

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.3383/2015

New Delhi, this the 14th day of September, 2015

Hon'ble Mr. Justice B.P. Katakey, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Dr. Ashutosh Kumar, Statistical Officer
Aged about 33 years
S/o Sh. S.B. Srivastava
R/o C/o Smt. Pallavi Singh
Plot A-3, Flat FF3,
SLF, Ved Vihar, Loni
Ghaziabad, UP-201102
2. Ms. Anupama, Statistical Officer
Aged about 35 years
D/o Sh. R.S. Gaur
R/o C/o Rakesh Sharma
B-58, Sector 48, Noida
UP-201301
3. Dr. Arvind Kumar Yadav, Statistical Officer
Aged about 35 years
S/o Sh. Shriram Yadav
R/o WA-35G, 3rd Floor
Street No.12, Shakarpur
New Delhi-110092.
4. Dileep Gupta, Statistical Officer
Aged about 35 years
S/o Sh. C.M. Gupta
R/o 150, Phase I, Pocket I,
Sector-13, Dwarka
New Delhi-110078.
5. Md. Liakat Mondal, Statistical Officer
Aged about 33 years
S/o Late Sh. Korban Mondal,
R/o C-135/6, 4th Floor, Shaheen Bagh,
Abul Faizal-II, Jamia Nagar,
New Delhi-25

6. Dr. Kaushal Kumar Rajput, Statistical Officer
Aged about 35 years
S/o Sh. D.R. Singh,
R/o PlotA-3, Flat FF3
SLF, Ved Vihar, Loni
Ghaziabad, UP-201102
7. Praveen Kumar Chaurasia, Statistical Officer
Aged about 38 years
S/o Kamata Prasad Chaurasia,
R/o Plot A-3, Flat FF2,
SLF, Ved Vihar, Loni
Ghaziabad, UP-201102 . Applicants.

(By Advocate : Mr.M.K. Bhardwaj)

Vs.

Govt. Of NCT of Delhi & Ors. Through

1. The Chief Secretary
Govt. Of NCT of Delhi,
5th Level, Á' Wing
Delhi Secretariat
New Delhi-110002.
2. The Principle Secretary (Planning)
Govt. Of NCT of Delhi
4th Level, A-Wing
Delhi Secretariat,
New Delhi-110002.
3. The Director
Planning Department
Govt. Of NCT of Delhi
6th Level, B Wing, Delhi Secretariat
New Delhi-110002. . Respondents.

(By advocate Mrs. Harvinder Oberoi)

ORDER (ORAL)

By Justice Mr. B.P. Katakey, Member (J);-

Heard Mr. M.K. Bhardwaj, learned counsel appearing for the applicant and also heard Mrs. Harvinder Oberoi, learned counsel appearing for the respondents.

2. The applicants in the present OA have prayed for a direction to the respondents to fix their seniority as Statistical Officer in terms of the judgment passed by the Hon'ble Supreme Court in the case of **Union of India & Ors. Versus N.R. Parmar [2012 (13), S C C 340]** with reference to order of vacancy for the year 2008 -2009. The applicants have also prayed for a declaration that the action of the respondents in not fixing the seniority of the applicants in terms of the OM dated 7.2.1986 and 3.7.1986 by interspersing them with the promotes of the same recruitment year is illegal, arbitrary and unjustified. The applicants have, hence, prayed for setting aside the seniority list dated 30.07.2012.

3. Learned counsel appearing for the applicants submits that after issuing the said memorandum dated 4.3.2014, though the applicants have filed number of representations including the latest dated 25.5.2015, the said representation has not been decided and disposed of till date. Learned counsel appearing for the applicant submits that present OA may be disposed of directing the respondent No.3 to consider and dispose of the said representation by passing a speaking order, within a reasonable period of time.

4. Learned counsel appearing for the respondents submits that representation filed by the applicants would be given due consideration and will be disposed of in accordance with the law

and necessary order would be passed, if such representation has not been disposed of.

5. Having regard to the submissions advanced by the parties, the present OA is disposed of directing the respondent No. 3 to dispose of the aforesaid representation and pass a reasoned and speaking order thereon, within a period of two months from the date of receipt of a copy of this order, provided such representation has not already been decided and disposed of by a speaking order. The order that may be passed shall be communicated to the applicants. No costs.

