

**Rajesh Kumar Shivhare and Ors vs Union of India and Ors**

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**SooperKanoon Citation :** [sooperkanoon.com/1266697](https://sooperkanoon.com/1266697)

**Court :** Delhi

**Decided On :** Jan-07-2026

**Judge :** Cases Pertaining to Spl.Division Benches

**Appeal No. :** W.P.(C)/8534/2020

**Appellant :** Rajesh Kumar Shivhare and Ors

**Respondent :** Union of India and Ors

**Advocate for Pet/Ap. :** Mr. Harpreet Singh, Mr. Jai Ahuja, Ms. Amrita Prakash, Ms. Anju Kaushik, Ms. Pratima Prakash, Mr. Jitender Rajotia, Mr. Ankit Yadav, Ms. Gunjan Rathore, Mr. Chaitanya Sonkeria, Ms. Shivangi Gulati, Mr. Vivek Goyal, Mr. Gokul Sharma

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 7th JANUARY, 2026 IN THE MATTER OF: + W.P.(C) 4102/2020 & CM APPL. 14705/2020, CM APPL. SATISH KUMAR & ORS. ....Petitioners Through: Mr. Harpreet Singh and Mr. Jai Ahuja, Advocates.

versus

UNION OF INDIA & ORS. ....Respondents Through: Ms. Amrita Prakash, CGSC with Mr.Vishal Ashwani Mehta, Ms. Anju Kaushik, Advs. Ms. Pratima Prakash, CGSC with Mr. Jitender Rajotia, Asstt. Commandant/CISF, SI Vinod Singh. Mr. Ankit Yadav, Ms. Gunjan Rathore, Mr. Chaitanya Sonkeria and Ms. Shivangi Gulati, Advocate for Respondents No.5-10, 13-16, 20, 21, 23, 25-27, 30, 35-37, 41-43, 47-49, 53-56, 58-60, 62-65, 71-75, 77-80, 84, 87, 89-91 and 93-94.

+ W.P.(C) 8534/2020 RAJESH KUMAR SHIVHARE AND ORS ....Petitioners Through: Mr. Harpreet Singh and Mr. Jai Ahuja, Advocates.

versus

UNION OF INDIA AND ORS ....Respondents Through: Mr. Vivek Goyal (CGSPC) with Mr. Gokul Sharma, Advocate along with Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 1 of 23 Mr. Surinder Kumar AC/JAO(CISF), Mr. Vikash HC/GD (CISF).

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

## **JUDGMENT**

**SUBRAMONIUM PRASAD, J.**

1. The Petitioners in W.P.(C) 4102/2020 have prayed for the following reliefs:-

### **(i) Issue a writ of certiorari quashing office order**

dated 13.03.2020 rejecting representations of petitioners for correction of their deemed seniority;

(ii) Issue a writ of mandamus directing the

respondents nos. 1 to 3 to issue complete seniority list of Assistant Commandant (Executive) Of Central Industrial Security Force by correctly placing them above respondents nos. 4 to 94.

(iii) Pass any such orders as the Honble court may deem fit in the facts and circumstances of the case;

2. The Petitioners in W.P.(C) 8534/2020 have prayed for the following reliefs:-

**(i) Issue a writ of certiorari quashing of the order**

dated 13.03.2020 issued by the Respondents inter alia rejecting the representation of the Petitioner; AND

(ii) Issue a writ of mandamus directing the respondents

to publish a Seniority list for AC (Exe) fixing the seniority from the date of appointment and not from the date of initiation of recruitment process, as propounded by the Honble Apex Court in K. Meghachandra and thereby correctly placing the Signed By: RAHUL W.P.(C) 4102/2020 etc. Page 2 of 23 petitioners 9 AC/LDCE Batch above the 30 AC/Direct Batch i.e. the private respondents herein; AND

(iii) Issue a writ of mandamus directing the

respondents to direct the 9 AC/LDCE Batch to undergo pre-promotional course and also place them higher in seniority, above the 30 AC/Direct Batch for consideration to promotion to next promotional post; OR

(iv) Pass any such orders as the Honble court may deem fit in the light of above mentioned facts and circumstances of the case.

3. The instant writ petitions have been filed by the Petitioners herein, who are working in the position of Assistant Commandant in the Central Industrial Security Force (hereinafter referred to as CISF).

