



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

***Reserved on: 17.04.2025***

***Pronounced on: 01.07.2025***

+ **LPA 228/2025 & CM APPL. 18766/2025**

K. K. SONI AND ORS. ....Appellants  
Through: Mr.Naresh Kaushik, Sr.  
Advocate with Mr.Anand  
Singh, Advocate.  
versus

UNION OF INDIA THROUGH SECRETARY MINISTRY OF  
CIVIL AVIATION & ORS. ....Respondents  
Through: Ms.Anjana Gosain, CGSC with  
Mr.Vidur Dwivedi, GP and  
Ms.Nippun Sharma, Mr.Keshav  
Raheja, Advs. for UOI.  
Mr.Digvijay Rai, Mr.Archit  
Mishra, Advocates with  
Mr.Yatinder Choudhary, Law  
Officer for R-2.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**  
**HON'BLE MS. JUSTICE RENU BHATNAGAR**

### **J U D G M E N T**

**NAVIN CHAWLA, J.**

1. This appeal has been filed under Clause X of the Letters Patent Act, 1865 against the Judgment dated 24.12.2024 of the learned Single Judge of this Court in W.P.(C) 7524/2013, titled ***K.K. Soni & Ors. v. Union of India & Ors.***, dismissing the writ petition filed by



the appellants herein and upholding the seniority list of Managers (ATC) dated 11.01.2011.

**Background of the Appeal**

2. The Airports Authority of India ('AAI') invited applications for filling up 68 notified posts of Manager (ATC) by way of Advertisement No.2/2007 dated 07.10.2007. It is the case of the appellants that as per the information sought under the Right to Information Act, 2005, out of the 68 vacancies notified by the AAI, 55 vacancies were of the year 2005 and 13 vacancies were of the year 2006. The final result was declared on 01.12.2009, whereby the appellants were declared successful, and they joined in the year 2010 as direct recruit candidates.

3. In the meantime, promotions were also made by the AAI, and 67 Assistant Managers (ATC) were promoted to the post of Manager (ATC) on 17.08.2005; 50 on 01.12.2006; 23 on 23.06.2007; 29 were provisionally promoted on 08.11.2007 subject to the final decision of the inter-se seniority committee; 42 on 03.04.2008; 159 on 22.05.2009; and 6 on 24.12.2009, that is, all before the appellants joined as direct recruits.

4. On 11.01.2011, a seniority list was circulated wherein the appellants were placed below the promotees.

5. A second seniority list was issued on 23.03.2012, wherein the appellants were again placed below the promotees.

6. Aggrieved by the seniority lists and the absence of inter-spacing of the departmental promotees and the direct recruits in a 3:1 ratio as per the Airport Authority of India (Recruitment and Promotion)



Regulations, 2005 (hereinafter referred to as, “2005 Regulations”) that relates to the general principles of seniority, and the fact that the direct recruitment process had commenced only in the year 2007 for posts earmarked for 2005 and 2006, and was completed only in 2010, because of which no direct recruit Managers (ATC) were inducted in the years 2005 to 2009, one of the appellants made a representation in 2012 and one in 2013, seeking rectification of the seniority list dated 11.01.2011.

7. A third seniority list was issued on 15.01.2013, maintaining the same seniority position.

8. Aggrieved thereof, the appellants approached this Court by way of W.P.(C) 7524/2013, challenging the seniority list dated 11.01.2011 and seeking its recasting after re-fixing the seniority between the direct recruits and the promotees.

9. The learned Single Judge, by the impugned judgment, dismissed the writ petition and upheld the seniority list dated 11.01.2011, finding it correctly prepared in accordance with Clauses 30.1.7 to 30.1.10 of the 2005 Regulations. The learned Single Judge initially noted that the appellants had delayed their challenge, having accepted the 2011 seniority position and only challenging it after subsequent lists were issued in 2012 and 2013, which alone warranted dismissal. However, proceeding on merits, the learned Single Judge emphasized that service rules must prevail over executive instructions in service jurisprudence, and observed that the Department of Personnel and Training has itself clarified in the ‘Frequently Asked Questions and Answers’ (‘FAQs’) that seniority in PSUs and similar



organizations is governed by their respective regulations, and concluded through a conjoint reading of the relevant clauses that the 2005 Regulations properly governed the seniority determination in this case. The learned Single Judge held as under:

*“29. ... the relative seniority of direct recruits and promotees was to be determined as per the roster of vacancies between the two modes based on quota of vacancies reserved for that year and to the extent direct recruits do not become available in a particular year, promotees will be bunched together at the bottom of the seniority list below the last person from the direct recruitment and the unfilled direct recruitment vacancy shall be carried forward. The additional direct recruits selected against the carried forward vacancies will be placed en-bloc below the last promotee in the seniority list. From a perusal of the seniority list as amplified by a chart filed by the Petitioners themselves to explain the fixation of seniority in the said list, it is clear the promotees from the years 2005 to 2009 were placed at seniority positions 4 to 366. In the year 2010, there were no promotions and the direct recruits including the Petitioners, who joined in the year 2010, were placed en-bloc below the promotees, who were promoted between 2005 to 2009, starting from serial number 367 to 431. Thus, the impugned seniority list is in consonance with Clauses 30.1.7 to 30.1.10 of 2005 Regulations. The list has been prepared following the settled law as propounded by the Supreme Court in Jagdish Ch. Patnaik (supra); Suraj Parkash Gupta (supra) and Pawan Pratap Singh (supra), that no person can claim seniority from a date he was not borne in the cadre. Petitioners concededly joined in the year 2010 and cannot claim seniority from 2007 only because the recruitment process was commenced in the said year as this is not the position envisaged*



in Clauses 30.1.7 to 30.1.10 of 2005 Regulations.

30. There can be no quarrel with the proposition that in service jurisprudence wherever service rules occupy the field they must prevail and any Executive Instructions must be in consonance with the Rules but cannot conflict them. [Ref. Ashok Ram Parhad v. State of Maharashtra 2023 SCC OnLine SC 2651. Even in K. Meghachandra (supra), the Supreme Court, while overruling the judgment in N.R. Parmar (supra) has clearly elucidated that in wake of the MPS Rules, 1965, the judgment in Parmar (supra) was not automatically applicable to Manipur State Police Officers. Following this principle of law, the Division Bench of this Court in Jagmohan Vishwakarma and Others v. Union of India and Others, 2023SCC OnLine Del 4494, held that inter se seniority between direct recruits and promotees will have to be reckoned from the date of appointment in accordance with the applicable Rule 8 of CRPF Group-'A' (General Duty) Officers Recruitment Rules, 2001, as amended in 2010.

31. In the present case, 2005 Regulations govern the field and DoPT has itself clarified in the 'Frequently Asked Questions and Answers' ('FAQs'), that seniority of officers working in PSUs/Autonomous Bodies/Organisations/Banks will be governed by Regulations/Instructions issued by concerned Administrative Department/PSUs/Banks, etc. Thus, the impugned seniority list can only be tested on the touchstone of Clauses 30.1.7 to 30.1.10 of 2005 Regulations and DoPT O.Ms. relied upon by the Petitioners are inapplicable. Consequentially, the reliance and emphasis on the judgment in N.R. Parmar (supra) is misconceived albeit it may be reiterated for the sake of completeness that the said judgment has been overruled by the three-



*Judge Bench of the Supreme Court in K. Meghachandra (supra), prospectively and a reference is pending before a larger Bench.*

*32. The impugned seniority list has been correctly made keeping the rota quota principle formulated in the applicable Regulations governing the field in AAI and the writ petition is accordingly dismissed, being bereft of merit.”*

10. Aggrieved of the impugned judgment, the appellants have filed the present appeal.

**Submissions of the learned senior counsel for the Appellants**

11. Mr. Naresh Kaushik, the learned senior counsel appearing for the appellants, submits that when the appellants were appointed and when the seniority list was prepared, the law in force was that laid down in *Union of India v. N.R. Parmar*, (2012) 13 SCC 340 and *Mervyn Coutindo v. Collector of Customs*, (1966) 3 SCR 600. He submits that under the then prevailing law, if the recruitment process had started, any delay in the said process would not make a difference and it would not result in there being a deemed breakdown of the rota-quota rule. He submits that the rota-quota rule would be fully applicable in the present case and the direct recruits will have to be inter-spaced with the promotees of the same year as it is not necessary that the direct recruits should join within the recruitment year during which vacancies have arisen, and the date of joining would not be a relevant factor for determining their seniority. He submits that delay in administrative action cannot deprive the appellants of their due seniority. He submits that accordingly, the appellants must be granted



seniority in the post of Manager (ATC) from the vacancy year or at least from 2007, when the advertisement was issued, and the recruitment process commenced.

12. He submits that the case of the appellants was to be determined based on the law that was prevailing at that point in time. He submits that it was during the pendency of the writ petition, that the judgment in ***K. Meghachandra Singh v. Ningam Siro***, (2020) 5 SCC 689 was delivered, which itself clarified that it would apply prospectively, not retrospectively, and will not affect the *inter se* seniority fixed on the basis of ***N.R. Parmar*** (supra). He submits that, therefore, the judgment in ***K. Meghachandra*** (supra) would not take away the right for determination of seniority that inhered in the appellants on the date of their appointment and on the date of the creation of the seniority list.

