

OA.No.170/00971/2016/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00971/2016

DATED THIS THE 19th DAY OF SEPTEMBER, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Smt.Umesh Kuwar
W/o.Sri.Divyanshu Gupta
Aged about 38 years
Senior Scientific Officer-II
ORDAQA(OH)
Directorate General of Aeronautical
Quality Assurance (DGAQA)
Ministry of Defence
Vimanapura, Post Box No.1782
Bangalore-560 017.
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Outer Ring Road
Mahadevapura
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.....Applicant

(By Advocate Shri K.Hanifa)

Vs.

1. Union of India
Represented by its Secretary
Department of Defence Production
Ministry of Defence
136, South Block
New Delhi-110 011.
2. Director General, AQA
Directorate General of Aeronautical
Quality Assurance (DGAQA)
Ministry of Defence
'H' Block
New Delhi-110 011.
3. Deputy Director General (South Zone)
Directorate General of Aeronautical
Quality Assurance (ORDAQA)
Ministry of Defence
Post Box No.1782
Vimanapura
Bengaluru-560 017.
4. Sri.Komal Padmakar Barhate

SSO-II
O/o Deputy Director General (Nasik)
DGAQA, Ministry of Defence
C/o HAL (Nasik Division)
Ojhar (Maharashtra)-422207.

5. Sri Rajeev Verma
SSO-II
O/o Regional Director Aeronautical Quality Assurance, DGAQA
C/o Bharath Electronics Limited
Bharat Nagar PO
Gaxiabad (UP)-201010.
6. Sri.V.K.Kadam
SSO-II
O/o Regional Director Aeronautical Quality Assurance, DGAQA
C/o Bharath Electronics Limited
Bharat Nagar PO
Gaziabad (UP)-201010.Respondents

(By Advocate Smt.P.K.Parameswari)

O R D E R (ORAL)

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a. *Call for the records leading to the issuance of the impugned Letter F.No.2927/SSO-II/DGAQA/Admn-I dt.13.10.2016 at Annexure-A19 issued by the R-2 on perusal quash the impugned Letter F.No.2927/SSO-II/DGAQA/Admn-I dt.13.10.2016 at Annexure-A19 as arbitrary, discriminatory, unjust, unfair and violation of Article 14 and 16 of Constitution of India.*
 - b. *Direct the respondent-2 to rectify the discrepancy in the Seniority Roll for SSO-II at Ann-A13 and direct the R2 to place the applicant at Sl.No.3 by superseding DPC candidates Shri Komal Padmakar Barhate at Sl.No.3-R4 and Sh.V.K.Kadam at Sl.No.9-R6 and Shri Rajeev Verma at Sl.No.4-R5, in consequence thereof direct the R2 to issue the fresh Seniority Roll for SSO-II in the interest of justice and equity.*
2. Based on the details furnished in the OA and the reply statement, the facts of the case are as follows:

The respondent organisation i.e. Directorate General of Aeronautical Quality Assurance(DGAQA) vide its letter dated 29.9.2009 placed a requisition with

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the UPSC for recruitment of 23 Senior Scientific Officer Grade-II in six different disciplines such as Electrical, Electronics, Computer Engineering, Mechanical, Metallurgy & Chemical. The applicant had applied for the said recruitment in response to the UPSC advertisement dated 31.12.2009 (Annexure-A4) under Electronics category. After completing the selection process, the UPSC sent different panels for the six disciplines which included six names under the Electronics category. The applicant did not figure in the said list. After one Shri Raghavendra M.S who was number one in the panel under Electronics category did not join the post, the respondents sought names from the reserved list and the name of the applicant was recommended in his place. The applicant was appointed vide communication dated 20.9.2012(Annexure-A7) and after seeking time she joined on 19.11.2012. The Seniority Roll of SSO-II in DGAQA was brought out on 01.04.2014 in which the applicant's name did not figure though she had completed more than a year's service by that time. Thereafter, she submitted representation dated 30.4.2014(Annexure-A9) for inclusion of her name in the seniority list. The respondent No.2 informed her vide communication dated 31.8.2015(Annexure-A12) that her name will be reflected in the seniority list. The fresh Seniority Roll was brought out on 26.11.2015(Annexure-A13) in which the applicant's name was shown at Sl.No.21. Thereafter, the applicant submitted a representation on 7.12.2015(Annexure-A14) saying that her name should have been placed at Sl.No.3 below Shri Baburam Yadav as she belongs to same panel as him. She had also referred to information obtained from UPSC by her through RTI which stated that she had obtained 66 marks as compared to 60 marks secured by Shri Rajev Verma. Hence, she claims placement of her name above him. She also agitated against the placement of promoted candidates at Sl.No.4 and 9 above her. The issues that have been

highlighted in the OA are the inter-se seniority between the applicant and other persons who were directly recruited in the same year as well as the inter-se seniority position of direct recruits and promotees in the seniority roll.

