



2026:DHC:2846-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 970/2021, CM APPLs. 2620/2021, 10122/2021,
10838/2021, 53363/2022, 53364/2022, 53365/2022,
10526/2023, 10527/2023, 12863/2023 & 58225/2023

SANTOSH VITTHALRAO

INDRAKSHA & ORS.

.....Petitioner

Through: Mr. Jay Savla, Sr. Adv. with
Mr. Sameer Kumar and Mr. Vaibhav
Pachauri, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Ripudaman Bhardwaj,
CGSC with Mr. Kushagra Kumar and Mr.
Amit Kumar Rana, Advs. for UOI

Mr. Jasmeet Singh, Mr. Mahinder Singh
Hura, Mr. Saif Ali, Mr. Pushendra S.
Bhadoriya, Mr. Vijay Sharma, Mr. Pranav
Menon, Mr. Ajith Williyam S. and Mr.
Saurav, Advs. for R-6, R-7, R-9 & R-11

Mr. M.K. Madan and Mr. Gunit Shah, Advs.
for R-15

Mr. M.K. Bhardwaj and Ms. Sakshi Saugat,
Advs. for R-10

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

02.04.2026

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C. HARI SHANKAR, J.



1. Respondents 6 to 16¹ were appointed as Technical Officers in the Ministry of Health and Family Welfare in 2015. They were promoted as Assistant Drug Controllers² on 1 May 2015.
2. As against this, the petitioners were appointed as ADCs by direct recruitment between the years 2016 and 2018.
3. On 8 April 2016, the official respondents drew up a provisional seniority list in which the petitioners were placed above the private respondents. The private respondents represented against the said seniority list. The representation was rejected on 25 June 2019. The private respondents thereafter petitioned the Central Administrative Tribunal³ by way of OA 2001/2019, claiming that they were entitled to seniority above the petitioners as their appointment, on promotion, was prior to the date when the petitioners were appointed as direct recruits.
4. The petitioners, as the respondents before the Tribunal, contended on the other hand that they had been directly recruited against vacancies of 2014, at which time the private respondents were not even eligible for promotion and that, therefore, they were entitled to seniority over the private respondents.
5. The Tribunal has, by judgment dated 13 October 2020, allowed the private respondents' OA and set aside the seniority list dated 8 April 2016. The Tribunal has held the private respondents to be

¹ "the private respondents" hereinafter

² "ADCs", hereinafter



entitled to seniority over the petitioners.

6. Aggrieved thereby, the petitioners have approached this Court by means of the present writ petition.

7. We have heard Mr. Jay Savla, learned Senior Counsel appearing for the petitioners, Mr. Ripudaman Bhardwaj, learned CGSC for the Union of India, Mr. Jasmeet Singh, Mr. M.K. Madan and Mr. M.K. Bhardwaj, learned Counsel for the respondents at length.

8. Mr. Savla has taken us through the sequence of events in the present case. He points out that the petitioners were eligible for direct recruitment as ADCs in 2014 but that, as their selection was challenged by some of the private respondents before the Allahabad Bench and the Principal Bench of the Tribunal Allahabad Bench and before the High Court of Calcutta, there was a stay on their selection process, as a result of which their appointments got delayed. It was only after the stay was vacated by the Calcutta High Court that the selection process culminated in the appointments of the petitioners. He, therefore, invokes the doctrine *actus curiae neminem gravabit*, to contend that a party cannot be prejudiced by the act of Court. He also submits that, having themselves filed a misconceived petition challenging the petitioners' selection, the private respondents cannot seek to take advantage of the said fact and claim seniority over the petitioners merely because the petitioners came to be appointed after

³ "the Tribunal" hereinafter



the private respondents.

9. Mr. Savla has also placed reliance on Office Memorandum⁴ dated 4 March 2014, issued by the Department of Personnel and Training⁵. He has particularly drawn our attention to paragraphs 5 (a) to (e) and 7 of the said OM which may be reproduced thus:

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

- a) DOPT OM No. 20011/1/2006-Estt(D) dated 3.3.2008 is treated as non-existent/withdrawn ab initio;
- b) The rotation of quota based on the available direct recruits and promotees appointed against the vacancies of a Recruitment Year, as provided in DOPT O.M. dated 7.2.1986/3.07.1986, would continue to operate for determination of inter se seniority between direct recruits and promotees;
- c) The available direct recruits and promotees, for assignment of 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.