4. It is pertinent to note that the Petitioners in W.P. (C) No. 4102/2020

and W.P. (C) No. 8534/2020 belong to the 8th and 9th batch of Limited Departmental Competitive Examination (LDCE), respectively. Whereas, the Private Respondents in the said writ petitions belong to the 29th and 30th batch of Direct Recruits, respectively.

5. Since the instant petitions collectively impugn the Order dated 13.03.2020 passed by the Respondent/CISF, both the writ petitions are being decided by a common Judgment, in order to avoid confusion.

6. Shorn of unnecessary details, the facts leading to the filing of the

instant writ petitions are as follows:- a. The Ministry of Home Affairs promulgated a Note dated 21.08.2000 introducing LDCE as a mode of recruitment to the position of Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 3 of 23

Assistant Commandant (Executive) in CISF, wherein 17% weightage has been allotted. b. Pursuant to the same, an amendment vide Notification dated 17.02.2009 was made to the Assistant Commandant (Executive) Recruitment Rules, 2009 thereby inculcating the weightage of 17% LDCE as a mode of recruitment to the position of Assistant Commandant (Executive). The following weightage was allotted to each method of recruitment:-

Mode of recruitment Weightage for the filling up of the vacancies Promotion 33% LDCE, failing which by promotion 17% Absorption from PSUs 02% Direct Recruitment 48%

c. An Office Memorandum (hereinafter referred to as OM) dated 03.03.2008 was notified by the Do PT stating that inter-se seniority of Direct Recruits and Promotees shall be fixed based on the actual year of appointment after completion of all the pre-appointment formalities. The relevant portion of the said OM is reproduced hereinunder:- 3. Some references have been received seeking clarifications regarding the term 'available' used in the preceding para of the O.M. dated 3.7.1986. It is

hereby clarified that while the inter-se seniority of direct

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recruits and promotees is to be fixed on the basis of the rotation of quota of vacancies, the year of availability, both in the case of direct recruits as well as the 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. It is further clarified that when appointments against unfilled vacancies are made in subsequent year or years either by direct recruitment or promotion, the Persons so appointed shall not get seniority of any earlier year (viz. year of Vacancy/panel or year in which recruitment process is initiated) but should get the seniority of the year in which they are appointed on substantive basis. The year of availability will be the vacancy year in which a candidate of the particular batch of selected direct recruits or an officer of the particular batch of promotees joins the post/service.

d. The Union Public Services Commission (hereinafter referred to as UPSC) issued a notification dated 15.06.2013 and 01.02.2014 for conducting LDCE for the years 2013 and 2014, respectively. The results for LDCE-2013 (8th batch of LDCE) were declared on 27.12.2013 and for LDCE-2014 (9th batch of LDCE) were declared on 14.08.2014, respectively. e. With respect to the Direct Recruits, the UPSC conducted the Central Armed Police Force (CAPF) Examination for the years 2012 and 2013, which the Direct Recruits herein cleared. f. Pursuant to the examinations, the following dates of appointment for the Promotees and Direct Recruits were declared for the post of Assistant Commandant (Executive):- 8th Batch of LDCE (promotees) 01.02.2014

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W.P.(C) 4102/2020 etc.

g. In light of the development regarding the determination of inter-se seniority vide the Apex Courts Judgment in the case of N.R. Parmar vs. Union of India, (2012) 13 SCC 340, an OM dated 04.03.2014 was released by the Do PT withdrawing the earlier OM dated 03.03.2008 and stating that the inter-se seniority shall be determined based on the recruitment year, instead of year of appointment. h. However, the grievance of the Promotees in the instant case arose when the Respondent-CISF invited the Direct Recruits prior to the Promotees for the pre-promotion courses without providing any seniority list, despite the latter being appointed before the former. It is pertinent to note that the seniority list for the years 2012 and 2013 were only released on 20.01.2021. Aggrieved by this, the Promotees made a representation before the Respondent-CISF regarding fixation

### **of seniority, however, the same was rejected vide the Impugned Order**

dated 13.03.2020, stating that the seniority shall be fixed based on the existing guidelines of Do PT. It is this Order which is under challenge in the instant writ petition.

7. Learned Counsel for the Petitioners/Promotees submits that the

Promotees herein were appointed prior to the Direct Recruits and therefore, the seniority can only be fixed as per the date of appointment and not the recruitment year. It is contended that the Direct Recruits, who were not even born in the cadre at the time of the appointment of the Promotees, Signed By: RAHUL W.P.(C) 4102/2020 etc. Page 6 of 23 cannot be given the status of seniority. In order to fortify his argument, learned Counsel for the Petitioners places reliance on the Apex Courts

### **Judgment in the case of K. Meghachandra Singh v. Ningam Siro, (2020) 5**

SCC 689, wherein it was observed that retrospective seniority cannot be claimed when an employee is not even born in the cadre yet.