3. The applicant has highlighted the following aspects in the OA;

The DOPT OM dated 11.11.2010 clearly indicates that the inter-se seniority of candidates nominated from reserve panel will be fixed as per consolidated merit given by UPSC/SSC/Recruiting agency. The DOPT OM dated 13.6.2000 had clearly specified that a request for nomination from reserve list, if any, is made to the UPSC in the event of an occurrence of a vacancy caused by non-joining of the candidates within a period of one year, then such a vacancy should not be treated as fresh vacancy. The applicant sought information from UPSC under RTI as to whether the recruitments undertaken against the 6 advertisements are to be considered as a single selection panel, how the inter-se seniority of all the selected candidates would be determined and whether the UPSC considered all the candidates selected against six advertisements. The UPSC informed the applicant that each of the recruitment cases mentioned in RTI is different and a separate merit list is prepared for each recruitment case and hence no question of preparing a consolidated merit list and deciding inter-se seniority of all candidates selected against the six advertisements. The DOPT OM dated 3.7.1986(Annexure-A2 series) stipulated that the relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on recommendations of the UPSC or other selecting authorities, the person appointed as a result of earlier selection being senior to those appointed as a result of subsequent selection. The applicant contends that she had secured 66 marks as against 60 marks secured by Shri Rajeev Verma and hence she should be considered senior to Shri Rajeev Verma and

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should be placed above him in the seniority list. She further mentioned that the advertisement against which she was recruited has closing date of 31.12.2009 and another officer Shri Sudhakar Sahoo was recruited against UPSC advertisement with closing date of 28.1.2010, but he has been placed at Sl.No.20 which is above the applicant in the seniority list. Referring to the inter-se seniority between direct recruits and the promotes, the applicant had referred to the judgment of the Hon'ble Apex Court in UOI vs. N.R.Parmar's case which held that the recruitment year should be the year of initiating the recruitment process against a vacancy year. Advertisement against which the applicant was recruited was published in month of December 2009 and hence the recruitment year of the applicant is 2009-10. Two promotee candidates at Sl.No.3 and 9 in the seniority list(Annexure-A13) were considered under the DPC held on 25.10.2010. Hence they should belong to the recruitment year 2010-11 and placed after the applicant in the seniority list. The applicant submits that the stand taken by the respondents in the impugned order dated 13.10.2016(Annexure-A19) that candidates appointed from the reserve panels may be placed at the bottom of seniority list prepared on the basis of consolidated order of merit of a particular selection year is against its own OM dtd.3.7.1986 and therefore, the same is unjustified and liable to be set aside and her seniority should be fixed at Sl.No.3 as contended by her.

4. The respondents in their reply statement submitted that the Defence Aeronautical Quality Assurance Service(DAQAS) Rules 2005(Annexure-R3) provide induction at the level of Senior Scientific Officer(SSO-II) by direct recruitment(75%) and by promotion(25%). Accordingly, inter-se seniority of direct recruits and promotes in the grade of SSO-II is determined as per the ratio prescribed in the Service Rules i.e. 3:1. The term 'availability' contained in DOPT OM dated 7.2.1986(Annexure-R4) continued to be taken as date of

appointment of batch of direct recruits and promotes even before the issue of DOPT OM dated 3.3.2008. Hence withdrawal of said OM dated 3.3.2008 issued pursuant to the judgment in N.R.Parmar's case does not affect the seniority position of officers fixed as per the said interpretation of the term 'availability'. The inter-se seniority of direct recruits and promotes decided prior to 27.11.2012 i.e. effective date of revised instructions is considered as settled cases and are not to be re-opened. Since more than one panel was received from UPSC during a year in the grade of SSO-II, the same was consolidated as a single batch and availability of complete batch was deemed from the date of joining of first candidate from the consolidated batch. The applicant and another direct recruit SSO-II Smt.Ranjitha C who was selected from the reserve panels were available on the date of issue of last seniority roll of SSO-II on 01. Apr 2014 but they were not included inadvertently. Their names were included in the draft seniority roll dated 26.11.2015 at the bottom of batch of direct recruits of the year 2010-11 and above the available promotes of DPC year 2011-12 i.e above Shri M.S.Rana to Smt.Kusum Dahiya.

