

No. 20011/2/2019-Estt. (D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi
Dated: 13th August, 2021.

OFFICE MEMORANDUM

Subject: Judgement of the Hon'ble Supreme Court of India in Civil Appeal No. 8833-8835 of 2019 of K. Meghachandra Singh & Ors. Vs Ningam Siro & Ors – revised instructions relating to seniority of direct recruits and promotees and inter-se seniority thereof – reg.

The undersigned is directed to say that the fundamental principles of determining *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 inter alia provided that, the *inter se* seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, which shall be based on the quotas of vacancies, provided in the Recruitment Rules for direct recruitment and promotion respectively.

2. The carry forward of unfilled slots of a vacancy year, to be filled up by direct recruits of later years, was dispensed with through modified instructions contained in DoPT O.M. No. 35014/2/80-Estt.(D) dated 7.2.1986 which provides that rotation of quotas for purpose of determining seniority would take place only to the extent of available direct recruits and the promotees. The unfilled direct recruitment/promotion quota vacancies would be carried forward and added to the corresponding direct recruitment/promotion quota vacancies of the next year (and to subsequent years where necessary) for determining the total number of direct recruitment or promotion vacancies to filled up as per usual practice. For determining *inter-se* seniority between direct recruits and promotees, it would be done as per rotation of quota to the extent of number of vacancies for direct recruits and promotees, as determined according to the quota for that year and the additional direct recruits/promotees selected against the carried forward vacancies of the previous year, to be placed en-bloc below the last promotee/direct recruit, as the case may be, in the seniority list. All the existing instructions on seniority were consolidated by DoPT through a single O.M. No. 22011/7/86-Estt(D) dated 03.07.1986.

3. Subsequently, vide O.M. No. 20011/1/2006-Estt.(D) dated 3.3.2008, the term 'available' as provided in OMs dated 7.2.1986/3.7.1986 was sought to be clarified, wherein it was clarified that the actual year of appointment, both in the case of direct recruits and promotees, would be reckoned as the year of availability for the purpose of rotation and fixation of *inter se* seniority. This was, however, challenged before the Hon'ble Supreme Court of India in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar v/s Union of India & Others. In its judgement dated 27.11.2012 in the said case, the Hon'ble Apex Court held that 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 particular recruitment year, where the recruitment year shall be the year in which the recruitment process for either of the modes of recruitment (direct recruitment or promotion) for a

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particular vacancy year is initiated viz. initiation of recruitment process against a vacancy year would mean the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits or the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up vacancies earmarked for promotion.

4. The law laid down in the N.R. Parmar case relating to determination of *inter se* seniority between direct recruits and promotees in a grade/post was reviewed by the Hon'ble Supreme Court of India in Civil Appeal No. 8833-8835 of 2019 [arising out of SLP(C) Nos.19565-19567 of 2019] in the matter of K. Meghachandra Singh & Ors. Vs Ningam Siro & Ors. In its Order dated 19.11.2019 in CA No. 8833-35/2019 of K. Meghachandra Singh & Ors. Vs Ningam Siro & Ors, the Hon'ble Supreme Court of India has overruled the decision of the Court in NR Parmar case.

5. In para 40 of the Order dated 19.11.2019, the Hon'ble Court *inter-alia* held that "***the law on the issue is correctly declared in J.C. Patnaik (Supra). Consequently, we disapprove the norms on assessment of inter-se seniority, suggested in N. R. Parmar (Supra). 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.***" Further, in para 38, the Hon'ble Court had held as under:

"38. When we carefully read the judgment in N. R. Parmar (Supra), it appears to us that the referred OMs (dated 07.02.1986 and 03.07.1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OMs had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process. But surprisingly, the judgment while referring to the illustration given in the OM in fact overlooks the effect of the said illustration. According to us, the illustration extracted in the N.R. Parmar (Supra) itself, makes it clear that the vacancies which were intended for direct recruitment in a particular year (1986) which were filled in the next year (1987) could be taken into consideration only in the subsequent year's seniority list but not in the seniority list of 1986. In fact, this was indicated in the two OMs dated 07.02.1986 and 03.07.1986 and that is why the Government issued the subsequent OM on 03.03.2008 by way of clarification of the two earlier OMs."

6. The determination of *inter se* seniority of direct recruits and promotees, as laid down by the Hon'ble Supreme Court of India, in its Order dated 19.11.2019 in K. Meghachandra Singh case, has been carefully examined in consultation with the Department of Legal Affairs, and the following principles have emerged:-

- (i) The rotation of quota, based on the percentage of vacancies allocated to direct recruitment and promotion in the notified recruitment rules/service rules, shall continue to operate for determining vacancies to be filled by the respective quotas in a recruitment year. The term 'recruitment year' shall mean the year in which the vacancy arises. However, *inter se* seniority between direct recruits and promotees, who are appointed against the vacancies of respective quota, would be reckoned with reference to the year in which they are appointed i.e. year in which they are borne in the cadre or formal appointment order is issued.
- (ii) The terms 'recruitment' and 'appointment' have to be read harmoniously and the determination of seniority for recruitees would depend on their actual appointment and

not the initiation of recruitment process itself. It thus follows that the seniority of direct recruits and promotees henceforth stands delinked from the vacancy/year of vacancy.

- (iii) The source of legitimacy of determination of seniority would be with reference to the date of joining of a person against a vacancy, irrespective of the fact that it may have arisen in the previous year(s) and not being a carried forward vacancy of any quota.
- (iv) If adequate number of direct recruits (or promotees) do not become available, "rotation of quotas" for the purpose of determining seniority, would stop after the available direct recruits and promotees are assigned their slots on joining in a particular year.
- (v) The term 'available', both in the case of direct recruits as well as promotees, for the purpose of rotation and fixation of seniority, shall be the actual year of appointment after declaration of results/selection and completion of pre-appointment formalities as prescribed.
- (vi) Thus, appointees who join in the concerned recruitment year and those who join in subsequent year(s), would figure in the seniority list of the respective years of their being appointed. To that extent it may not be necessary to go into the question of quota meant for direct recruits and promotees to find out as to the year in which the vacancy arose against which the recruitment is made.