8. Learned Counsel for the Petitioners submits that K. Meghachandra

(supra), which explicitly overrules N.R. Parmar (supra), is applicable only prospectively and since the seniority list was published only on 20.01.2021, fixation of seniority cannot be made in terms of N.R. Parmar (supra). It is further submitted that since the list of seniority was not finalised until after K. Meghachandra (supra), the seniority list cannot be said to be already settled. Therefore, a new seniority list in terms of the principle expounded by K. Meghachandra (supra) shall be released by the Respondent-CISF.

9. It is also contended by the learned Counsel for the Petitioners that the

Respondent-CISF erred in inviting the Direct Recruits prior to the Promotees for the pre-promotion courses as the same indicates that the Direct Recruits are placed senior to the Promotees, despite the dates of appointment. It is stated that the department itself treats the Petitioners as senior for all other purposes, such as granting them Senior Time Scale (STS) on 01.02.2018 (based on their 01.02.2014 appointment date), a benefit the junior respondents did not receive at that time.

10. Learned Counsel for the Petitioners also submits that the 8th Batch of

LDCE was appointed along with 28th Batch of Direct Recruits and similarly, the 9th Batch of LDCE were appointed along with 29th Batch of Direct Recruits in the same financial years. However, it is submitted that the 8th Batch of LDCE was placed below the 29th and 30th Batches of Direct Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 7 of 23 Recruits and 9th Batch of LDCE was placed below the 30th Batch of Direct Recruits. It is submitted that if the seniority is not re-fixed in terms of the Apex Courts decision in K. Meghachandra (supra), the same would amount to arbitrariness.

11. Per Contra, learned Counsel for the Respondents submits that the

determination of seniority shall be based only on the existing OM i.e., OM dated 04.03.2014, which specifically states that the recruitment year shall be taken as a factor for fixation of seniority instead of date of appointment as expounded by the Apex Court in N.R. Parmar (supra). It is stated that the ratio in K. Meghachandra (supra) categorically states that the decision taken will not affect the inter-se seniority already based on N.R. Parmar (supra) and the same is protected.

12. It is submitted that the inter-se seniority for the position of Assistant

Commandant (Executive) was fixed only based on the OM dated 04.03.2014 which was notified as per the law laid down in N.R. Parmar (supra). Hence, reliance placed by the Petitioners on K. Meghachandra (supra) in the present set of facts is misplaced.

13. It is also submitted that the date on which the seniority list is released,

cannot be taken as a determining factor for the applicability of K. Meghachandra (supra)s ratio, rather it is dependent on whether the seniority is fixed as per the terms of N.R. Parmar (supra) or not.

14. Heard the learned Counsels for the parties and perused the material on record.

15. Material on record indicates that the seniority list, in the instant case, has been prepared on the basis of OM dated 04.03.2014, which stipulates Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 8 of 23

that recruitment year shall be taken as a factor for determination of seniority. The OM dated 04.03.2014 is reproduced herein, in its entirety:- OFFICE MEMORANDUM

Subject: Inter se seniority of direct recruits and promotees - instructions thereof 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.

## 2. The carrying forward of unfilled slots of a vacancy

year, for being filled up by direct recruits of later years, was dispensed with through modified instructions contained in Do PT 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 the 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 taking action for the total number of direct recruitment/promotion according to the usual practice. Thereafter, in that year, while 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

Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 9 of 23 for that year, the additional direct recruits/promotees selected against the carried forward vacancies of the previous year, would be placed en-bloc below the last promotee/direct recruit, as the case may be, in the seniority list, based on the rotation of vacancies for that year.

3. All the existing instructions on seniority were consolidated by Do PT through a single O.M. No.

4. In view of divergent stance taken by different

Ministries/Departments on interpretation of 'available direct recruits and promotees' in the context of OM dated 7.2.86, the Do PT had issued O.M. No. 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.