5. Referring to the contention made by the applicant in her representation, the respondents submitted that in pursuance of DOPT OM dated 13.6.2000, the selection of a candidate from reserve panel should not be treated as fresh vacancy. Though the applicant became available in the year 2012-13 and the date of her joining is 19.11.2012, she has been deemed available in the year 2010-11 along with other candidates of her panel and was placed at the bottom of the consolidated batch of year 2010-11. Subsequent to the issue of panel of Electronics discipline to which the applicant belongs, the panels of other disciplines were available such as Metallurgy dt.13.8.2010, Chemical dt.8.6.2011, Electrical dt.23.11.2010, Mechanical dt.04.01.2011, 25.2.2011 &

18.3.2011 and Computer Engineering dt.27.1.2011. In case the applicant is placed with her panel of Electronics discipline above Sri Rajeev Verma on the basis of marks obtained by her, she would also be above the four other candidates of other discipline namely Bhaskar Satya Pulyapudi, Metallurgy, Abhishek Sahay, Mechanical, Anand Palathadethil, Comp.Engineering and Srinivasa Phani Kumar, Computer Engineering who have got more marks than her and joined well before her. Regarding the case of promotees referred to by the applicant, the respondents submitted that the DPCs for promotion in SSO-II grade for the year 2009-10(3 vacancies) and 2010-11(01 vacancy) was conducted by UPSC on 29.9.2010. All 4 departmental promotes, including Shri Komal Padmakar Barhate and Shri V.K.Kadam who were empanelled against vacancy of year 2009-10 were deemed available in the year 2010-11 as first candidate from the consolidated panel joined on 11.11.2010. Accordingly, the departmental promotes have been rotated with available direct recruits of consolidated batch of year 2010-11 in the ratio of 1:3. The DOPT was also consulted on the representation of the applicant for which the DOPT clarified that as regards appointment of candidates from the reserve panel, he/she may be placed at the bottom of seniority list prepared on the basis of consolidated order of merit. Therefore, the respondents contended that there is no merit in the contention made by the applicant.

6. The applicant has filed a rejoinder in which she contends that the submission of the respondents that they have submitted a single requisition for the recruitment of 23 posts of SSO-II is not correct. While it was a single covering letter dated 29.9.2009(Annexure-R9), there are six different requisitions made to the UPSC for recruitment in six disciplines. Moreover the Ministry of Defence OM dated 18.6.2009(Annexure-A22) would indicate that the 23 vacancies were actually pertaining to the year 2008-09 though the

respondents attempted to fill up these vacancies only during the year 2009-10 i.e after one year. Hence the interpretation of the term 'available' as defined in the DoP&T OM dated 7.2.86(Annexure-R4) and the interpretation of the respondents in the reply statement regarding availability of complete batch was deemed from the date of joining of first candidate from the consolidated batch is against the order of Hon'ble Apex Court in N.R.Parmar's case. Moreover, the contention made that the inter-se seniority of direct recruits and promotes decided prior to 27.11.2012 i.e. effective date of revised instructions was considered as settled will also not hold good in the present case as the applicant's name has not been entered in the seniority roll. Therefore, without finalising the said roll it cannot be termed as settled. Moreover the DOPT OM dated 4.3.2014 issued in pursuance of the judgment in N.R.Parmar's case indicate that DR/DPC candidates belonging to same vacancy year should be rotated as per the ratio defined in service rules(Annexure-R3). Hence, the direct recruits like the applicant should be rotated with the DPC candidates promoted against the vacancies year of 2008-09 and not with the vacancies year of 2009-10 and 2010-11. Moreover, Sri Baburam Yadav is the first DR candidate and the first DPC candidate Sri Komal Padmakar was placed directly below Sri Baburam Yadav, which is against the ratio of 3:1. Further, Sri Nagendra Singh Poniya is shown as direct recruit, which is not correct as he was not recruited against one of the 23 vacancies in question.

7. The applicant further submitted that all the direct recruits selected through same selection process are always placed together and their date of joining or date of recommendation by the UPSC has no bearing on their seniority and only marks are used to determine the inter-se seniority within the panel. The applicant has referred to inter-se seniority in the Mechanical and Computer Science groups to support her contention.

8. The applicant mentioned that the discipline of the applicant has a closing date of 31.12.2009 and by which time the applicant should need to have 5 years of experience whereas in other cases selected through other advertisements, per se for computers, the closing date was 28.1.2010, they should need to have 5 years of experience as on that date. This should indicate that for other disciplines, the candidates enjoy the criteria of 'first candidate'. Therefore, placing them above the applicant will be arbitrary and against the natural justice. The applicant contended that the advice of the DOPT regarding appointment of candidates from the reserve panel and their placement at the bottom of seniority list prepared on the basis of consolidated order of merit is therefore grossly unfair and cannot be sustained.
9. The respondents have filed an additional reply statement in which they submit that as the posts of SSO-II are not divided into different disciplines, consolidated vacancies in the grade are released and thereafter these are divided into different disciplines on the basis of requirement of the service. Hence after completion of recruitment process for all disciplines, the same are consolidated as a single batch by placing one panel below another in the chronological order of receipt of panels from the UPSC. Vacancies for 23 candidates in six disciplines were notified in the same day by single letter. As regards the interpretation of the term 'available' as per DoP&T OM dated 7.2.1986 is being followed by the respondent all along. Regarding inter-se seniority of direct recruits which had become available in the year 2010-11, they were consolidated into a single batch in the seniority roll issued on 25.10.2012. Therefore, the inter-se seniority of direct recruits of the year 2010-11 as well as promotes already rotated with them was a settled issue before the issue of revised instructions dated 4.3.2014. The applicant was

nominated from the reserve panel and joined the service on 19.11.2012 and hence as per the advice of DoP&T the applicant has been placed at bottom of consolidated batch of direct recruits of the year 2010-11.

