

**Central Administrative Tribunal
Principal Bench**

OA No.411/2011
MA No.259/2011
MA No.428/2014
MA No.811/2015
MANo.4336/2015

Orders Reserved on: 27.07.2016.
Pronounced on:16.08.2016.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Dinesh Kumar,
S/o Shri Angnoo Ram,
R/o House No.21-F, Pocket-F,
Mayur Vihar Phase-I, Delhi-91.
2. Jaspal Singh,
s/o Anand Singh,
R/o 964/IV, NH IV,
Faridabad, Haryana-121001.
3. Arvind Kumar Pandey,
S/o R.S. Pandey,
R/o 14619-B, Mahalakshmi Apartments,
Kistangarh, Vasant Kunj,
New Delhi.
4. Prosenjit Nath Chaudhary,
S/o Mukul Rajan Nath,
R/o Tarapur VII, PO Tarapur VII,
Near Anamese L.P. School,
Dt-Cochar (Assam).
5. Dr. N. Roshini Kumar,
S/o N. Labango,
R/o Nagamapal Singjubung
Leirak, Imphal Pin795001.
6. Keshya Naik R
S/o Rama Naik,
R/o MIG-72, Jawahar Chowk,
Bhopal.
7. Dheeraj Jain,
S/o R.K. Jain,

N-50, Jagat Ram Park,
Laxmi Nagar,
Delhi-110092.

8. M.K. Choudhary,
s/o Sh. R.P. Choudhary,
R/o D-41, Aakriti Garden,
Nehru Nagar, Bhopal (MP).
9. Jose T. Varghese,
S/o Sh. T.J. Varghese,
R/o H-4, Shatabdi Nagar,
Raipur (C.G.)
10. J. Jayapragasam,
S/o Sh. P. Jayaraman,
R/o 80/G, GPRA Quarters,
Indira Nagar, Hyderabad.
11. V.A. Warade,
w/o Sh. Abhijit Warade,
R/o Directorate of Census Operations,
Gujarat, Census Bhawan,
Sector-10-A,
Gandinagar 382043.
12. S. Lingaswamy,
S/o Sh. S. Soundaiyan,
R/o Directorate of Census Operations,
Gujarat, Census Bhawan
Sector-10A, Ghandinagar-382043.
13. Digbijoy Giri,
S/o late Sh. P. Giri,
R/o Directorate of Census Operations,
Gujarat, Census Bhawan
Sector-10A, Ghandinagar-382043.
14. Vijay Kumar,
S/o Sh. Choote Lal Gupta,
R/o Flat No.934, Pocket-I,
Sector-14, Dwarka,
New Delhi-110 078.
15. Rajesh N. Malvia,
S/o N.R. Malvia,
R/o E-609, M.S. Apartments,
Curzon Road, New Delhi-110 001.

-Applicants

(By Advocate Shri Amit Anand)

-Versus-

1. Union of India through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Registrar General of India,
Office of the Registrar General of India,
2/A, Man Singh Road,
New Delhi-11.
3. Department of Personnel & Training,
Through its Secretary,
North Block, New Delhi.
4. Ravi Shankar,
Assistant Director of Census Operations,
Office of the Registrar General of India,
2/A Man Singh Road, New Delhi-11.
5. Ajay Khanna,
Assistant Director of Census Operations,
Office of the Registrar General of India,
2/1 Man Singh Road, New Delhi-11.
6. Devdutt Sharma (Retd.),
Directorate of Census Operations,
Lekhraj Marekt-III, Indiria Nagar,
Lucknow-226016, Uttar Pradesh.
7. Rakesh Kumar (Rtd.),
Directorate of Census Operations,
C Wing, Ground Floor, Pushpa Bhawan,
Madangir Road, Delhi-110062.
8. G. Fernandes (Rtd.),
Directorate of Census Operation,
Janganana Bhawan, 6-B,
Jhalana Doongri, Jaipur-302004,
Rajasthan.