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. U01 & 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) Do PT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as nonexistent/withdrawn ob 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; Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 10 of 23 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.

f) The initiation of recruitment process for any of the modes viz. direct recruitment or promotion would be deemed to be the initiation of recruitment process for the other mode as well; g) Carry forward of vacancies against direct recruitment or promotion quota would be determined from the appointments made against the first attempt for filling up of the vacancies for a Recruitment Year; h) The above principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012, the date of Supreme Court

## **Judgment in Civil Appeal No. 7514-7515/2005 in the**

case of N.R. Parmar Vs. U01 & Ors i) The cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in Do PT O.M. dated 7.2.86/3.7.86 may not be reopened. Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 11 of 23

7. As the conferment of seniority would be against the

Recruitment Year in which the recruitment process is initiated for 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 Do PT 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. (Emphasis Supplied)

16. The question, therefore, which arises for consideration before this

Court is whether the seniority list has been prepared in terms of OM dated 04.03.2014, which in turn has been prepared on the basis of judgment in N.R. Parmar (supra) would be upheld or whether the

judgment of K. Meghachandra (supra) which has prospectively overruled N.R. Parmar (supra) would apply, more so when in the present case, the seniority list has been prepared after the judgment of K. Meghachandra (supra), but based on the judgment of N.R. Parmar (supra).

17. For the sake of convenience, the relevant extracts of Apex Courts K.

Meghachandra Singh v. Ningam Siro, (2020) 5 SCC 689 are reproduced hereinunder:- 28. Before proceeding to deal with the contention of the appellants' counsel vis--vis the judgment in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] , it is necessary to observe that the law is fairly well settled in a series

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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 [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] 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 [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] 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 [Jagdish

Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] is followed by this Court in several subsequent cases. It would

however be appropriate to make specific reference considering the seniority dispute in reference to the Arunachal Pradesh Rules which are in pari materia to the MPS Rules, 1965 [vide Nani Sha v. State of Arunachal Pradesh [Nani Sha v. State of Arunachal Pradesh, (2007) 15 SCC 406 : (2010) 1 SCC (L&S) 719] ]. 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.

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30. We may also benefit by referring to the judgment in State of U.P. v. Ashok Kumar Srivastava [State of U.P. v. Ashok Kumar Srivastava, (2014) 14 SCC 720 : (2015) 3 SCC (L&S) 536] . This judgment is significant

since this is rendered after the N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] decision. Here the Court approved the ratio in Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] , 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 [State of U.P. v. Ashok Kumar Srivastava,

(2014) 14 SCC 720 : (2015) 3 SCC (L&S) 536] being the one appealing to us, is profitably extracted as follows : (SCC p. 730, para 24)

24. The learned Senior Counsel for the appellants has drawn inspiration from the recent authority in Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] 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 : (SCC pp. 281-82, para 45)

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 Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 14 of 23 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

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.

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34. The judgment in N.R. Parmar [Union of India v.

N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] is now to be considered in some detail as this is heavily relied on by the appellants' counsel. At the outset, it must however be cleared that the cited case had nothing to do with the MPS Rules, 1965 and that litigation related to the Income Tax Inspectors who were claiming benefits of various Central

Government OMs (dated 22-12-1959, 7-2-1986, 3-7- 1986 and 3-3-2008). The judgment was rendered in respect of the Central Government employees having their own Service Rules. The applicable Rules for the litigants in the present case however provide that the seniority in the service shall be determined by the

### **order in which appointments are made to the service.**

Therefore, the memorandums concerned referred to in N.R. Parmar [Union of India v. N.R. Parmar, (2012) Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 15 of 23 13 SCC 340 : (2013) 3 SCC (L&S) 711] which deal with general principles for determination of seniority of persons in the Central Government service, should not according to us, have any overriding effect for the police officers serving in the State of Manipur.

35. After the judgment in N.R. Parmar [Union of India

v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] was delivered, the Union of India issued the Office Memorandum on 4-3-2014 defining the recruitment year to be the year of initiating the recruitment process against the vacancy year and that the rotation of quota, would continue to operate for determination of inter se seniority between direct recruits and promotees. This Memo was not made applicable to the State of Manipur till the issuance of the OM dated 21-12-2017, adopting the OM dated 4-3- 2014 prospectively with effect from 1-1-2018. Significantly, the said OM specifically provided that appointments/promotions made before the issue of this OM will not be covered by this OM. The seniority already fixed as per existing rules followed earlier in the State prior to the issue of this OM may not be reopened. It was also specifically stated therein that this OM will come into effect from 1-1-2018 with the publication in the Gazette.