10. Regarding first DPC candidate vis-à-vis direct recruit candidate, the respondents submitted that in the previous years the rotation between direct recruits and promotes had ended at direct recruit i.e. Shri Deepak Kumar Sahu. Thereafter, in the year 2010-11, the first available direct recruit i.e. Shri Nagendra Singh Poniya was placed followed by Sri Baburam Yadav and hence the next slot, after three direct recruits as assigned to the promotee. The inclusion of name of Sri Nagendra Singh Poniya in the consolidated batch of the year 2010-11 is as per the interpretation of the term 'availability'. The respondents submit that as no consolidated order of merit has been given by the UPSC, the different disciplines are consolidated as a single batch by placing one panel below another in the chronological order of receipt of panels from the UPSC which is in consonance with the DoP&T instructions that persons appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selection. Therefore, they submit that the entire seniority list has been prepared in accordance with the extant rules and there is no merit in the submission made by the applicant.

11. The applicant has filed additional rejoinder which is practically a reiteration of the submission made earlier in the OA and also the rejoinder.

12. We have heard the Learned Counsel for both sides. The Learned Counsel for the applicant while reiterating the submission made in the OA and rejoinder highlighted the fact that the DOPT OM of July 1986 clearly stipulate that relative seniority of all direct recruits has to be in the order of merit in which

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they were selected. Subsequent DOPT OM of June 2000 states that a vacancy caused by non-joining of a candidate within the stipulated time should not be treated as fresh vacancy. Therefore the applicant's inter-se seniority amongst direct recruit candidates should have been based on the marks secured by her. The stand taken by the respondents that a candidate from reserved panel would be placed at the bottom of the seniority list is thus against the DOPT OM of July 1986. He also referred to a judgment of the Principal Bench of the Tribunal in OA.No.465/2013 and submitted that the applicant therein was placed in the supplementary list prepared by the UPSC in January 2005 while the original list of successful candidates was sent in 2004. The DOPT in their reply statement in the said OA submitted that the decision has been taken for fixation of seniority in order of marks obtained by the candidates. Accordingly, the Principal Bench in its order dated 6.9.2013 directed the respondents to fix the seniority of the applicant as per the marks secured by him in the examination. On the same analogy, the inter-se seniority amongst the applicant and other direct recruits of same batch should have been fixed according to the marks secured by her in the selection process. Regarding the inter-se seniority between direct recruits and promotees, the Learned Counsel for the applicant mentioned that the vacancies against the applicant's batch were recruited belong to 2008-09 whereas the promotees belong to vacancy of 2009-10 and 2010-11. Therefore, in terms of the judgment of the Hon'ble Apex Court in N.R.Parmar & others, the direct recruits shall belong to 2008-09 whereas promotes to the year 2009-10 and 2010-11. Therefore, placing promotes along with direct recruits of previous year is not justified.

13. The Learned Counsel for the respondents referred to the details submitted in the reply statement and additional reply statement and submitted that the

applicant was appointed from the reserved panel and in terms of the opinion given by the DOPT, she has been placed at the bottom of the consolidated seniority list prepared on the basis of merit. The consolidated seniority list was prepared based on the date of receipt of panels for the six disciplines as no consolidated order of merit of the candidate was provided by the UPSC. Hence all the six panels were consolidated by the respondents into a single batch in the chronological order of the panels issued by the UPSC. They referred to the DOPT OM dated 3.7.1986 which indicated that a person appointed as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection. Further this aspect has not been questioned by the applicant. The direct recruits have been rotated with promotes who became available in the same year.

14. On a query made to the respondents as to whether the Senior Scientific Officer Grade-II are covered by the Flexible Complementing Scheme meant for Scientists, they mentioned that they are not covered under the Flexible Complementing Scheme. As per the DGAQA service rules, the promotion to the post of Senior Scientific Officer Gr.I is made on the basis of selection by the DPC from the feeder grade i.e. Sr.Scientific Officer Grade-II. Accordingly, promotion to the post of SSC Gr-I is made on the basis of selection i.e. assessment in order of seniority against prescribed benchmark of 'good' in the relevant APARs. However, it could not be clarified by them as to whether the posts in Sr.Scientific Officer Gr-I are meant discipline wise and whether in that case it will be open to only Sr.Scientific Officer Gr-II belong to that discipline alone. On a further query made to the respondents as to how the selection panel for Metallurgy which was received on 13.8.2010 and panel for Chemical received on 5.10.2010 were placed below the Electronics stream whose first list was available only on 6.10.2010 since they were preparing the seniority on

