

**CNTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 970 of 2014

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr.Swarup Kumar Mishra, Member (J)**

1. Nirmal Samantray, aged about 48 years, S/o Sri Suryamani Samantray of Vill-Akhupal, PO-Kadadiha, Dist-Keonjhar.
2. Sanjib Kumar Mohanty, aged about 52 years, S/o Late Nagendra Prasad Mohanty, permanent resident of New Colony, Birat Bazar, Charbatia, Dist.-Cuttack.
3. Dasarathi Panda, aged about 53 years, S/o Late Padmanav panda, permanent resident of New Colony, Girls' High School Road, Bhuyan Sahi, Dist./Town-Deogarh.
4. Debasish Biswas, aged about 51 years, S/o Late I.B.Biswas, permanent resident of Basudevpur, Sibhala, Belgharia, Kolkata-56.
5. Anil Kumar Tiwari, aged about 49 years, S/o Late R.S.Tiwari, permanent resident of House No.628 S/B-05/01, Sarvodaya Nagar, Lucknow-16, Uttar Pradesh.

All applicants from 1 to 5 are working as Sr. Field Officer (Tech.), A.R.C., Charbatia, Dist.-Cuttack.

.....Applicants.

VERSUS

1. Union of India represented through its Secretary to Government of India, Department of Cabinet Affairs, Cabinet Secretariat, New Delhi – 110001.
2. Special Secretary, Aviation Research Centre, Block-V (East), R.K.Puram, New Delhi-110066.
3. Asst. Director, Aviation Research Centre, East Block-V, R.K.Puram, New Delhi – 110066.
4. Joint Director, Aviation Research Centre, At/PO-Charbatia, Dist-Cuttack-754028.
5. Avadesh Pratap Singh, presently working as Sr. Field Officer (Tech.), Aviation Research Centre (HQ), New Delhi.
6. Aroopi Samiya, presently working as Sr. Field Officer (Tech.), Aviation Research Centre, Charbatia, Dist-Cuttack.
7. Fanindra Mohan Sharma, presently working as Sr. Field Officer (Tech.), Aviation Research Centre, Sarasawa, Uttar Pradesh.
8. Sanjaya Kumar Sharma, presently working as Sr. Field Officer (Tech.), Aviation Research Centre, Charbatia, Dist.-Cuttack.
9. Kshitij Saxena, presently working as Sr. Field Officer (Tech.), Aviation Research Centre (HQ), New Delhi.
10. Gajendra Dutt, presently working as Sr. Field Officer (Tech.), Aviation Research Centre (HQ), New Delhi.
11. S.Suresh, presently working as Sr. Field Officer (Tech.), Aviation Research Centre, Doomdooma, Assam.
12. Anup Singh Meena, presently working as Sr. Field Officer (Tech.), Aviation Research Centre, Leh.
13. Harendra Singh, presently working as Sr. Field Officer (Tech.), Aviation Research Centre, Doomdooma, Assam.
14. Sanjeev Kumar, presently working as Sr. Field Officer (Tech.), Aviation Research Centre, Charbatia, Cuttack.
15. Kamal Gupta, presently working as Sr. Field Officer (Tech.), Aviation Research Centre (HQ), New Delhi.
16. Anand, presently working as Sr. Field Officer (Tech.), Aviation Research Centre, Doomdooma, Assam.

- 17.Vivek Sharma, presently working as Sr. Field Officer (Tech.), Aviation Research Centre (HQ), New Delhi.
- 18.Ankit Vishnoi, presently working as Sr. Field Officer (Tech.), Aviation Research Centre (HQ), New Delhi.
- 19.V.Sudhakar, presently working as Sr. Field Officer (Tech.), Aviation Research Centre, Charbatia, Cuttack, (HQ) New Delhi.
- 20.Akhil Raj R, presently working as Sr. Field Officer (Tech.), Aviation Research Centre (HQ), New Delhi.
- 21.Raj Kumar Beghel, presently working as Sr. Field Officer (Tech.), Aviation Research Centre, Doomdooma, Assam.
- 22.Saurabh Sharma, presently working as Sr. Field Officer (Tech.), Aviation Research Centre (HQ), New Delhi.

.....Respondents.