9. Mohd. Ahmad,
Directorate of Census Operation,
16, Rajpur Road, Dehradun-248001 (UK).
10. Suresh Chandra,
Directorate of Census Operation,
Lekhraj Market-III, Indira Nagar,
Lucknow-226016, Uttar Pradesh.
11. Promila Tyagi,
Directorate of Census Operation,
C Wing, Ground Floor, Pushpa Bhawan,
Madangir Road, Delhi-62.
12. V.K. Babbar,
Directorate of Census Operation,
CGO Complex, B Block, Himadri,
Longwood Shimla-171001, H.P.
13. H. Kameshwari (Rtd.),
Directorate of Census Operation,
H.No.4-3-596/D, 3rd Floor,
Posnett Bhawan, Tilak Road,
Ram Kote, Hyderabad-500001, A.P.
14. R.C. Meena,
Directorate of Census Operation,
C Wing Ground Floor, Pushpa Bhawan,
MADANGIR Road, Delhi-110062.
15. M.K. Darjee,
Directorate of Census Operation,
Near Army Convoy Ground,
Tadong P.O., Gangtok-737102, Sikkim.
16. Kamlesh Gupta,
Directorate of Census Operation,
Janganana Bhawan, Plot No.2-B,
Sector-19-A, Madhya Marg,
Chandigarh-160019, Punjab.
17. A.K. Jain,
Directorate of Census Operation,
Janganana Bhawan, Area Hills,
Jail Road, Bhopal-462004,
Madhya Pradesh.

18. Bhagirath Singh,
Directorate of Census Operations,
Janganana Bhawan, Plot No.2-B,
Sector-19A, Madhya Marg,
Chandigarh-160019, Punjab.
19. B. Marbaniang (VRS)
Directorate of Census Operations,
Bayavu Hill, Kohima-797001,
Nagaland.
20. Lalhmingthanga,
Directorate of Census Operations,
Hrangbana Building, Chanmari,
Aizawl-796007, Mizoram,
21. D.P. Choudhary (Rtd.),
Directorate of Census Operations,
State Cooperative Bank Bhavan,
2nd Floor, Ashok Rajpath,
Patna-800 004, Bihar.
22. Umesh Chandra Lal,
Directorate of Census Operations,
Janpath, Unit-IX P.O. Bhoi Nagar,
Bhubaneswar-751007, Odisha.
23. R.P. Roy (Rtd.),
Directorate of Census Operations,
State Co-operative Bank Bhavan,
2nd Floor, Ashok Rajpath,
Patna-800004, Bihar.
24. G.C. Joshi,
Directorate of Census Operations,
C Wing Ground Floor, Pushpa Bhawan,
Madangir Road, Delhi-110062.
25. M.K. Yashodharan,
Directorate of Census Operations,
Exchange Building, 2nd Floor,
Sir Shivasagar Ramgulam Marg,
Ballard Estate, Mumbai-400 001,
Maharashtra.
26. T.R. Krishnan,
Directorate of Census Operations,
250, II Floor, Jawaharlal Nehru Street,
Puducherry-605001.

27. Parul Barman,
Directorate of Census Operations,
20-B, 10th Floor, Abdul Hamit Street,
Kolkata-700069, West Bengal.
28. K.C. Bahuguna,
Directorate of Census Operations,
16, Rajpur Road, Dehradun-248 001,
Uttarakhand.
29. P.P. Joy,
Directorate of Census Operations,
CGO Complex Poomkulam, Vellayani, PO,
Thiruvananthapuram-695522, Kerala.
30. S.C.L. Meena,
Directorate of Census Operations,
C Wing, Ground Floor, Pushpa Bhawan,
Madangir Road, Delhi-110062.
31. F. Lyngdoh,
Directorate of Census Operations,
Marwein Building, Dhankheti,
Shillong-793003, Meghalaya.

-Respondents

(By Advocates Shri Rajesh Katyal (1-3) & Shri L.R. Khatana
(4&5))

ORDER

Mr. K.N. Shrivastava, Member (A):

This Original Application (OA) has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:

A. Quash the impugned order dated 21.01.2010 passed by the Respondents as the same is not in consonance with the D.O.P.&T office memorandum dated 3rd of March, 2008 on the subject matter.

B. Quash the final seniority list dated 02.02.2010 issued by the Respondents as the same is in violation of the office memorandum dated 3rd March 2008 issued by the D.O.P&T.

C. Direct the respondents to re-cast/re-draw the seniority list of ACDO's (T) having due regard to the D.O.P.&T. Circular dated 3rd March 2008.

D. Pass any further order(s) as be deemed just and proper to meet the ends of justice."

2. The brief facts of this case are as under:

2.1 The applicants are Direct Recruits (DRs) to the post of Assistant Director of Census Operations (Technical), in short, ADCO (T). The Union Public Service Commission (UPSC) had advertised 33 posts of ADCO (T) vide its advertisement dated 13/19.05.2006 (Annexure A-2). The applicants had applied for the said post and through the UPSC selection process, they were selected. They were appointed to the said post in January, 2007. A copy of the appointment letter of one of the applicants issued by the Office of Registrar General of India can be seen at Annexure A-3.