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the basis of issue of panel by the UPSC, they mentioned that this has been done erroneously. However, when the draft seniority list was placed, no representation was received from any of the direct recruits. However, the same can be corrected separately after examining all the issues. On being asked to the actual vacancy of promotes, they mentioned that the promotes who have been rotated with the direct recruits from the consolidated batch of 2010-11, three vacancies pertain to the vacancy of 2009-10 and one to the vacancy year 2010-11. Since the first candidate from the consolidated batch joined in 2010-11, the promotees were against the vacancies available in the year 2010-11, they have been rotated with the direct recruits. When asked as to whether it does not go against the spirit of the N.R.Parmar's judgment, the Ld.Counsel or Dept. representative could not clarify the same. The respondents also submitted a written reply which also enclosed a copy of the note from DOPT regarding the inter-se seniority of the applicant.

15. We have gone through the records and have carefully considered the facts of the case and also the submissions made by either side. It is evident from the records that there were 23 vacancies of Senior Scientific Assistant Gr-II which were apportioned between the six different disciplines namely Mechanical, Electrical, Electronics, Metallurgy, Information Technology and Chemical by the respondents based on their requirement. A single communication was sent by the respondents to UPSC on 29.9.2009 for recruitment to Sr.Scientific Officer Gr-II enclosing requisitions for the six disciplines. In terms of OM dated 18.6.2009(Annexure-A22) the said 23 vacancies released for direct recruitment pertain to the year 2008-09. The selected panels for the six disciplines were received by the respondent department from the UPSC on different dates starting with 13.8.2010. In the Electronics panel one of the selected candidate did not join and the respondents requested UPSC to

nominate another candidate from the reserved panel. The name of the applicant was communicated in 2012 following which the applicant was appointed vide order dated 20.9.2012. In regard to the seniority of the applicant in the panel, she was placed at the bottom of the consolidated seniority list prepared for that particular selection year based on the consultation and advice of the DOPT. It also appears that in the case of promotes for four vacancies, three departmental promotees were considered against vacancies for the year 2009-10 and one for the vacancy 2010-11 on the basis of DPC conducted by the UPSC on 29.9.2010. They were rotated with the direct recruits taking their availability in the year 2010-11 in the ratio of 1:3. The issues for consideration in the present OA are as follows:

- i. Whether the decision for placing the applicant at the bottom of the consolidated list of direct recruits as communicated vide Annexure-A19 is justified.
- ii. Whether the seniority of the applicant shall be considered based on the marks secured by her during the selection process.
- iii. Whether the inter-se seniority between direct recruits and promotees have been correctly made.

16. As far as the first issue which relates to placement of the applicant at the bottom of the consolidated seniority list of direct recruits is concerned, the applicant had referred to the OM dated 3.7.1986 which says that the relative seniority of direct recruits is to be determined by the order of merit in which they are selected for appointment. It is further clarified in OM dtd.13.6.2000 that if a vacancy is caused by non-joining of the candidate and is filled up by the reserved panel candidate, the same shall not be treated as fresh vacancy. Since the applicant has secured 66 marks in the selection process, she claims for placement of her name above Sri Rajeev Verma who secured 60 marks in the selection process in the seniority roll. The respondents, on the other hand, have taken a stand that as the applicant was appointed from the reserved

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panel, she has to be placed at the bottom of the panel prepared on the consolidated merit list. The respondents had provided a UO note of the DOPT based on which they placed the applicant at the bottom of the consolidated list and sent a communication dated 13.10.2016(Annexure-A19). The UO note of the DOPT mentions that instructions contained in DOPT OM dated 3.7.1986 stipulate that the relative seniority of all direct recruits is to be determined by an order of merit in which they are selected for appointment on the recommendation of the UPSC or other selecting authority. They also taken a view that in case of more than one panel are received from UPSC during a year including panels for different disciplines, the same were consolidated as single batch and availability of complete batch is deemed from the date of joining of first candidate from the consolidated batch. Seniority of a candidate from different disciplines shall be considered as per their order of merit. Reference has also been made to OM dated 13.6.2000 on the subject of operation of reserve panels which provided that a vacancy caused by non-joining of a candidate within the stipulated time shall not be treated as fresh vacancy. The respondents have mentioned in their reply that even though the applicant has actually available in the year 2012-13, her date of joining being Dec.2012, she was placed with other candidates who were available in the year 2010-11. If the appointment of the applicant from a reserved panel is not considered as a fresh vacancy, her seniority should be considered along with all the persons consolidated in the same batch and in the order of merit. There is no stipulation anywhere in the DOPT OMs that a person in the reserved panel has to be placed at the bottom of the consolidated seniority list. Therefore the conclusion drawn by the DOPT in their UO note that applicant belongs to a reserve panel and hence placed below the consolidate list of direct recruits of that batch defies logic and also not in consistent with

the OMs referred to by them in the UO note.