For the applicant : Mr. S.K.Ojha, Counsel

For the respondents: Mr. S.Behera, Counsel

Heard & reserved on : 9.9.2019

Order on : 21.10.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicants have filed this OA seeking the following reliefs :

- “(i) To allow the original application.
- (ii) To quash the seniority list dtd. 23.9.2014 (Annex. A/5) holding that the same is not in consonance with the rules;
- (iii) To quash the memorandum dtd. 4.7.2014 (Annex.A/7) and memorandum dtd 7.11.2014 (Annex.A/8) and memorandum dtd. 29.1.2016 (Annex.A/11) holding that the same are opposing & against the spirit of the DOP&T circulars dtd. 3.7.1986, 13.6.2000 & 4.3.2014;
- (iv) To declare that the Respondents No. 5 to 24 and the persons not yet joined as direct recruits in the SFO(Tech) cadre are junior to the applicants and be placed below in the seniority list;
- (v) To direct the Respondent No.2 to re-fix the seniority of the applicants in appropriate place;
- (vi) To give the consequential benefit on the basis of re-fixation of seniority;
- (vii) To pass any further order/orders as deem fit and proper in the facts and circumstances of the case.”

2. In brief, the facts in this OA are that the applicants are working as Senior Field Officer (Tech.) (in short SFO) under the respondents after their selection for promotion to the post of SFO through a written examination held on 7.1.2007. They joined in the said post on different dates. Out of 20 persons who were listed to have qualified in the said written examination for promoting it is stated that 6 persons joined in 2009, 6 persons joined in 2010, 4 persons in 2011, 3 persons in 2012 and one person joined in 2013. In the year 2011-12, a panel of outsiders were prepared for direct recruitment to the post of SFO, based on the waiting list of the UPSC in Indian Engineering Service examination conducted in 2010. Seven(7) from this panel joined in 2013 and 5 in 2014. When the draft seniority list was prepared by the respondents on

27.6.2014 (Annexure A/2), consisting of the promotees (like the applicants) and directly recruited employees, the applicants' names were found to be below the direct recruits who are incorporated and respondent nos. 5 to 22 in this OA, who are stated in the OA to be the applicant's juniors. It is stated that under the Recruitment Rules, 70% of the posts of SFO are to be filled up by way of promotion failing which by deputation and 30% of posts by way of direct recruitment w.e.f. 2011. Prior to 2011 ratio between the promotion and direct recruitment was 75:25.

3. Being aggrieved by the seniority position shown in the list dated 27.6.2014(Annexure-A/2), the applicants submitted representations through proper channel. One representation dated 30.7.2014 submitted by applicant No.1 is at Annexure A/3, stated that the said draft seniority list was not in accordance with the DOPT circular dated 3.7.1986 (Annexure A/4). However, it is stated in the OA that without considering the applicants' representations, the draft seniority list was finalised vide memo dated 23.9.2014 (Annexure A/5). Thereafter, the applicants submitted further representations dated 9.10.2014 to respondent No.2, to which a reply was sent to the applicants stating that the said seniority list was prepared in accordance with the circular dated 4.3.2014 of the DOPT (Annexure A/9), which was issued in pursuance to the judgment of Hon'ble Apex Court in the case of N.R.Parmar Vs. Union of India in Civil Appeal No.7514-7515/2005..

4. The applicant being aggrieved by the reply of the respondents as per the letters at Annexure A/7 and A/8, have filed this OA. Subsequently, the respondents have issued a revised seniority list dated 29.1.2016 (Annexure A/11), which is also impugned in this OA. The applicants have added the respondents No. 5 to 22 in this OA, who were directly recruited employees placed above the applicants in the impugned seniority list. One of the main arguments of the applicants is that though the respondents No.5 to 22, have joined as SFO on direct recruitment subsequent to the applicants' joining, they have been shown to be senior to the applicants in the impugned seniority list.

