

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2944/2016
M.A.No.354/2017
M.A.No.2611/2016
M.A.No.3345/2016

Order Reserved on: 09.02.2017
Order pronounced on 21.02.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

1. Ashish Sood
Aged about 28 years
S/o Shri P.C.Sood
R/o H.No.44-45, 11nd Floor, Pocket-2
Sector-24, Rohini, New Delhi – 110 085.
2. Neha Anand
Aged about 27 years
D/o Late Shri Denesh Kumar Anand
R/o H-15, MIG Flats, Prasad Nagar Phase-2
Karol Bagh, New Delhi – 110 005.
3. Rajender Singh
Aged about 27 years
S/o Shri Madan Singh
R/o B-4166/108, Sant Nagar
Burari, New Delhi.
4. Bhagwan Das
Aged about 31 years
S/o Shri Pooran Chand
R/o H.No.631/4, Krishna Street No.13
Maujpur, Delhi-110 053.

5. Balraj
Aged about 30 years
S/o Shri Jai Singh
R/o VPO Farmana, Sonapat
Haryana-131408.
6. Sheetal Kumar
Aged about 37 years
S/o Shri Prahlad Singh
R/o H.No.157, Type-II, ESIC Colony
Sector-56, Noida, Uttar Pradesh – 201301.
7. Ravi Sonwal
Aged about 28 years
S/o Shri Jyoti Prasad Sonwal
R/o B-287, Madipur Colony
New Delhi – 110 063.
8. Vinesh Dabas
Aged about 27 years
S/o Shri Kirpal Singh
R/o H.No.235, Vill. Rasulpur
P.O.Rani Khera, Delhi-81.
9. Arvind
Aged about 28 years
S/o Shri Sukhpal Singh
R/o Gagsina, Teh. Gharaunda
Karnal – 132114.
10. Sumit
Aged about 28 years
S/o Shri Ramesh Chand
R/o Village Saboli, PO-Nathupur
Distt. Sonapat, Haryana-131029.
11. Somvir
Aged about 29 years
S/o Shri Birj Lal
R/o VPO Dahina, Distt & Teh. Rewari
Haryana-123411.

12. Lalit Kumar
Aged about 29 years
S/o Shri Ravinder Singh
R/o 1058/7, Shastri Nagar, Line Par
Bahadurgarh, Haryana – 124507.
13. Deepak
Aged about 28 years
S/o Shri Ram Kumar
R/o H.No.4110-A, Gali No.5
Shiv Colony, Kaithal Road, Karnal.
14. Sumit Kumar Vats
Aged about 26 years
S/o Shri Naresh Chander Vats
R/o A-2/40 Sector-18
Rohini, Delhi.
15. Anil Kumar
Aged about 26 years
S/o Shri Kailash Chander
R/o VPO Ladpur, Bhiran Pana
Delhi-81.
16. Preeti Mehta
Aged about 36 years
D/o Shri Mahinder Kumar Mehta
R/o D-8/S-3, Shikhar Appartments
Dilshad Colony, Delhi – 110 095.
17. Sushil Kumar Pandey
Aged about 32 years
S/o Shri Gopi Nath Pandey
R/o 4/55, Subhash Nagar
New Delhi – 27.
18. Amit Kumar Vashishta
Aged about 27 years
S/o Shri Subhash Chandra

R/o VPO Tajpur Kalan
Delhi – 110 036.

19. Manish Kumar Suman
Aged about 29 years
S/o Shri Subodh Rai
R/o VPO Kochahasa
Distt. Arwal, Bihar-804426.
20. Bharti Aggarwal
Aged about 30 years
W/o Shri Abhishek Aggarwal
R/o B-2/270, Yamuna Vihar
Delhi – 110 053.
21. Rohit Yadav
Aged about 29 years
S/o Shri Mahesh Yadav
R/o WZ-171, Madipur Village
New Delhi – 110 063.
22. Suman Pandey
Aged about 26 years
D/o Shri Anand Ballabh Pandey
R/o 8-B-3, N.P.L. Colony
New Rajendra Nagar, New Delhi – 110 060.
23. Deepika Sharma
Aged about 29 years
D/o Shri Ved Prakash Sharma
R/o WZ-27A, Ajay Park, Naya Bazar
Najafgarh, New Delhi -43.
24. Sunil Kumar
Aged about 32 years
S/o Shri Rajendra Prasad Yadav
R/o C-72, Mohan Garden, Rama Park
Dwarkamore, Delhi-69.