17. In this context, reference was made to the order of the Principal Bench of the Tribunal in OA.No.465/2013, Neeraj Kumar Sharma vs. UPSC. The Principal Bench in its order dated 6.9.2013 held vide para-5&6 as follows:

5. When the matter was heard earlier, learned counsel for the respondents sought time to seek instruction in the matter and file reply. Shri R.N.Singh, counsel appearing for DOP&T, respondent No.2, informs that the grievance of the applicant has already been redressed as the cadre controlling authority of the applicant is instructed for fixation of seniority in order of marks obtained by the candidates. He submits that in this regard, as per advice of the Commission, necessary directions to all the cadre controlling authorities have been issued for fixation of seniority in order of marks obtained by the candidates, vide letter dated 08.06.2013. He, therefore, submits that since the only grievance of the applicant is with regard to fixation of his inter-se seniority on the basis of the marks obtained by the candidates, as provided by the DOP&T through OM NO.41019/18/97-Estt(B) dated 13.6.2000, and the cadre controlling authorities have now been instructed to fix seniority as per marks obtained by the candidates, nothing survives to be decided by this Court. The applicant also fairly submitted that the respondents may, therefore, be directed to prepare the seniority list keeping in view the marks obtained within a reasonable period of time.

6. In view of the submissions made and also as agreed to by the parties, we dispose of this matter at this stage with the direction to the respondents to fix the seniority of the applicant as per the marks secured by him in the Examination, meaning thereby that he should be placed above the candidates who have secured less than 1195 marks. However, it would be open to the applicant to approach the Tribunal again in the event the respondents fail to prepare the seniority list keeping in view the marks obtained by the applicant.

In the said OA, the applicant had appeared for the Civil Services Examination 2003. The first list of 413 candidates was published in 2004. In view of the available vacancies, a supplementary list of 44 candidates was published in January, 2005 in which the applicant figured. The applicant was placed below in the first consolidated merit list. As admitted by the DOPT in the said OA, the fixation of seniority was to be based on the order of marks obtained by the candidates irrespective of whether they are in the first list or in the supplementary list. On the same analogy, in the present case also the seniority of the applicant along with other candidates should be based on the marks secured by her rather than placing her at the bottom of the consolidated list. Therefore, the stand taken by the respondents that a

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candidate from a reserved panel should be placed at the bottom of the seniority list prepared on the consolidated order of merit clearly appears to us wrong and unjustified.

18. The second issue concerns the placement of the applicant vis-à-vis other candidates of that batch in the consolidated list. We note that the Senior Scientific Officer Gr-II is treated as consolidated cadre. All the 23 vacancies released for direct recruitment for the year 2008-09 by the Dept. of the Defence Production is a consolidated. As submitted by the respondents in their reply, the breakup of vacancies in to six disciplines was done in terms of the requirement of the service. However, after the selection all are consolidated in to a single batch. All the 23 vacancies were reported to the UPSC through a single communication on 29.9.2009 though there were six requisitions for six disciplines. The issuance of notices by the UPSC for the six different disciplines is only a matter of procedure and as processed by the office. Similarly the receipt of selection panels is also based on processing of the files by the office and communicated to the department. The communication of six disciplines cannot be considered as earlier or later selection under any circumstances as all vacancies are consolidated and the selection panels were also consolidated into a single batch. We are unable to accept the contention of the respondents that based on the communication of panels made by the UPSC on different dates, the selection of a discipline is considered as earlier selection than the others whose panel was received later. Though the department claims to have constituted the panels into single batch on the basis of the chronological order of issue of the panels by the UPSC, we note that the panel of Metallurgy received on 13.8.2010 and panel for Chemical received on 5.10.2010 were placed below the Electronics discipline whose panels were received on 6.10.2010 and 6.12.2010. The

Department representative during the hearing mentioned that they have wrongly placed the Electronics stream above the Metallurgy but no one objected to the inter-se seniority when the draft seniority list prepared. A wrong cannot be justified by saying that others did not object to it.