5. The counter filed by the respondents stated that the action taken by the respondents is in accordance with the judgment of Hon'ble Apex Court in the case of N.R.Parmar (Supra) by which, the principle for determining the seniority of the direct recruits was inter alia laid down. It is stated that the applicants No. 1 to 4 are from the promotee batch of 2011-12, while the applicant No. 5 is from the promotee batch of 2012-13. It is further averred that the recruitment process for 12 vacancies of SFO was initiated in the recruitment year 2006-07 and after written examination and interview, a panel of 22 candidates was prepared. It is stated that the joining in the direct recruitment cases is generally after a period of 3-5 years from the date of finalisation of the panel in view of the time required to complete post-selection

formalities. It is stated that all the candidates who joined from the direct recruitment panel have been placed in the seniority list against the vacancy year 2006-07 in order of merit, irrespective of their actual date of joining as per the ratio of the judgment in N.R.Parmar case and the DOPT OM dated 04.03.2014(Annexure-A/9). The promotee officers who had joined prior to such directly recruited officers, have represented that the direct candidates who joined after them have been placed above them in the seniority list. It is further stated in the counter that the direct recruitment candidates were placed based on vacancy year in the seniority list although they were issued the appointment order subsequently after verification of the education certificates, caste certificates and antecedents which took time. It is stated that the seniority of the officers have been fixed as per the DOPT OM dated 7.2.1986 (Annexure R/1), 3.7.1986 (Annexure R/2) and 4.3.2014 (Annexure R/3) keeping in view the judgment dated 27.11.2012 of the Hon'ble Apex Court in the case of N. R. Parmar –vs- Union of India. It is further stated in the counter that mere fulfilling of the qualifying service is not the criteria for promotion, since other factors like availability of vacancies, zone of consideration, reservation, etc. are required to be fulfilled by the candidates for promotion. The delay in promotion of the applicants from the previous post cannot be attributed to the department. It is stated as per the OM dated 4.3.2014 of DOPT, the OM dated 7.2.1986/3.7.1986 would apply for deciding the inter se seniority between the direct recruit and promote officials prior to the date of the judgment of Hon'ble Apex Court in the case of N.R.Parmar (supra) i.e. 27.11.2012.

6. The respondents have filed another Counter for the consolidated OA, stating in para 7, 8 and 19 of the Counter that for the direct recruits selected on the basis of the interview from out of the candidates from the UPSC, who had appeared for the IES examination conducted by the UPSC in the year 2010 a panel of 22 candidates were prepared and 14 candidates were in the reserve panel. Prior to that, on the basis of the vacancy in the year 2006-07, another selection process was conducted through a written examination and a panel of 22 candidates were prepared for direct recruits vide Annexure-R/4 of the first Counter. It is averred that the candidates selected in the panel at R/4 against 2006-07 vacancy, were placed against the seniority for the year 2006-07 as per the DOPT instructions referred above according to their relative merit in the approved panel, irrespective of their date of joining. The delay in joining of the direct recruits was stated to be due to the delay in verification process, a contention which is disputed by the applicants. It is stated that the recruitment from the UPSC list was resorted in the year 2010 to address the problem of the shortage of officers in the cadre. It is stated in para 9 and 10 of

the Counter filed in the consolidated OA (in short referred hereinafter as 'CC') as under:-

"9. The candidates as above were considered under direct recruitment quota. Since these candidates were selected on the basis of marks obtained by them in the relevant tests which were held for the vacancy year 2006-07 & 2011-12, so accordingly they have been placed in the relevant recruitment year i.e. 2006-07 & 2011-12 in the respective final seniority list. Hence, there is no force in the submissions of the applicants with reference to disputing relevant recruitment 7 seniority list.

10. That in reply to the contents of the para-1, it is submitted that the selection process undertaken at the end of the respondents' office is purely based on the relevant rules and instructions in vogue in this regard. Details of 02 Selection Processes practiced for the vacancy year 2006-07 & 2011-12 have been given in the brief history above contents of which are reiterated here which justifies stand of the department & scuttles the submissions of the applicants. In assigning the seniority to the private respondents & applicants the primary respondents have followed the recruitment rules, vacancy year, prescribed norms & rulings of the Hon'ble Apex Court specifically the judgment & order passed in N.R.Parmar case on the basis of which guidelines to the present effect have been formulated by the DOP&T. In view of the same there is no force in the submissions of the applicants with respect to their seniority & induction of the private respondents into respondents' organization."