7. As the conferment of seniority would be against the Recruitment Year in which the recruitment process is initiated for

⁴ “OM”, hereinafter

⁵ “DOPT”, hereinafter



filling up of the vacancies, it is incumbent upon all administrative authorities to ensure that the recruitment process is initiated during the vacancy year itself. While requisition for filling up the vacancies for direct recruitment should be sent to the recruiting agency, complete in all respects, during the vacancy year itself, the timelines specified in the Model Calendar for DPCs contained in DoPT O.M. No.22011/9/98-Estt(D) dated 8.9.98 and the Consolidated Instructions on DPCs contained in O.M. No.22011/S/86-Estt(D) dated April 10, 1989 should be scrupulously adhered to, for filling up the vacancies against promotion quota.”

10. Mr. Savla submits that the Tribunal has not, in the impugned judgment, taken sufficient note of the fact that the delay in appointment of the petitioners as direct recruit ADCs was only owing to the litigation which had been initiated by the respondents challenging their selection. The petitioners cannot, therefore, be put to prejudice for that reason.

11. Mr. Savla submits that, in these circumstances, the petitioners would be entitled to the benefit of the law laid down by the Supreme Court in *Union of India v. N.R. Parmar*⁶, which granted seniority to direct recruits from the date when the vacancies against which they were appointed arose.

12. As such, he submits that there was no error in the seniority list dated 8 April 2016 and, therefore, the Tribunal erred in setting it aside.

13. Having heard learned Counsel for the parties, we regret our inability to agree with the submissions of Mr. Savla.

⁶ (2012) 13 SCC 340



14. The principle *actus curiae neminem gravabit*, to our mind, does not apply in a case such as this. The question is not as to the reason for the appointments of the petitioners as direct recruit ADCs having taken place after the private respondents were promoted as ADCs. The fact of the matter is that the petitioners *were* appointed as direct recruit ADCs only after the private respondents.

15. In such circumstances, the seniority can be determined only by one of two methods. In case the principle of quota rota applies, the law laid down in *N.R. Parmar* would have become relevant. *N.R. Parmar*, however, stands expressly overruled in *K. Meghachandra Singh v. Ningam Siro*⁷, which held that seniority would have to be determined on the basis of continuous officiation, thus:

“28. Before proceeding to deal with the contention of the appellants' counsel vis-à-vis the judgment in *N.R. Parmar*, it is necessary to observe that the law is fairly well settled in a series of cases, that *a person is disentitled to claim seniority from a date he was not borne in service*. For example, in *Jagdish Ch. Patnaik v. State of Orissa*⁸, the Court considered the question whether the year in which the vacancy accrues can have any bearing for the purpose of determining the seniority irrespective of the fact when the person is actually recruited. The Court observed that there could be time-lag between the year when the vacancy accrues and the year when the final recruitment is made. Referring to the word “recruited” occurring in the Orissa Service of Engineers Rules, 1941 the Supreme Court held in *Jagdish Ch. Patnaik* that *person cannot be said to have been recruited to the service only on the basis of initiation of process of recruitment but he is borne in the post only when, formal appointment order is issued.*

29. The above ratio in *Jagdish Ch. Patnaik* is followed by this Court in several subsequent cases. It would however be appropriate to make specific reference considering the seniority dispute in

⁷ (2020) 5 SCC 689

⁸ (1998) 4 SCC 456



reference to the Arunachal Pradesh Rules which are in pari materia to the MPS Rules, 1965 [*vide Nani Sha v. State of Arunachal Pradesh*⁹]. Having regard to the similar provisions, the Court approved the view that seniority is to be reckoned not from the date when vacancy arose but from the date on which the appointment is made to the post. The Court particularly held that retrospective seniority should not be granted from a day when an employee is not even borne in the cadre so as to adversely impact those who were validly appointed in the meantime.