19. As the matter stands all selected candidates belong to the same vacancy year and the same batch and form part of the same gradation list. The UPSC in an RTI communication to the applicant informed that since they have prepared a separate merit list for each discipline, there is no question of their preparing a consolidated merit list and deciding inter-se seniority of all the candidates selected against all the six advertisements. The DOPT in their note had indicated that administrative Ministry may obtain a consolidated order of merit of candidates recommended for different disciplines for appointment as Senior Scientific Officer Gr-II from UPSC for a particular year. Though the UPSC did not prepare a consolidated merit list, they did indicate the marks secured by each candidate in the selection process. Therefore, on that basis, the department could have prepared a consolidated merit list of all the candidates based on marks secured by them. In the reply statement, the respondents had tried to justify the placement of the applicant at the bottom of the list saying that 4 persons belonging to the disciplines of Metallurgy, Mechanical, Computer Engineering scored higher marks than the applicant but still placed below to the applicant. If such a stand is taken then marks secured by a candidate should be deciding factor for preparing seniority list based on merit and no other criteria. Since the marks of each candidate are available that should be the basis for preparing the consolidated seniority list. It would be grossly unfair for a candidate who secured 75 marks to be placed below in the seniority list of a person secured 40 marks only because the selection panel from UPSC for that discipline was received on a later date. The processing of

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case by the UPSC office whether for bring out the advertisement or sending the panel cannot be a determining factor for deciding seniority of a candidate when the date of joining is not taken into consideration for deciding the inter-se seniority. Hence it would be logical if the consolidated seniority list prepared on the basis of marks secured by all the candidates of the particular batch.

20. The third issue pertains to the inter-se seniority between promotees and direct recruits. As already mentioned, the vacancies for which direct recruits have been obtained belong to the vacancy year 2008-09, though the selection process took place in 2009-10 and joining of persons took place in 2010-11. On the other hand, four promotes were selected by the UPSC in the DPC held on 29.9.2010 for three vacancies of the year 2009-10 and one for 2010-11. The order of the Hon'ble Apex Court in Civil Appeal No. No.7514-7515/2005 and other connected cases, N.R.Parmar and others Vs. Union of India & ors. dealt with the issue of inter-se seniority between direct recruits and promotes. The Hon'ble Apex Court has elaborately analysed the implication of OMs dated 7.2.1986 and 3.7.1986 and had observed as follows:

"It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year(during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the concerned appointees in terms of the 'rotation of quotas' principle, so as to arrange them with other appointees (from the alternative source), for vacancies of the same recruitment year."

The issue of inter-se seniority between direct recruits and promotees has to be decided in terms of the order passed by the Hon'ble Apex Court and subsequent communications by the DOPT. There is no scope for any other

interpretation in the matter. The stand taken by the applicant that first direct recruit has joined in 2010-11 and hence they have been rotated with promotes of that batch is wrong and against the order of the Apex Court in N.R.Parmar's case. The inter-se seniority between direct recruits and promotes has to be made strictly in accordance with the judgment of the Hon'ble Apex Court in N.R.Parmar's case.

21. In the light of the discussions in the preceding paras, we hold that the placement of the applicant at the bottom of the consolidated seniority list is not in consistence with the DOPT OM dated 3.7.1986 and therefore, the communication dtd.13.10.2016 at Annexure-A19 is set aside. The applicant shall be placed in terms of marks secured by her vis-à-vis other selected candidates of that particular year. Further in regard to the inter-se seniority between all the candidates selected in the six disciplines in the consolidated merit list the same should be prepared by the respondents based strictly on the marks secured by them as communicated by the UPSC. The inter-se seniority between promotees and direct recruits shall be re-examined treating the vacancy year for direct recruits as 2008-09. The respondents are therefore, directed to prepare the seniority list afresh in accordance with the observation and directions given above. The draft seniority list shall be prepared within a period of four(4) months from the date of receipt of a copy of this order and then finalised after giving an opportunity for representation, if any, to the draft seniority list.

22. The OA is accordingly, disposed of with the aforesaid direction. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(JUSICE HARUN UL RASHID)
MEMBER (J)

/ps/

Annexures referred to by the applicant in the OA.170/00971/2016

- Annexure-A1: Copy of OM No.9/23/71-Estt.(D) of DoP&T dt.06.06.1978
 Annexure-A2: Copy of OM No.22011/7/86-Estt.(D) of DoP&T dt.03.07.1986 & OM No.41019/18/97-Estt.(B) dt.13.06.2000
 Annexure-A3: Copy of the Advertisement No.10/2009 dt.11.06.2009
 Annexure-A4: Copy of the Advertisement No.23/2009 dt.31.12.2009
 Annexure-A5: Copy of the Advertisement No.24/2009 dt.14.01.2010
 Annexure-A6: Copy of the Advertisement No.01/2010 dt.28.01.2010
 Annexure-A7: Copy of the Appointment L.No.4130/SSO-II/Electronics/DGAQA/ADM-II dt.20.09.2012
 Annexure-A8: Copy of L.No.4130/SSO-II/Electronics/DGAQA/ADM-II dt.15.10.2012
 Annexure-A9: Copy of representation dt.30.04.2014
 Annexure-A10: Copy of F.No.7/6(42)/2014-R-VI of UPSC dt.19.05.2014
 Annexure-A11: Copy of representation dt.30.03.2015
 Annexure-A12: Copy of L.No.2927/SSO-II/DGAQA/Admn-1 dt.31.08.2015 of R-2
 Annexure-A13: Copy of Seniority Roll F.No.2927/SSO-II/DGAQA/Admn-1 dt.26.11.2015
 Annexure-A14: Copy of representation dt.07.12.2015
 Annexure-A15: Copy of online RTI Application to UPSC dt.14.08.2016
 Annexure-A16: Copy of reply of UPSC-No.F.7/6(145)/2015-R. VI dt.15.01.2016
 Annexure-A17: Copy of representation dt.10.06.2016
 Annexure-A18: Copy of reply of R2-F.No.2927/SSO-II/DGAQA/Admin-1