7. The averments in para 4.6 of the OA is that the persons selected on the basis of 2006-07 vacancy were appointed subsequently due to non-availability of vacancy to accommodate them. The respondents, in para 17 of the CC have denied the same by stating that the private respondents were appointed as per the available vacancy and their seniority has been correctly fixed as per the DOPT instructions. It is averred in para 21 and 33 of the CC as under:-

"21. That, in reply to the contents of the para 4.10 the respondents state that the draft seniority list of SFO(Tech) was first circulated on 27.6.2014 & the same was revised and re-circulated vide memo dated 23.9.2014 and the final seniority list of SFO(Tech) has been issued vide respondents memo dated 29.1.2016 (Annexure A/11 to the OA). It is pertinent to mention here that the seniority list under reference has been formulated in terms of DOP&T OM No. 35014/2/80-Estt(D) dated 7.2.1986, OM No. 22011/786-Estt(D) dated 3.7.1986, OM No. 20011/1/2012-Estt(D) dated 4.3.2014, over and above Hon'ble Apex Court judgment order dated 27./11/2012 in Sh. N.R.Parmar -vs- UOI & was taken cognizance of in formulation of the seniority list thus no injustice has been caused to either incumbents.

33.The officers selected on direct recruitment for Recruitment Year 2006-07 (whether from the select panel or reserve panel whose names were released after cancellation of candidature of candidate from select panel following due process), have been given seniority in the Recruitment Year 2006-07 irrespective of their date of joining, maintaining inter se seniority with promotes of the same Recruitment Year since both panels (select and reserve) are from the same recruitment process. The comments of respondents on delay in joining of Direct Recruit candidates have been averred against para 4.7 above contents of which are reiterated here for the sake of brevity."

8. Rejoinder has been filed by the applicants enclosing a copy of the order dated 31.5.2016 of the Principal Bench of this Tribunal in OA No. 591/2009 and OA No. 2981/2009, in which a similar dispute of inter se seniority of the employees under the Railways was decided. The most of the contentions made

in the OA have been reiterated. The example of two employees have been cited in the rejoinder, one of which one was selected against vacancy year 2011 joined the post on 6.6.2013. Another Officer selected against the vacancy for the year 2006-07 joined in the cadre on 18.06.2013 on direct recruitment, but he has been shown against the seniority of 2006-07. It is stated that although the select list for direct recruitment was prepared in the year 2008, the currency of the said panel was continued for indefinite period (till 2013) and the persons, allowed to join after a number of years, were assigned higher seniority than the persons who joined in the cadre on promotion prior to them. It is stated that after transfer of some posts to other departments there were 87 posts of SFO for which the direct recruitment quota should have been 22(at the rate of 25 %). In the draft seniority list circulated in 2008, 6 number of direct recruit SFOs, were available in the cadre leaving 16 vacancies. Hence, the preparation of panel for 22 existing vacancy for the year 2006-07 was not in order. It is further averred that as per the existing law, the currency of the panel should remain valid for one year and further extension of one year was allowed. Therefore, the selected panel approved on 14.12.2007 (Annexure R/4 of the first counter) should not have been kept alive to enable joining of the candidates from the panel after a number of years from the date of approval of the said panel. The contention in the counter that the delay was due to verification of character and antecedents by different agencies have been also objected to, since in some cases verification process has taken about 6 years as stated in the rejoinder. It is stated that the direct recruitment quota has been filled up in excess by about 8 numbers of candidates and it is averred that the respondents have diverted promotion quota posts for direct recruitment in violation of the Recruitment Rules. Rejoinder has also cited the following judgments in support of the averments of the applicants:-

- i) Bishan Sarup Gupta –vs- Union of India [(1973) 3 SCC1]
- ii) V.B.Badami –vs- State of Mysore [(1976) 2 SCC 901]
- iii) Uttaranchal Forest Rangers’ Assn. (Direct Recruits) & Ors. –vs- State of U.P. & Others [(2006) 10 SCC 346]
- iv) State of Uttaranchal & Anr. –vs- Dinesh Kumar Sharma [(2007) 1 SCC 683]
- v) Union of India & Others –vs- N.R.Parmar & Others [(2012) 13 SCC 340]
- vi) OA No. 3596/2011 dated 5.9.2013 of CAT, Principal Bench.
- vii) H.V.Pardasani –vs- Union of India & Others [AIR 1985 SC 791]
- viii) P.S.Mahal & Others –vs- Union of India [AIR 1884 SC 1294]
- ix) A.Janardana –vs- Union of India [AIR 1983 SC 769]
- x) N.K. Chauhan –vs- State of Gujarat [1977 1 SCC 308]
- xi) A.N.Pathak –vs- Secretary to the Government [AIR 1987 SC 716]