30. We may also benefit by referring to the judgment in *State of U.P. v. Ashok Kumar Srivastava*¹⁰. This judgment is significant since this is rendered after the *N.R. Parmar* decision. Here the Court approved the ratio in *Pawan Pratap Singh v. Reevan Singh*¹¹, and concurred with the view that *seniority should not be reckoned retrospectively unless it is so expressly provided by the relevant Service Rules. The Supreme Court held that seniority cannot be given to an employee who is yet to be borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.* The law so declared in *Ashok Kumar Srivastava* being the one appealing to us, is profitably extracted as follows:

“24. The learned Senior Counsel for the appellants has drawn inspiration from the recent authority in *Pawan Pratap Singh* where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are produced below:

‘45. (ii) Inter se seniority in a particular service has to be determined as per the service rules. *The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources.* Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iv) *The seniority cannot be reckoned from the*

⁹ (2007) 15 SCC 406

¹⁰ (2014) 14 SCC 720

¹¹ (2011) 3 SCC 267



date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.’ ”

(Emphasis supplied)

16. In *Meghachandra*, the Supreme Court held, in categorical terms, that *N.R. Parmar* did not reflect the correct legal position. A limited protection for past cases was, however, thus provided in para 39 of the report, even while overruling *N.R. Parmar*:

“39. Accordingly, the decision in *N.R. Parmar* is overruled. However, it is made clear that this decision will not affect the inter se seniority *already based* on *N.R. Parmar* and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement.”

Clearly, all that stands protected, in *Meghachandra*, are cases in which the *inter se* seniority between direct recruits and promotees was already determined prior to the decision in *Meghachandra*. Otherwise, the decision in *Meghachandra* itself covered direct recruits, and promotees, appointed prior thereto.

17. No *Parmar*-based determination of *inter se* seniority among the petitioners and private respondents, in the present case, took place prior to the rendition of the judgment in *Meghachandra*.

18. In case quota rota does not apply, the only method by which seniority can be fixed is on the basis of continuous officiation based



on the date of appointment, which is what *Meghachandra* sanctifies and approves.

19. We are aware of the fact that *Meghachandra* has been referred to a Larger Bench. However, the Supreme Court has held in *Union Territory of Ladakh v. Jammu and Kashmir National Conference*¹² that, even where a judgment of the Supreme Court is referred to a Larger Bench, the courts lower in the judicial hierarchy have to continue to follow the law as it exists. As on date, therefore, *Parmar* stands overruled, and *Meghachandra* holds the field.

20. The OM dated 4 March 2014, on which Mr. Savla relies, opens with the following paragraph:

“The undersigned is directed to refer to the subject mentioned above and to say that the fundamental principles of inter se seniority of direct recruits and promotees in Central Civil Services/posts were laid down in the Department of Personnel & Training (DOPT) O.M. No. 9/11/55-RPS dated 29.12.1959 which provided, inter alia, that the relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, *which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively, in the Recruitment Rules.*”

21. A bare reading of the afore-extracted paragraph from the OM dated 4 March 2014 makes the legal position crystal clear. *In case the Recruitment Rules*¹³ *provide for a quota between direct recruits and promotees*, the *N.R. Parmar* principle was applicable at that time when that judgment was rendered and seniority would have to be fixed

¹² 2023 SCC OnLine SC 1140

¹³ “RRs”, hereinafter



on quota rota basis.

22. In the present case, however, *there is no inter se quota of direct recruits and promotees provided in the RRs. The RRs clearly holds that the post is to be filled 100% by promotion with direct recruits only being considered in the event of promotees not being available.*

23. *In the absence of any quota between direct recruits and promotes, the OM dated 4 March 2014 as well as the judgment of the Supreme Court in **N.R. Parmar** would not apply.*

24. Where the RRs envisages recruitment “100%” only by one method, with other methods of recruitment only provided as default options, the applicability of the quota-rota rule *ipso facto* stands ruled out. The existence of a quota is the *sine qua non* for the quota-rota rule to apply. **N.R. Parmar**, too, was rendered in the context of an existing 2:1 quota in that case for recruitment.

25. *De hors **Parmar** and **Meghachandra**, too, therefore, as there is, in fact, (i) no quota provided for direct recruitment and promotion in the RRs and (ii) no provision, in the RRs, permitting grant of retrospective seniority to any category of appointees prior to the dates of their appointment, inter se seniority between direct recruits and promotees would have to be determined on the basis of continuous officiation, i.e. with effect from the respective dates when they were appointed as ADCs.*

26. Inasmuch as the respondents’ appointment as promotees was



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before the petitioners had been appointed as direct recruits, we are of the view that the Tribunal has committed no error in holding the respondents to be entitled to seniority over the petitioners.

27. Accordingly, no occasion arises for us to interfere with the impugned judgment of the Tribunal.

28. The writ petition is accordingly dismissed with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

APRIL 2, 2026/aky/ss