25. Shiv Gupta
Aged about 28 years
S/o Shri Ashok Kumar Gupta
R/o Flat No.507, Indigo Tower
Sgimpressions 58, Rajnagar Extn.
Ghaziabad, Uttar Pradesh-201017.
26. Rohit Kumar
Aged about 31 years
S/o Shri Prem Lal
R/o H.No.04, Street No.14
A-1 Block, Bengali Colony
Sant Nagar, Burari, Delhi-84.
27. Shari Sasidharan
Aged about 27 years
W/o Shri Dipin Sugathan
R/o CC9A, Shalimar Bagh
Delhi – 110 088.
28. Nikhil Anand
Aged about 30 years
S/o Shri Vijay Prasad Sah
R/o 124-H, Sector-4
Pushp Vihar, New Delhi – 110 017.
29. Manoj Kumar
Aged about 33 years
S/o Shri Navnath
R/o A-12, Shashi Garden, Gali No.-6
Near Govt. Primary School
Patpar Ganj, Delhi – 110 091.
30. Amar Singh
Aged about 30 years
S/o Shri Badri Prasad
R/o SBC-266/4, Gali No.4
Bapu Colony, Mandi Pahari
Dist. South Delhi, New Delhi – 110 047.

31. Amrit Bhakat
Aged about 40 years
S/o Late Shri Ram Nath Bhakat
R/o Flat No.146, ESIC Colony, Sector-56
Noida, Uttar Pradesh-201301.
 32. Gaurav Singh
Aged about 30 years
S/o Shri Richpal Singh
R/o H.No.2 Opp. Bharat Petrol Pump
Main Wazirabad Road, Bhopura, Sahibabad
Ghaziabad, Uttar Pradesh – 201005.
 33. Harish Kumar
Aged about 34 years
W/o Late Shri Devendra Prasad
R/o F-2/18-B, Gali No.32, Chankya Place
C-1, Janakpuri, New Delhi – 110 059.
 34. Rekhil Lodi
Aged about 31 years
S/o Shri Kalyan Sahai
R/o RZ-25, Shanker Park
West Sagarpur, New Delhi – 110 046.
 35. Kapil Kumar
Aged about 30 years
S/o Shri Khajan Chand
R/o B-82-C, Block-B, Shivaji Enclave
Raghubir Nagar, Delhi-27.
(All Upper Division Clerks in ESIC)
- Applicants.

(By Advocate: Shri Ajesh Luthra)

Versus

1. Employees State Insurance Corporation
Through its Director General
Panchdeep Bhawan, CIG Marg
New Delhi - 110 002.

2. Regional Director (Delhi)
Employees State Insurance Corporation
3rd and 4th Floor, Rajendra Bhawan
Rajendra Place, New Delhi – 110 008.
3. Om Prakash
S/o not Known
R/o not known
4. Sajjan Singh
S/o not known
R/o not known
5. Sanjiv Kumar
S/o not known
R/o not known
6. Kuldeep Kumar Ravi
S/o not known
R/o not known
7. Raju Kumar
S/o not known
R/o not known
8. Jitender Kumar
S/o not known
R/o not known
9. Rajender Prasad
S/o not known
R/o not known
10. Pavitra Kumar
S/o not known
R/o not known
11. Manoj Yadav
S/o not known
R/o not known

12. Vinod Kumar P.V.
S/o not known
R/o not known
13. Manoj Verma
S/o not known
R/o not known
14. Divyadheesh Chandra Tilkhan
S/o not known
R/o not known
15. Chetan Kapoor
S/o not known
R/o not known
16. Balister
S/o not known
R/o not known
17. Ram Kishore Meena
S/o not known
R/o not known
18. Shashi Bhushan Mandal
S/o not known
R/o not known
19. Manoj Kumar
S/o not known
R/o not known
20. Surender Kumar
S/o not known
R/o not known
21. Raj Pal
S/o not known
R/o not known