- xii) S.G.Jaisinghania -vs- Union of India [AIR 1967 SC 1427]
- xiii) Suraj prakash Gupta -vs- State of J&K [AIR 2000 SC 2386]
- xiv) Ammini Rajan & Others -vs- Union of India [OA 1356/1997, CAT, Principal Bench]
- xv) AFHQ/ACSOs/SOs (DP) Association & Others -vs- Union of India & Others [CA No. 1384 of 2008 arising out of SLP(C) No. 4545 of 2007 and CA No. 1385 of 2008 arising out of SLP(C) No. 5953 of 2007]
- xvi) Pawan Pratap Singh & Others -vs- Reevan Singh & Others [(2011) 3 SCC 267]

9. It is further stated in the Rejoinder that as per Government of India, Department of Personnel & Training OM dated 7.2.1986 if the vacancy could not be filled up, the unfilled vacancies were filled up later through a subsequent process of selection. The manner of determining inter se seniority between promotee and direct recruits was modified from the provisions in the earlier OM dated 22.12.1959. As per the OM dated 7.2.1986 of the DOPT, the rotation of quota as stipulated in the OM dated 22.12.1959 is to be adopted only to the extent of available direct recruits and promoted officials in the panel and the vacancies which could not be filled up through the process of selection or examination conducted for the recruitment year, will be carried over to the subsequent years and the rotation of quota principle will be stopped after all the candidates in the panel are exhausted. As stated in paragraph 6 of OM dated 7.2.1986, the general principles for determining seniority as per OM dated 22.12.1959 will be modified to the extent as provided in the said OM. It is averred in the rejoinder that as per the judgments of the Hon'ble Apex Court, a direct recruit through a later selection cannot claim seniority before he was borne in the service and he can claim seniority only from the date of his regular appointment. The later direct recruit cannot claim deemed dates for seniority w.e.f. the time when the direct recruitment vacancies arose. It is also stated that the notional seniority cannot be granted from the back date. If it is done, it must be done on objective considerations and on valid classification and must be permitted under the rules. It is stated that the seniority of an employee cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively, unless it is provided under the relevant service rules. Hence, it was stated that the department be directed to follow rota quota principle to fix up seniority of the directly recruited employees from the date when direct recruit quota was introduced and to implement the OM dated 4.3.2014 of the DOPT regarding inter se seniority of the direct recruits and promotees.

10. The respondents have filed MA No. 376/2019 by which it was informed that final seniority list of the SFOs under the respondents as annexed to the MA was published on 10.12.2018 and the same was circulated, but the

applicants have not raised any grievance with regard to their seniority in the said list.