7. Based on the above, it has been decided to modify the instructions relating to determination of *inter se* seniority between promotees and direct recruits as under:

- (i) DoPT's O.M. No. 20011/1/2012-Estt.(D) dated 4.3.2014, issued in pursuance of Order dated 27.11.2012 in N.R. Parmar case, is treated as non-est/withdrawn w.e.f. 19.11.2019.
- (ii) As the Order dated 19.11.2019 is prospective, cases of *inter se* seniority of direct recruits and promotees, already decided in terms of O.M. No. 20011/1/2012-Estt.(D) dated 4.3.2014, shall not be disturbed, i.e. old cases are not to be reopened.
- (iii) In case of direct recruits and promotees appointed/joined during the period between 27.11.2012 and 18.11.2019 and in which case *inter se* seniority could not be finalised by 18.11.2019, shall also be governed by the provisions of O.Ms. dated 7.2.1986/3.7.1986 read with OM dated 4.3.2014, unless where a different formulation/manner of determination of seniority has been decided by any Tribunal or Court.
- (iv) For cases where the recruitment process has been initiated by the administrative Department/Cadre Authority before 19.11.2019 and where some appointments have been made before 19.11.2019 and remaining on or after 19.11.2019, the *inter se* seniority of direct recruits and promotees, shall also be governed by the provisions of O.Ms. dated 7.2.1986/3.7.1986 read with OM dated 4.3.2014 to ensure equal treatment of such appointees.

- (v) For recruitments initiated on or after 19.11.2019 as well as for future recruitments, in addition to cases where the recruitment process has been initiated by the administrative Department/ Cadre Authority before 19.11.2019, but where all appointments, subsequent to the initiation of recruitment process, could be made only on or after 19.11.2019 i.e. date of order of Apex Court, the *inter se* seniority of direct recruits and promotes shall be determined in the following manner-
- (a) The rotation of quota based on the percentage of vacancies allocated to direct recruitment and promotion in the notified recruitment rules/service rules, shall continue to operate for determination of vacancies to be filled by the respective quotas in a recruitment year.
 - (b) Determination of inter-se seniority between direct recruits and promotees, who are appointed against the vacancies of respective quota, would, however, be reckoned with reference to the year in which they are appointed i.e. year in which they are borne in the cadre or formal appointment order is issued. In case, where the recruitment year is the same as the year of appointment, the appointees shall be given seniority of that year.
 - (c) Where in case of promotees or direct recruits, the year of appointment is the next year or any year subsequent to the recruitment year, the seniority of such promotees and direct recruits would be determined with reference to the year of their actual joining/appointment to the post, since they were not able to join in the said recruitment year in which the vacancy arose. Thus, they would get seniority of the year in which they actually join i.e. year in which formal appointment order is issued or they are borne in the service/cadre and that they shall not get seniority of any earlier year (viz. year of Vacancy/panel or year in which recruitment process is initiated).
 - (d) In terms of OMs dated 7.2.1986/3.7.1986, rotation between promotees and direct recruits for the purpose of determination of inter-se seniority, would be undertaken only to the extent of available direct recruits and promotees in a particular year. The term 'available direct recruits or promotees' appearing in these OMs dated 7.2.1986/3.7.1986, for the purpose of rotation of quota in fixation of inter-se seniority, shall mean the actual number of direct recruits and promotees appointed during the year after declaration of results/selection and completion of pre-appointment formalities as prescribed.
 - (e) As per (d) above, if adequate number of direct recruits (or promotees) do not become available in a particular year, the "rotation of quotas" for the purpose of determining inter-se seniority, would stop after the available direct recruits and promotes are assigned their slots on their appointment/joining in that year.
 - (f) If no direct recruit is available in a particular year, available promotees would be bunched together in accordance with their position in the panel approved for promotion. Similarly, if no promotee is available in that year, available direct recruits would be bunched together, as per their position obtained in the selection process.

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(g) In case, where direct recruits or promotees, as the case may be, belonging to two more selections/panel approved for promotion, join in the same year, then those who have been appointed/joined as a result of earlier selection/panel would be placed senior in the seniority list to those been appointed/joined as a result of a subsequent selection/panel.

(h) Instructions contained in OMs dated 7.2.1986 and 3.7.1986, stand modified to the extent indicated in above paragraphs.

8. These provisions shall come into effect from 19.11.2019 onwards.

9. All Ministries/Departments are requested to bring these instructions to the notice of all concerned.

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Under Secretary to the Govt of India

To

All Ministries/Departments of the Government of India

Copy to :-

1. President's Secretariat/Vice President's Secretariat/Prime Minister's Office/ Supreme Court/ Rajya Sabha Secretariat/ Lok Sabha Secretariat/ Cabinet Secretariat /UPSC/ CVC/ C&AG/ Central Administrative Tribunal (Principal Bench), New Delhi.
2. All attached/subordinate offices of the Ministry of Personnel, Public Grievances and Pensions.
3. Secretary, National Commission for Minorities.
4. Secretary, National Commission for Scheduled Castes/Scheduled Tribes.
5. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi.
6. PS to MOS(PP) for information to Hon'ble MoS(PP).
7. All Staff Side Members of the National Council (JCM).
8. NIC [for uploading this OM on the website of DOPT (Seniority)].
9. Hindi Section, DoPT for Hindi Translation.

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Under Secretary to the Government of India