dt.06.07.2016

Annexure-A19: Copy of reply of R2 to R3-F.No.2927/SSO-II/DGAQA/Admin-1
dt.13.10.2016

Annexures with reply statement:

Annexure-R1: Copy of DoP&T letter dt.04.03.2014 Annexure-R2: OM dtd:19.5.2009

Annexure-R2: Copy of seniority roll of Sr.Scientific Officer Gr-II in DGAQA
organisation

dt.26.11.2015

Annexure-R3: Copy of the Gazette of India dt.6.12.2005

Annexure-R4: Copy of Seniority of direct recruits and promotees

Annexure-R5: Copy of representation dated 7.12.2015

Annexure-R6: Copy of OM dt.13.6.2000

Annexure-R7: Copy of inter-se seniority of direct recruits in the grade of SSO-II

Annexure-R8: Copy of letter dated 13.10.2016 of Director(HR),DGAQA, N.Delhi

Annexure-R9: Copy of letter dt.29.9.2009 w.r.t. recruitment of Sr.Scientific Officer Gr-II in

DTE Gen of Aeronautical Quality Assurance, Min. of Defence

Annexure-R10: Copy of letter dt.6.10.2010 from UPSC

Annexure-R11: Copy of letter dt.13.08.2010 of UPSC

Annexure-R12: Copy of letter dt.25.10.2012 of Dy.Director(HR/Pers),DGAQA,
N.Delhi

w.r.t. seniority roll of Sr.Scientific Officer Gr-II in DGAQA organisation

Annexure-R13: Copy of letter dt.10.01.2012 from UPSC

Annexures with rejoinder:

Annexure-A20: Copy of Proforma for requisition to the UPSC

Annexure-A21: Copy of OM No.22011/9/98-Estt dt.08.09.1998 – Model Calendar for
DPCs

Annexure-A22: Copy of OM No.9(1)/2007-D(FY-I) Vol-III dt.18.06.2009

Annexure-A23: Copy of DoP&T OM.No.20011/1/2008-Estt.(D) dt.11.11.2010

Annexure-A24: Copy of UPSC recommendation letter (Meenakshi M)

No.F.1/248(64)/2009-R-VI dt.04.01.2011

Annexure-A25: Copy of UPSC recommendation letter (Bheemla Bhukya)

No.F.1/248(64)/2009-R-VI dt.25.02.2011

Annexure-A26: Copy of UPSC recommendation letter (Suraj Raj)

No.F.1/248(64)/2009-R-VI dt.18.03.2011

Annexure-A27: Copy of UPSC RTI reply dt.26.07.2016

Annexure-A28: Copy of Promotional order No.4173/SSO-I/DGAQA/Adm-I
dt.17.11.16 of Sh Rajeev Verma (Junior to the applicant)

Annexures with additional reply:

-NIL-

Annexures with additional rejoinder:

Annexure-A29: Copy of OM No.A-23011/03/2016-Ad.II, GOI, Ministry of Corporate
Affairs, dt.22.05.2017

Documents produced by the applicant:

Document No.1: OM.F.No.22012/15/2013-AIS(I) dtd. December, 2016 & OM No.22012/15/2013-AIS(I) dtd.8.8.2013 filed along with Memo dtd.29.8.2017

Document No.2: Order dtd.27.11.2012 of Hon'ble Apex Court in CA.No.7514-7515/2005, order dtd.11.10.2013 of Hon'ble Principal Bench in OA.No.3594/2011-Shri Narayana Rao Battu v. UOI & Anr. and order dtd.28.1.2014 of Hon'ble CAT, Bangalore in OA.No.960-979/2013-Aalok Tiwari & 28 Ors v. UOI & Ors filed along with Memo dtd.29.8.2017

Document No.3: Order dtd.6.9.2013 of Hon'ble CAT, Principal Bench, N.Delhi in OA.No.465/2013-Neeraj Kumar Sharma v. UOI & Ors filed along with Memo dtd.8.9.2017

Documents produced by the respondents:

Document No.1: Clarifications on the points raised by the Tribunal

Document No.2: Copy of the DOPT Dy.No.1162327/16/CR dtd.3.5.2016