11. Heard learned counsels for the applicant and respondents. Copies of the judgments in the Civil Appeal No. 4594-4595 of 2017 (Sunaina Sharma & Others –vs- State of Jammu & Kashmir & Others), in the case of State of Bihar & Others –vs- Amarendra Kumar Mishra [(2007) 2 SCC(L&S) 132], in the case of Girdhar Kumar Dadhich & Anr. –vs- State of Rajasthan & Others [AIR 2009 SC 1899] and the case of Public Service Commission, Uttaranchal –vs- Mamta Bisht & Others [AIR 2010 SC 2613] have been filed by the learned counsel for the applicants. Learned counsel for the respondents submitted a brief written note summarizing the case of the respondents. It has been stated in the brief note of the respondents that for the year 2006-07 recruitment process for 22 vacancies were initiated and after examination and interview the panel dated 14.12.2007 (Annexure R/4) was approved by the competent authority. Many of these candidates selected for direct recruitment, joined after a delay of about 3-5 years due to delay in verification of character and antecedents. It is also stated that due to non-joining of some of the candidates from the main panel, reserve panel was operated, resulting in further delay in joining of the candidates from the reserve panel prepared for the year 2006-07. It is stated that their seniority was given for the recruitment year 2006-07 irrespective of their date of joining. The subsequent process for 22 vacancies were taken up in 2010-11 after taking waitlisted candidates in IES examination held by UPSC. The relative seniority list was determined as per OM dated 7.2.1986, 3.7.1986 and 4.3.2014 as well as the judgment of Hon'ble Apex Court dated 27.11.2012 in the case of N.R.Parmar (supra). Accordingly, the direct recruited candidates have been placed in the seniority list against the vacancy year for 2006-07 and 2011-12 in order of merit both for main as well as reserve panel irrespective of their actual date of joining. The direct recruits who joined later after some of the promoted candidates in some cases, have been placed senior to the later depending on the vacancy year for which they were recruited. The draft seniority list of SFOs as issued on 26.9.2018 which was finalised on 10.12.2018 after furnishing copy of all officers who represented against the draft seniority list. It is also stated that a total of 35 officers in the grade of SFO have been promoted in the meantime to the post of Assistant Director (T), including the applicant no.1, vide order dated 17.7.2019. These orders are passed subject to final outcome of this OA.

12. Learned counsel for the applicant in reply, reiterated that the panel for the direct recruits approved in 2006-07 cannot be kept alive indefinitely and the officers joining much after should not be given the retrospective seniority. He has cited the judgment in the case of Sunaina Sharma (supra), in which the dispute related to the fact that the private respondents were allowed

retrospective promotion in the cadre, for which they were placed senior to the appellants in that case. The Division Bench of the Hon'ble High Court in that case held that since the promoted officers were against pensionable post in the feeder category they were considered to be members of the service for which they satisfied the provisions of the Rule 23 under which promotions were given. This position was not accepted by the Hon'ble Apex Court with the finding that before joining in the promoted post, the promoted officials cannot be deemed to be members of the service in that particular cadre in question.

13. In the case of Amarendra Kumar Mishra (*supra*) cited by the applicants' counsel, the employee in that case could not join the post within stipulated time after he was selected. After a lapse of time, he requested for issue of fresh appointment order since the persons below his rank were appointed. When the matter went up to Hon'ble High Court, direction was given to the respondents to allow the employee to join after issue of appointment order. It was held by Hon'ble Apex Court that if one of the candidates failed to join in response to the appointment order, the waiting list candidates can be considered and no relief could have been granted by the Hon'ble High Court to the candidate who failed to join within the stipulated time. Hence, if a candidate fails to join a selected post within stipulated time and no request for extension of time was made, then he cannot exercise his right for appointment when candidates with lower merit are appointed.

14. In the case of Girdhar Kumar Dadhich (*supra*) it was held as under :

"19. Furthermore the select list would ordinarily remain valid for one year. We fail to understand on what basis appointments were made in 2003 or subsequently. Whether the validity of the said select list was extended or not is not known. Extension of select list must be done in accordance with law. Apart from a bald statement made in the list of dates that the validity of the said select list had been extended, no document in support thereof has been placed before us. [In State of Rajasthan & ors. vs. Jagdish Chopra](#) [(2007) 8 SCC 161], this Court held:

"9. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of any rule, ordinary period of validity of select list should be one year. [In State of Bihar v. Amrendra Kumar Mishra](#) (2006) 12 SCC 561, this Court opined: (SCC p.564, para 9)

"9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel."

It was further held: (SCC p.565, para 13)

13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period."

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11. It is well-settled principle of law that even selected candidates do not have legal right in this behalf. (See [Shankarsan Dash v. Union of India](#) (1991) 3 SCC 47, and [Asha Kaul v. State of J&K](#) (1993) 2 SCC 573)"

15. In the case of Mamta Bisht (supra) cited by the applicant it was held as under :

"6. It is settled legal proposition that vacancies over and above the number of vacancies advertised cannot be filled up. Once all the vacancies are filled up, the selection process comes to an end. In case a selected candidate after joining resigns or dies, the vacancy, so occurred cannot be filled up from the panel, which stood already exhausted. (Vide Rakhi Ray & Ors. Vs. The High Court of Delhi & Ors. AIR 2010 SC932).