13. He submits that the judgments that have come post ***N.R. Parmar*** (supra) are *per incurium* or in the alternative, require reconsideration, as they have not considered ***Mervyn Coutindo*** (supra) and other such decisions. He submits that ***K. Meghachandra*** (supra) has been referred to a larger bench in ***Hariharan v. Harsh Vardhan Singh Rao***, 2022 SCC OnLine SC 1717, for reconsideration.

14. Placing reliance on the judgment in ***Mervyn Coutindo*** (supra), he submits that the rota-quota system for fixing seniority in a cadre does not violate Article 16(1) of the Constitution of India or deny equality of opportunity in government service. He submits that administrative delays and other fortuitous circumstances cause anomalies and a shortfall of direct recruits in comparison to the quota



fixed for them, and the same is not on account of there being anything opposed to equality of opportunity in government service by the use of the rotational system.

15. Lastly, with regard to the 2005 Regulations, he submits that since the advertisement was issued in the year 2007, the appellants were available in service and the rota-quota rule, being a statutory mandate, cannot be defeated.

**Submissions of the learned counsel for the respondent nos.1 & 2**

16. The learned counsel appearing for the respondent no.2 submits that the Advertisement for direct recruitment to the post of Manager (ATC) was issued in 2007, and the selection process concluded in 2010. He submits that the seniority was fixed in accordance with the 2005 Regulations, based on the date of their joining.

17. He submits that the appellants are seeking seniority from 2007 and even earlier thereto, that is, when they were not even born in the cadre. He submits that the seniority of the direct recruits and the promotees is to be fixed in accordance with the 2005 Regulations, therefore, there is no legal infirmity in the impugned seniority list dated 11.01.2011.

18. He submits that Clauses 30.1.7 to 30.1.10 of the 2005 Regulations stipulate that relative seniority of direct recruits and promotees shall be determined according to the roster of vacancies between the two modes, based on the quota of vacancies reserved for that year, and to the extent that direct recruits do not become available in any particular year, promotees will be bunched together at the bottom of the seniority list below the last person from direct





recruitment and unfilled vacancies shall be carried forward. He submits that in the instant case, though the recruitment process was initiated in 2007, however, the appellants joined only in the year 2010 and cannot claim seniority from when they were not even born in the cadre.

19. He submits that the reliance on **N.R. Parmar** (supra) is misplaced as the same has been since overruled by **K. Meghachandra** (supra), with the observation that seniority of direct recruits can be reckoned only from the date of appointment and not from the date of initiation of recruitment process.

20. The learned counsel for the respondent no.1 adopted the arguments of the respondent no.2.

### **Analysis and Findings**

21. We have considered the submissions made by the learned counsels for the parties.

22. First, we shall quote hereinbelow the relevant portion of Clause 30 of the 2005 Regulations, as under:

*“30.1.7 The relative seniority of direct recruits and of promotees shall be determined according to the roster/rotation of vacancies between the two modes based on quota of vacancies reserved for that year.*

*30.1.8 If, to the extent the direct recruits do not become available in any particular year, the promotees will be bunched together at the bottom of the seniority list below the last person from direct recruitment.*

*30.1.9 The unfilled direct recruitment quota vacancies will be carried forward and added to corresponding direct recruitment vacancies of the next year.*



30.1.10 Additional direct recruits selected against the carried forward vacancies of previous year would be placed *en-block* below the last promotee in the seniority list based on the rotation of vacancies in that year.”

23. From a reading of the above, it would be apparent that although the relative seniority of direct recruits and of promotees is to be determined according to the roster/rotation of vacancies between the two modes based on the quota of vacancies reserved for that year, if the direct recruits do not become available in any particular year, then the promotees will be bunched together at the bottom of the seniority list below the last person who was directly recruited. Further, the unfilled direct recruitment quota vacancies will be carried forward and added to the corresponding direct recruitment vacancies of the next year, and the direct recruits selected against the carried forward vacancies of the previous years, would be placed *en bloc* below the last promotee in the seniority list based on the rotation of vacancies “in that year”. Therefore, where the vacancies for the direct recruits are not filled in a particular year, they are to be carried forward to the next year and whenever they are filled, the additional direct recruits selected against the carried forward vacancies of previous years are to be placed *en bloc* below the last promotee in the seniority list based on the rotation of vacancies in that year, that is, the year of selection/appointment.