22. Chandra Mohan Singh
S/o not known
R/o not known
23. Chaman Lal
S/o not known
R/o not known
24. Raj Kumar
S/o not known
R/o not known
25. Dalip Kumar
S/o not known
R/o not known
26. Daya Ram Dwivedi
S/o not known
R/o not known
27. Charan Singh
S/o not known
R/o not known
28. Sanjeev Kumar
S/o not known
R/o not known
29. Jagdish Singh
S/o not known
R/o not known
30. K.K.Bhardwaj
S/o not known
R/o not known
31. Rajendra Singh Bisht
S/o not known
R/o not known

32. K.Kandaswami
S/o not known
R/o not known
33. Narender Singh
S/o not known
R/o not known
34. Pradyuman Singh
S/o not known
R/o not known
35. Mahender Singh
S/o not known
R/o not known
36. Suman Arora
D/o not known
R/o not known
37. Nasim Akhtar
S/o not known
R/o not known
38. Raqmbir Singh
S/o not known
R/o not known
39. Ashish Kumar
S/o not known
R/o not known
40. Mohan Singh
S/o not known
R/o not known
41. Sangeeta Diwan
D/o not known
R/o not known

42. Babita Chhabra
D/o not known
R/o not known
43. Ramesh Kumar Gupta
S/o not known
R/o not known
44. Prem Prakash
S/o not known
R/o not known
45. Kiran Rani
D/o not known
R/o not known
46. Sunny Ram
S/o not known
R/o not known
47. H.S.Bisht
S/o not known
R/o not known
48. Kumari P.R.
D/o not known
R/o not known
49. Sumer Singh
S/o not known
R/o not known
50. Abhey Kumar Ohja
S/o not known
R/o not known
51. Pinky
D/o not known
R/o not known

52. Radhe Shyam
S/o not known
R/o not known
53. Subhash Chand
S/o not known
R/o not known
54. Salimuddin
S/o not known
R/o not known
55. Manjur Khan
S/o not known
R/o not known
56. Ravinder Kumar
S/o not known
R/o not known
57. Anjana Ahuja
D/o not known
R/o not known
58. Shweta
D/o not known
R/o not known
59. Yograj
S/o not known
R/o not known
60. Naveen Kumar
S/o not known
R/o not known
61. Deepak Giri Goswami
S/o not known
R/o not known

62. Dhan Singh
S/o not known
R/o not known
63. Sachin Soni
S/o not known
R/o not known
64. Chaitanya Krishan Murti
S/o not known
R/o not known
65. Snehhil Lodhi
S/o not known
R/o not known
66. Nitesh Kumar
S/o not known
R/o not known
67. Ganesh Kumar
S/o not known
R/o not known
68. Diksha
D/o not known
R/o not known
69. Amrender Kumar
S/o not known
R/o not known
70. Manoj Kumar
S/o not known
R/o not known
71. Arun Kumar
S/o not known
R/o not known

72. Preeti Kalia
D/o not known
R/o not known
73. Kuldeep Chand
S/o not known
R/o not known
74. Rajiv Kumar
S/o not known
R/o not known
75. Jai Kishan Meena
S/o not known
R/o not known
76. Khamba Khaling
S/o not known
R/o not known
77. Krishan Pal
S/o not known
R/o not known
78. Seema Kumari
D/o not known
R/o not known
79. Raghubir Singh
S/o not known
R/o not known
80. Nishit Kumar Mishra
S/o not known
R/o not known
81. Prashant Jaggi
S/o not known
R/o not known

(Respondent No.3-81 to be served through Respondent No.2)

.... Respondents

(By Advocate: Shri Manish Kumar Saran with Ms. Rekha Banker)

ORDER

By V. Ajay Kumar, Member (J):

The applicants, 35 in number and who were all appointed as UDCs in the 1st Respondent-Employees State Insurance Corporation (in short, ESIC) through direct recruitment mode, in September, 2012, filed the OA seeking seniority over the private respondents 3 to 81, who were originally appointed as LDCs and were promoted as UDCs prior to the date of the appointment of the applicants.

2. The 1st Respondent-ESIC notified the Employees State Insurance Corporation (Upper Division Clerk or Upper Division Clerk –Cashier) Recruitment Regulations, 2011, which were published in the official gazette vide Annexure A7, dated 03.12.2011. Under these rules, for the first time, for recruitment to the post of UDC, the direct recruitment method was introduced. Prior to the issuance of the said rules, under the old rules, 100% of the UDC/UDC-Cashier posts were required to be filled up by way of promotion only. All the private respondents were initially appointed as LDCs and later were promoted as UDCs by way of upgradation of 75% of posts in the cadre of LDC vide Annexure A6 Memorandum dated 05.09.2011, and Annexure A5-Memorandum dated 04.11.2011, i.e., prior to the date of issue and publication of the 2011 Regulations.