However, in the instant case, the advertisement itself made it clear that the vacancies could be increased and decreased and before completion of the selection process, a decision had been taken to fill up 42 instead of 35 vacancies and reservation policy had been implemented accordingly."

The claim in that case was to consider the case of the respondents basing on the fact that some additional vacancies were available. Hon'ble High Court directed for consideration of the case, making a distinction between the vertical reservation and horizontal reservation. Hon'ble Apex Court set aside that the decision of High Court.

16. In the cases cited on behalf of the applicants, the facts are distinguishable from the facts of the present OA, in which the dispute related to the basis for determining the inter se seniority between the direct recruits and the promoted officials in accordance with the provisions of respective Recruitment Rules as well as the guidelines of the DOPT. The contention of the applicant that the direct recruit candidates have been accommodated much beyond the available vacancies during that recruitment year and they have been wrongly assigned higher seniority, has been denied by the respondents. There is no document furnished by the applicant in support of the contention that number of direct recruitment vacancies for a particular year was less than the number of candidates who were selected direct recruitment for the year and then appointed against the vacancy of that year, although they joined subsequently due to delay in verification of their antecedents. The averment in the Rejoinder that total cadre strength of SFOs was 87(out of which the direct recruitment quota in 22), is not supported by any document on record. Hence, the principle that recruitment should not exceed the vacancies notified, has not been violated in this case as would be revealed from the records. **Hence, the question for determination in this case is whether the contention of the**

respondents that the seniority has been correctly fixed in accordance with the DOPT OM dated 7.2.1986, 3.7.1986 and 4.3.2014 is correct.

17. From the undisputed facts, it is clear that after the main panel was exhausted, the reserve panel for that particular year of vacancy i.e. 2006-07 and 2011-12 had been operated and some candidates from reserve panels were selected and they joined in subsequent years. In other words, the recruitment for that particular vacancy year had been made in two attempts. In the first attempt, the candidates from the approved panel were covered subject to verification of antecedents, without operating the reserve vacancy or waitlisted vacancies. When some vacancies were still left, the candidates from reserve list were selected by the respondents. The question is whether the candidates selected from reserve panel can be given the benefit of seniority of the vacancy year at par with the candidates selected from the original panel as per the OMs of the DOPT as referred above.

18. Before we proceed to consider the contentions of the OMs of the DOPT, it is noted that the dispute in this case has arisen since the respondents have taken abnormally long time for completing the formalities like verification of the antecedents done of the candidates selected in the process of direct recruitment. Although it is mentioned in the counter that due to procedure of verification and number of vacancies involved, such delay occurs in the process. But if such delay is abnormal exceeding more than 3-5 years in some cases as in the case in this OA, then it may give rise to complications vis-à-vis other employees. Since no specific prayer has been made in the OA regarding such procedure, we have not examined the matter further and leave the issue with observation that the respondents are to find out the ways and means to minimise the delay in completing post-selection formalities in direct recruitment cases.

19. Learned counsel for the applicants have enclosed a copy of the order dated 31.5.2016 passed by the Principal Bench of the Tribunal in OA No. 591/2009 (Annexure A/13). The dispute in that OA was regarding the fixation of the inter se seniority between the direct recruits as well as the promoted Section Officers of Railway Board Secretariat Service (in short RBSS). The grievance in that OA was that the persons who were recruited under direct recruit quota were given undue advantage in terms of fixation of seniority, which was challenged before the Tribunal in OA 591/2009. It was stated on behalf of the applicants before the Tribunal that the rotation of quota as per the existing vacancy in a particular recruitment year had never been followed in RBSS resulting in failure of rotation of quota system and that an officer directly recruited cannot be assigned seniority earlier than his recruitment year in violation of the rules by adversely affecting the promotees. It was further alleged that unfilled direct recruitment posts for previous years have been

wrongly carried forward and the direct recruits have been given higher seniority against these carried over vacancies. The stand of the respondents in that case was that seniority was fixed strictly in accordance with the rules. It was observed in the cited order dated 31.05.2016 that rotation of quota system had broken down in RBSS since the Railway authorities had not followed the DOPT OM dated 07.02.1986 and 03.07.1986 while determining inter se seniority of the direct recruits and promoted officials as SO in RBSS. Hence, the cited case is factually different from the present OA in which the respondents have claimed to have fixed seniority as per the DOPT OM basing on rotation of quota principle which has not broken down. Hence, the ratio of the order dated 31.05.2016 of the Tribunal cited by the applicant's counsel will not be at any help for the present case of the applicants.