(K.N.Shrivastava)
Member (A)

(B.P. Katakey)
Member (J)

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2. The applicant in the present OA raised the issue of his seniority contending, inter-alia that despite the issuance of the office memorandum dated 4.3.2014 issued by the Govt. of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, his seniority has not been fixed, though earlier memorandum dated 3.3.2008 has been issued declaring dies-none of his past service, which provided that the actual year of appointment, both in the case of direct recruits and promotees, would be reckoned as the year of availability for the purpose of rotation and fixation of inter se seniority. The matter was examined in pursuance of Hon'ble Supreme Court Judgement dated 27.11.2012, in Civil Appeal No. 7514-7515/2015 in the case of **Union of India & Ors. Versus N.R. Parmar [2012 (13), S S C 340]** and in consultation with the Department of Legal Affairs wherein it has been decided that the manner of determination of inter-se-seniority of direct recruits and promotees. In **Union of India & ors. vs. N.R. Parmar & Ors.** (supra), the Hon'ble Apex Court has appreciated this partial modification in sub-paragraphs a,b,c & h of Para-20 of its judgment, and arrived its conclusions as follows:-

“(a) Paragraph 2 of the OM dated 7.2.1986 first records the existing manner of determining inter se seniority between direct recruits and promotees (i.e., as contemplated by the OM dated 22.11(sic 12).1959), namely, “...the slots meant for direct recruits or promotees, which could not be filled up, were left vacant, and when direct recruits or promotees become available through later examinations or selections, such persons occupied the vacant slots, (and) thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was shortfall in direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service to their credit...”. The words, “when direct recruits or promotees become available through later examination or selections”, clearly connotes, that the situation contemplated is one where, there has been an earlier examination or selection, and is then followed by a “later” examination or selection. It is implicit, that in the earlier examination or selection there was a shortfall, in as much as, the available vacancies for the concerned recruitment year could not all be filled up, whereupon, further examination(s) or selection(s) had to be conducted to make up for the shortfall. In the instant situation, the earlier OM dated 22.11(sic 12).1959 contemplated/provided, that slots allotted to a prescribed source of recruitment which remained vacant, would be filled up only from the source for which the vacancy was reserved, irrespective of the fact that a candidate from the source in question became available in the next process of examination or selection, or even thereafter. In other words **the “rotation of quotas” principle was given effect to in letter and spirit under the OM dated 22.11(sic 12).1959, without any scope of relaxation.**

b).....**It is therefore apparent, that the OM dated 7.2.1986 partially modified the “rotation of quotas” principle in the determination of inter se seniority originally expressed in the OM dated 22.11(sic 12).1959. The OM dated 7.2.1986, provided that the “rota” (rotation of quotas) would be adhered to “...only to the extent of available direct recruits and promotees...”, i.e., for promotee and direct recruit vacancies which could be filled up through the original/first process of examination or selection conducted for the recruitment year in which the vacancies had arisen.**

(c) For the vacancies remaining unfilled when the same were originally/first sought to be filled up, the slots available under the “rota” principle under the OM dated 22.11(sic 12).1959, would be lost to the extent of the shortfall. In other words, the “rotation of quotas” principle would stop operating after, “...the last position upto which it is (was) possible to determine seniority on the basis of rotation of quotas...”, for the concerned recruitment year.

(d to g) xxxxxxxxxxxxxxxxxxxxxx (Not reproduced here).

(h) **In paragraph 6 of the OM dated 7.2.1986 it was asserted, that the general principles for determining seniority in the OM dated 22.11(sic 12).1959 were being “modified” to the extent expressed** (in the OM dated 7.2.1986). The extent of modification contemplated by the OM dated 7.2.1986 has already been delineated in the foregoing sub-paragraphs. Para 6 therefore leaves no room for any doubt, that **the OM dated 22.11(sic 12).1959 stood “amended” by the OM dated 7.2.1986 on the issue of determination of inter se seniority between direct recruits and promotees, to the extent mentioned in the preceding sub-paragraphs.** The said amendment was consciously carried out by the Department of Personnel and Training, with the object of remedying the inappropriateness of direct recruits of “later” examination(s) or selection(s) becoming senior to promotees with long years of service, in terms of the OM dated 22.11(sic 12).1959”.

(Emphasis supplied).

MA NO. 3002/2015.

Heard the leaned counsel apparing for the applicants and upon perusal of the averments made in the MA, MA for joining together is allowed.