3. The Annexure A7-Regulations 2011, which came into force w.e.f. 03.12.2011, provides for recruitment of 75% of UDC vacancies by

direct recruitment and 15% by promotion on the basis of seniority cum fitness and 10% by Limited Departmental Competitive Examination. In pursuance of the said Regulations of 2011, the respondents-EPFO initiated process of selection in December, 2011 and issued the Annexure A3-Notification in January, 2012. Under the said Notification, 137 posts of UDCs were notified for direct recruitment and in pursuance of the said Notification, the applicants were directly recruited as UDCs and were accordingly appointed in September, 2012.

4. The respondents vide Annexure A8, issued a revised draft seniority list of the employees appointed/promoted in the cadre of Upper Division Clerks for the years 2012-13, 2013-14 and 2014-15 at Delhi region, whereunder, the names of all the applicants were shown against the year 2012-13. Though the applicants made representations against the said draft seniority list, by requesting the respondents to place them in the seniority list of UDCs for the recruitment year 2011-12 by following the 2011 Regulations, as the process for their recruitment was initiated during 2010-12 itself and that the Notification was also issued during 2011-12, i.e., prior to 31.03.2012, the respondents without considering the same and without giving any reasons, issued the impugned Annexure A1, Memorandum dated 19.04.2016 by confirming the draft seniority list. Basing on the said seniority list, when they are proceeding to hold the DPC for promotion to the next higher post of Assistant/Headclerk, vide

the impugned Annexure A2 dated 23.08.2016, the applicants filed the OA questioning both the said orders.

5. Heard Shri Ajesh Luthra, the learned counsel for the applicants and Shri Manish Kumar Saran and Ms. Rekha Banker, the learned counsel for the respondents 1 and 2, and perused the pleadings on record. Though notices were served on the private respondents No.3 to 81, no one represented them and that no counter has also been filed on their behalf and hence, they were set exparte on 06.12.2016.

6. Shri Ajesh Luthra, the learned counsel for the applicants submits that the issue relating to the fixation of inter-se seniority between the direct recruits and promotees was settled by the Hon'ble Apex Court in **Union of India & Others v. N.R.Parmar and Others**, (2012) 13 SCC 340 and the DoPT has also issued Office Memorandum dated 04.03.2014, in pursuance of the said decision of the Hon'ble Apex Court and in terms of the same, the applicants are entitled for reckoning their seniority in respect of their recruitment year, i.e., 2011-12, and also entitled to be placed above the private respondents in the seniority list of 2011-12, with all consequential benefits.

7. The learned counsel further submits that once the process for recruitment of vacancies of UDCs by way of direct recruitment was initiated during the year 2011-12, and a Notification was also issued during the said year, even though the applicants were appointed in September, 2012, they are required to be treated as recruited in the

recruitment year 2011-12 and entitled for the consequential seniority over the private respondents.

8. Shri Manish Kumar Saran, learned counsel appearing for the EPFO-official respondents 1 and 2, though not disputed the aforesaid facts, but denied the submissions and the claim of the applicants.

9. The learned counsel for the respondents would mainly contend that the Annexure A7, Regulations of 2011 were issued on 14.11.2011 and were published in the official gazette on 03.12.2011, and hence, they came into force w.e.f. 03.12.2011 only. Prior to the said date, there was no direct recruitment method for appointment to the post of UDC and whatever appointments made to the post of UDC before 03.12.2011, were governed by the old rules only, and their seniority also would be reckoned accordingly. All the private respondents, who were originally appointed as LDCs, were promoted to the post of UDC prior to 03.12.2011, by way of Annexure A6, dated 05.09.2011 and Annexure A5, dated 04.11.2011, by way of upgradation of 75% posts in the cadre of LDC to the post of UDC. There was no rota quota rule between direct recruits and promotees in the category of UDCs prior to 03.12.2011 and hence, either the decision of the Hon'ble Apex Court in **N.R.Parmar** (supra) or the OM dated 04.03.2014 issued in implementation of the said decision has no application to the private respondents. Since the Regulations of 2011 came into force on 03.12.2011, the vacancies filled up subsequent thereto only are governed by **N.R.Parmar** (supra), and that no UDC who was

promoted from the category of LDC subsequent to 03.12.2011, was given seniority over the applicants. The Regulations 2011 have no retrospective operation and hence, the applicants are not entitled for the relief(s) claimed by them.