20. Regarding the inter se seniority, the OM dated 7.2.1986 (Annexure R/1 of the first counter) of the DOPT, it is stated that the practice of keeping the vacant slots for being filled up by direct recruits of subsequent years was dispensed with and it was decided that the rotation of quotas for purpose of determining seniority will take place in particular vacancy, only to the extent of available direct recruit candidates and promotees. If the direct recruits are not available from the select list, then the promotees will be placed in the bottom of the seniority list below the last direct recruit person of that year and unfilled direct recruitment quota will be carried forward and added to the subsequent year vacancy when the recruitment takes place. In subsequent year also seniority will be determined between the direct recruits and promotees to the extent of the candidates available in panel for that years. The additional direct recruits selected against the carried forward vacancies of the previous year will be placed enblock below the last promotee in the seniority list based on the rotation of quota for that year.

21. The OM dated 3.7.1986 (Annexure R/2 of the first counter) consolidated the guidelines for determining the inter se seniority and reiterated the procedure specified in OM dated 7.2.1986. Thereafter, in the OM dated 4.3.2014 (Annexure R/3 of the first counter), the issue was examined by the DOPT in the light of the judgment dated 27.11.2012 of Hon'ble Supreme Court in the case of N.R.Parmar -vs- Union of India & Others and it was specified that in addition to the provision for determination of seniority as per OM dated 7.2.1986 it was also specified that the recruitment year would be the criteria for assignment of inter se seniority for direct recruits and promotees and recruitment year would be the year in which recruitment process against a vacancy year is initiated i.e. requisition is sent to the recruiting agency for filing up the vacancies and for promotes the date when the proposal is sent to the Chairman, DPC/UPSC for convening the DPC for promotion. It is also stated that the carried forward of the vacancy against direct recruitment or promotion

quota would be determined from the appointment against the first attempt for filling up of the vacancy for a recruitment year. These guidelines in OM dated 4.3.2014 were effective from 27.11.2012.

22. From the above, it is clear that when a candidate joins service after 27.11.2012, his/her seniority is to be determined in accordance with the OM dated 4.3.2014. If he was selected from the select panel in the first attempt for a particular recruitment year/vacancy year relating to the period prior to 27.11.2012 and he joined subsequent to 27.11.2012, then his seniority is to be fixed according to the rotation of quota for the recruitment year/vacancy year in question as per the OM dated 7.2.1986. However, this benefit will not be available to a candidate selected from the reserve panel (which is not the first attempt of recruitment) and if he/she has joined after 27.11.2012, since the OM dated 04.03.2014 will be applicable to his case and his inter se seniority will be below the last person of the promoted officer for that particular vacancy year. On the other hand, if such a person selected from the reserve panel, joined prior to 27.11.2012 in the cadre, his/her inter se seniority will be determined as per OM dated 7.2.1986 as per the rotation of quota principle, since prior to 27.11.2012, first attempt principle as per the OM dated 04.03.2014 was not in force.

23. In view of the above discussions, if any of the respondent no.5 to 22 was selected from the reserve panel for direct recruitment and he/she joined the service on or after 27.11.2012, then his/her seniority will be placed at the end of all the direct recruit and promoted officials for that recruitment year, as per the OM dated 04.03.2014 of the DOPT. We are unable to accept the prayer for other reliefs since for the respondents no.5 to 22, except for those who were selected from the reserve panel and had joined on or after 27.11.2012, their inter se seniority has been fixed as per the instruction of the DOPT and we do not find any infirmity in the decision of the respondents.

24. The OA is disposed of with direction to the respondent nos.1, 2, 3 and 4 to review the inter se seniority of those out of the respondent nos.5 to 22 who were selected from reserve list and had joined service on or after 27.11.2012 in terms of the paragraph 23 above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)