2.2 The controversy involved in the OA is with regard to inter-se seniority of the DRs and the Departmental Promotees (DPs). Earlier, the respondents had prepared Annexure A-4 seniority list dated 27.05.2009 based on Department of Personnel & Training (DoP&T), OM dated 03.03.2008, which is at Annexure A-9. Later on, the seniority list was revised after obtaining the opinion of the DoP&T on the representations submitted by the DPs and accordingly the impugned Annexure A-1 seniority list dated 21.01.2010 has

been issued. Aggrieved by the said action of the official respondents, the instant OA has been filed.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The respondents no.4&5 are private respondents who are DPs to the post of ADCO (T). The applicants thereafter filed their rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 27.07.2016. Shri Amit Anand, learned counsel for the applicants, Shri Rajesh Katyal, learned counsel for the official respondents (1-3) and Shri L.R. Khatana, learned counsel for private respondents (4-5) argued the case.

4. The learned counsel for the applicants submitted that a provisional seniority list of officers in the grade of ADCO (T) as on 30.09.2009 was prepared vide OM dated 27.05.2009 (Annexure A-4). In the said seniority list the DPs recruited upto the years 2008 were placed above the promotes DPs who were promoted to the grade on substantive basis w.e.f. 04.01.2008. The said list was prepared as per DoP&T OM dated 03.03.2008 which is at Annexure A-9. He said that the DPs were dissatisfied with the said provisional seniority list on the ground that they could not be regularized to the cadre of ADCO (T) because the DPC meeting did not take

place in the recruitment years 2004-05, 2005-06 and 2006-07. The respondent no.1 sought the opinion of the respondent no.3 in the matter and finally the impugned Annexure A-1 seniority list came to be issued by respondent no.1. The learned counsel further submitted that the applicants represented to respondent no.2 vide their Annexure A-6 representation stating therein that inter-se seniority of DRs and DPs is to be fixed on the basis of rotation of quota of vacancies, year of availability both in their respective cases for the purpose of rotation and that the fixation of seniority is to be done as per the actual year of allotment after declaration of results/selection and completion of pre-appointment formalities as prescribed. The learned counsel vehemently argued that the inter-se seniority must be prepared on the basis of DoP&T, OM dated 03.03.2008 and not as per the opinion of the DoP&T furnished on a reference made. Concluding his arguments, the learned counsel stated that the impugned Annexure A-1 seniority list is not in accordance with the prescribed rules and regulations and hence is liable for quashing and setting aside, and that the prayers made by the applicants in the OA deserve to be granted.

5. Per contra, the learned counsel for the official respondents disputed the averments made in the OA. He

submitted that the cadre strength of ADCO (T) was 113 and as per the Recruitment Rules (RRs), 70% of the strength is to be filled by DPs and 30% by DRs. He said that in August, 2005 a proposal was sent by respondent no.1 to the UPSC for convening a DPC to fill up 14 vacancies of ADCO (T) meant for DPs. The said proposal was returned by the UPSC on the ground that latest seniority list of the feeder cadre, i.e., Statistical Investigators Grade-I (SI, Gr.-I) was required to be furnished with the proposal. The final seniority list of SI, Gr.-I, could be finalized only in April, 2007. By that time, more vacancies had arisen in the ADCO (T) cadre for the DPs. The total number of accumulated vacancies came to 59 belonging to the years 2004-05, 2005-06, 2006-07 and 2007-08. Accordingly, a consolidated proposal was sent to the UPSC for convening DPC for promoting the eligible officers in SI, Gr.-I to the grade of ADCO (T) and to fill up these vacant 59 posts meant for them. The learned counsel informed that pending regular promotions through the instrumentality of UPSC, the eligible SI, Gr.-I officers were promoted, on ad hoc basis, to the grade of ADCO (T). The learned counsel further submitted that the DPC meeting was convened by UPSC on 20.12.2007 wherein recommendations were made for regularizing all the ad hoc ADCOs (T) as regular ADCOs (T). The UPSC has also given the year-wise panel of the DPs

promoted on regular basis to the cadre of ADCO (T) and the same is at Annexure R-2. The learned counsel stated that the impugned Annexure A-1 seniority list is based on the DoP&T OM dated 03.07.1986 (Annexure R-5) by following the cardinal principle that the inter-se seniority between the DRs and DPs is to be based on quota of vacancies reserved for direct recruitment and promotion respectively in the RRs.