24. In ***K. Meghachandra*** (supra), the Supreme Court, disagreeing with the view expressed by the two-Judge Bench in ***N.R. Parmar*** (supra), has held that even the O.M.s dated 07.02.1986 and



03.07.1986 had made it clear that the seniority of the direct recruits is to be declared only from the date of appointment and not from the date of initiation of the recruitment process. It held that it is only on completion of the process of recruitment that the selected candidate can have any service-related rights or a claim for seniority. The same cannot be *ante-dated* only on the ground of delay in completion of the selection process. Seniority cannot be claimed from a date when the incumbent is yet to be born in the cadre.

25. Though the Judgment in ***K. Meghachandra*** (supra) has been referred for a reconsideration by a Larger Bench by the Supreme Court in ***Hariharan*** (supra), in our view, in absence of an order of stay, the judgement in ***K. Meghachandra*** (supra) would continue to hold the fort and would be applicable to the facts of the present case.

26. The submission of the learned senior counsel for the appellants that the decision in ***Mervyn Coutindo*** (supra) should be followed, cannot be accepted. The said judgment was considering the plea that the rota-quota system is violative of the Fundamental Right of the petitioner therein/promotees under Article 16(1) of the Constitution of India. The Supreme Court, while rejecting the said challenge, also placed reliance on the O.M. dated 22.12.1959, and held that merely because anomalies have arisen in working out the rota-quota system, the same would not be sufficient to hold that it is violative of Article 16(1) of the Constitution of India. The government, however, realising that these anomalies were resulting in heartburn, clarified that if an adequate number of direct recruits do not become available in any particular year, the rotation of quotas for the purpose of determining



seniority in that year would take place only to the extent of the available direct recruits and the promotees, and to the extent that direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list below the last position up to which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. It was further clarified that the un-filled direct recruitment quota vacancies would be carried forward and added to the corresponding direct recruitment vacancies of the next year, and in that subsequent year, while the seniority will be determined between direct recruits and promotees to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed *en bloc* below the last promotee or direct recruit, as the case may be, in the seniority list based on the rotation of vacancies for that year. Further clarifications in this regard were issued by the O.M. dated 03.07.1986 and 03.03.2008. These O.Ms. have been interpreted by the Supreme Court in ***K. Meghachandra*** (supra), which, as on today, binds us and to which there is no challenge.

27. The submission of the learned senior counsel for the appellants that it is the law which prevailed on the date of the preparation of the impugned seniority list, that is, 11.01.2011, which shall prevail and determine its validity and, therefore, it should be adjudged by applying the principles of ***Mervyn Coutindo*** (supra) and ***N.R. Parmar*** (supra), also does not impress us. First, it is relevant to note that the



impugned seniority list dated 11.01.2011 was not and could not have been in accordance with the decision in **N.R. Parmar** (supra), which was pronounced on 27.11.2012. The seniority list, in fact, follows the principle which now stands approved in **K. Meghachandra** (supra), that is, that the direct recruits will take their seniority from the date they are born in the cadre and not retrospectively from the date of the vacancy against which they are appointed, or from the date of the initiation of the recruitment process. It was the challenge of the appellants to this seniority list which remained pending before the learned Single Judge. In **K. Meghachandra** (supra), the Supreme Court, while prospectively overruling **N.R. Parmar** (supra), clarified that it is only the *inter se* seniority lists already prepared based on **N.R. Parmar** (supra) that shall be protected. Since this is not the case in the present appeal, therefore, it does not have the protection of the prospective overruling of **N.R. Parmar** (supra) by **K. Meghachandra** (supra).

28. The submission of the learned senior counsel for the appellants that though the selection process was initiated in 2007, but the appellants eventually joined as Manager (ATC) only in 2010, therefore, for the administrative delays in the selection process, they should not be penalised, and their seniority be reckoned with effect from 2007, also cannot be accepted. In **K. Meghachandra** (supra), the Supreme Court has specifically rejected a similar submission by observing as under:

*“38. At this stage, we must also emphasise that the Court in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340: (2013) 3*



*SCC (L&S) 711] need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between initiation of process and appointment. Such observation is fallacious inasmuch as none can be identified as being a selected candidate on the date when the process of recruitment had commenced. On that day, a body of persons aspiring to be appointed to the vacancy intended for direct recruits was not in existence. The persons who might respond to an advertisement cannot have any service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the applicant morphs into a selected candidate and, therefore, unnecessary observation was made in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340; (2013) 3 SCC (L&S) 711] to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in Shankarsan Dash v. Union of India [Shankarsan Dash v. Union of India, (1991) 3 SCC 47; 1991 SCC (L&S) 800], where it was held that even upon empanelment, an appointee does not acquire any right.”*

29. In view of the above, we do not find any merit in the present appeal. The same is, accordingly, dismissed. The pending application also stands disposed of.

30. There shall be no order as to costs.

**NAVIN CHAWLA, J**

**RENU BHATNAGAR, J**

**JULY 01, 2025/sg/SJ**

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