10. The learned counsel for the respondents also submits that the applicants cannot maintain the OA against the private respondents as they have not questioned the upgradation of the private respondents as UDCs, which was admittedly prior to the issuance of the 2011 Regulations.

11. The learned counsel for the respondents also placed reliance on **P.Sudhakar Rao & Others v. U.Govinda Rao & Others**, (2013) 8 SCC 693 and **State of Uttar Pradesh and Others v. Ashok Kumar Srivastava & Anr.**, (2014) 14 SCC 720.

12. In **N.R.Parmar** (supra), while determining the issue of inter-se seniority between the direct recruits and the promotees, the Hon'ble Apex Court, after a detailed discussion, held as under:

52. Having interpreted the effect of the OM's dated 7.2.1986 and 3.7.1986 (in paragraphs 20 and 21 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried forward vacancies, or vacancies which came to be filled up by a later examination/selection process. The facts only reveal, that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the inter-se seniority between the direct recruits and promotees, carried out through the OM dated 7.2.1986, and the compilation of the instructions pertaining to seniority in the OM dated 3.7.1986, leave no room for any doubt, that the rotation of quotas principle, would be fully applicable to the direct

recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year.ö

13. The relevant paragraphs of OM dated 04.03.2014, which was issued in implementation of **N.R.Parmar** (supra), read as under:

"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. U01 & 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 nonexistent/withdrawn ob 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 inter 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. U01 & 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."

14. The respondents have only submitted that **N.R.Parmar** (supra) and the OM issued thereto have no application prior to 03.12.2011, as the mode of direct recruitment was introduced, for the first time, w.e.f. the said date only. It is further submitted on their behalf, the rights of the private respondents to the posts of UDCs and the consequential seniority, have been crystallized as their upgradation as UDCs prior to 03.12.2011, was not questioned.

15. The old Rules of Recruitment of UDCs, provide 100% by way of promotion only, however, 75% by seniority subject to rejection of unfit and 25% on the basis of Departmental Competitive Examination. But the EPFO, vide Annexure A/5, Memorandum, dated 4.11.2011, upgraded all the existing LDCs as on 01.12.2011, irrespective of their qualifications, subject to vigilance clearance as UDCs, w.e.f. 01.12.2011. That means they have not filled up any existing UDC vacancies, as per the old rules even, but upgraded all the existing LDCs as on 01.12.2011 as UDCs, with effect from the said date.

16. Admittedly, the applicants have not questioned the upgradation of the private respondents as UDCs. It is also not the case of the applicants that the private respondents were upgraded/promoted as UDCs out of the vacancies, which were in existence as on 03.12.2011. As rightly submitted by the respondents counsel, there was no rota quota rule at the time of upgradation/promotion of the private respondents as UDCs. Therefore, their right to hold the post and for

the consequential seniority cannot be affected by way of the rules, which came into force subsequent to their upgradation.

17. The Memorandum No.A-40/11/1/2011-E-III.Col.II, dated 01.12.2011, issued by ESIC, indicates that after the private respondents were upgraded as UDCs, the remaining vacancies in the cadre of UDC were filled up by the applicants by way of direct recruitment.

18. It is true that as per OM dated 04.03.2014, the applicants are entitled to be considered against the recruitment year 2011-12, as their recruitment process was admittedly initiated during the vacancy year 2011-12. But, at the same time, the vacancies against which the private respondents were upgraded/promoted neither alleged to be of the UDC vacancies which were pertaining to the same recruitment year nor any pleadings to that effect were raised in the OA. The applicants have also failed to show any valid reason how the Regulations 2011, which came into force on 03.12.2011, can determine the seniority of those promotees, who were promoted prior to the said date.

19. In **P.Sudhakar Rao** (supra), the question which was answered is the validity of weightage for seniority purposes and its impact on the seniority of other employees, with reference to the service conditions in A.P.Engineering Service.

20. In **Ashok Kumar Srivastava** (supra), the claim of the 1st Respondent therein for conferment of retrospective seniority was rejected.

21. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly, the same is dismissed. Pending MAs, if any, stand disposed of. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/