6. The learned counsel for the private respondents by and large endorsed the arguments of the learned counsel for the official respondents.

7. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the record and the documents annexed thereto. There are three OM's issued by the DoP&T on the issue of inter-se seniority of DRs and DPs. The first one is dated 03.07.1986 in which the principle laid down is as under:

"2.4.1 The relative seniority of direct recruits and of promotes shall be determined according to the rotation of vacancies between direct recruits and promotes which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees."

8. In the second OM dated 03.03.2008, the DoP&T has completely altered the criteria laid down in the OM of

03.07.1986 and has prescribed that the actual year of appointment shall determine the inter-se seniority. The relevant portion of the said OM is extracted below:

“3. Some references have been received seeking clarifications regarding the term ‘available’ used in the preceding para of the OM dated 3.7.1986. It is hereby clarified that while the inter-se seniority of direct recruits and promotees is to be fixed on the basis of the rotation of quota of vacancies, the year of availability, both in the case of direct recruits as well as the promotees, for the purpose of rotation and fixation of seniority, shall be the actual year of appointment after declaration of results/selection and completion of pre-appointment formalities as prescribed. It is further clarified that when appointments against unfilled vacancies are made in subsequent year or years either by direct recruitment or promotion, the persons so appointed shall not get seniority of any earlier year (viz. year of Vacancy/panel or year in which recruitment process is initiated) but should get the seniority of the year in which they are appointed on substantive basis. The year of availability will be the vacancy year in which a candidate of the particular batch of selected direct recruits or an officer of the particular batch of promotees joins the post/service.”

9. The DoP&T has issued the third OM, which is the latest one, dated 04.03.2014, following the decision of the Hon’ble Supreme Court in the case of **Union of India & Ors. v. N.R. Parmar & Ors.**, [Civil Appeal Nos. 7514-7515 OF 2005].

The relevant extract from the said OM is extracted below:

“5. The matter has been examined in pursuance of Hon’ble Supreme Court Judgment on 27.11.2012, in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar vs. UOI & Ors in consultation with the Department of Legal Affairs and it has been decided, that the manner of determination of inter-se-seniority of direct recruits and promotes would be as under:

a) DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as non-existent/withdrawn ab initio,-

- b) The rotation of quota based on the available direct recruits and promotees appointed against the vacancies of a Recruitment Year, as provided in DOPT O.M. dated 7.2.1986/3.07.1986, would continue to operate for determination of inter se seniority between direct recruits and promotees;*
- c) The available direct recruits and promotees, for assignment of inner se seniority, would refer to the direct recruits and promotees who are appointed against the vacancies of a Recruitment Year;*
- d) Recruitment Year would be the year of initiating the recruitment process against a vacancy year;*
- e) Initiation of recruitment process against a vacancy year would be the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits; in the case of promotees the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up the vacancies through promotion would be the relevant date.*
- f) The initiation of recruitment process for any of the modes viz. direct recruitment or promotion would be deemed to be the initiation of recruitment process for the other mode as well;*
- g) Carry forward of vacancies against direct recruitment or promotion quota would be determined from the appointments made against the first attempt for filling up of the vacancies for a Recruitment Year;*
- h) The above principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012, the date of Supreme Court Judgment in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar Vs. UOI & Ors*
- i) The cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in DoPT O.M. dated 7.2.86/3.7.86 may not be reopened.”*

10. Basically, the principle laid down in OM dated 03.07.1986 has been restored in the OM of 04.03.2014 after the Hon'ble Supreme Court has held in **N.R. Parmar's** case (supra) that year of occurrence of vacancies for DRs and DPs

is to be reckoned for the purpose of preparation of inter-se seniority.

11. We find that the impugned Annexure A-1 seniority list has been prepared following the instructions contained in DoP&T, OM dated 03.07.1986 which are also upheld by the Hon'ble Supreme Court in the case of **N.R. Parmar** (supra) and DoP&T OM dated 04.03.2014 has also adopted the same instructions. The impugned Annexure A-1 seniority list is, therefore, in conformity with the principle laid down by the Hon'ble Apex Court in the case of **N.R. Parmar** (supra) as well as in accordance with latest OM of DoP&T dated 04.03.2014. As such, we find that the Annexure A-1 seniority list is absolutely in order and it does not call for any interference. We, therefore, hold that the OA is devoid of merit and is liable for dismissal. Accordingly, the OA is dismissed.

12. Consequently, MAs also stand disposed of.

13. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’