36. From the above, it is not only apparent that the

above OM was only to be given prospective effect from 1-1-2018 but it contains an express acknowledgment that this was not the position prior to the issuance of the OM and that a different rule was followed earlier in the State. The conclusion is, therefore, inevitable that at least prior to 1-1-2018, direct recruits cannot claim that their seniority should be reckoned from the date of initiation of recruitment proceedings and not from the date of actual appointment.

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37. When we carefully read the judgment in N.R.

Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] , it appears to us that the referred OMs (dated 7-2-1986 and 3-7-1986) 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 N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] 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 7-2-1986 and 3-7-1986 and that is why the Government issued the subsequent OM on 3-3-2008 by way of clarification of the two earlier OMs.

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

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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.

### 39. The judgment in N.R. Parmar [Union of

India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] had incorrectly distinguished the long-standing seniority determination principles propounded in, inter alia, Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] , Suraj Parkash Gupta v. State of J&K [Suraj Parkash Gupta v. State of J&K,

(2000) 7 SCC 561 : 2000 SCC (L&S) 977] and Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 :  
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(2011) 1 SCC (L&S) 481] . These three judgments

and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] and consequently we disapprove the norms on assessment of inter se seniority, suggested in N.R.

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Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] . Accordingly, the decision in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] is overruled. However, it is made clear that this decision will not affect the inter se seniority already based on N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] 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.

(Emphasis Supplied)

18. As stated in the foregoing paragraphs, the principle laid down in N.R.

Parmar (supra) regarding the determination of seniority on the basis of recruitment year was set aside by the Apex Court in K. Meghachandra (supra), thereby reiterating that the employee, who was not even born in

the cadre, cannot be given preference in seniority retrospectively. However, while overruling the said Judgment, the Apex Court also stated that the decisions made in terms of the law laid down by N.R. Parmar (supra) shall remain untouched and that K. Meghachandra (supra) shall be applied prospectively.

19. A similar question arose before the Co-ordinate Bench of this Court in

Ombeer Singh Parmar v. Union of India & Ors., 2025 SCC OnLine Del 1988, wherein the seniority list was prepared after the judgment of K. Meghachandra (supra), however, the seniority was based on the judgment of N.R. Parmar (supra). The Co-ordinate Bench of this Court in the said

### **Judgment held has under:**

Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 19 of 23 10. From a reading of the above, it would be apparent that the Supreme Court has clarified that it is only upon completion of the selection process, that the person so selected can claim seniority and that such seniority cannot be claimed from the date when the incumbent is yet to be born in the Cadre.

11. It is further clarified that though the decision

in Union of India v. N.R. Parmar, (2012) 13 SCC 340, has been overruled, however, the decision will not affect the inter se seniority already based on N.R. Parmar (supra) and the same is protected. The decision in K. Meghachandra Singh (supra) was therefore, held to be applicable prospectively.

12. In the present case, the impugned seniority list, has been issued by the respondents on 19.04.2023. The same therefore, has to be governed by the decision of the Supreme Court in K. Meghachandra Singh (supra).

13. Applying the above principle, retrospective

seniority even before the personnel is born in the Cadre, cannot be granted. The impugned seniority list insofar as it determined seniority in violation of the said

principal, is liable to be quashed.

14. As far as the prayer of the learned counsel for

the respondents that as the judgment in K. Meghachandra Singh (supra) has been referred to a Larger Bench, this Court should adjourn the present petition sine die is concerned, it is settled law that merely because the Supreme Court has referred a

**judgment to the Larger Bench, it would not prohibit or restrain the High Court from following the judgment**

that is presently holding forth.

15. In this regard, we may make a reference to the

**judgment of the Supreme Court in Union Territory of**

Ladakh v. Jammu and Kashmir National Conference, 2023 SCC OnLine SC 1140, wherein this principle has been explained as under: Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 20 of 23

32. The Court would categorically emphasize that no litigant should have even an iota of doubt or an impression (rather, a misimpression) that just because of systemic delay or the matter not being taken up by the Courts resulting in efflux of time the cause would be defeated, and the Court would be rendered helpless to ensure justice to the party concerned. It would not be out of place to mention that this Court can even turn the clock back, if the situation warrants such dire measures. The powers of this Court, if need be, to even restore status quo ante are not in the realm of any doubt. The relief(s) granted in the lead opinion by Hon. Khehar, J. (as the learned Chief Justice then was), concurred with by the other 4 learned Judges, in Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1 is

enough on this aspect. We know full well that a 5-Judge Bench in *Subhash Desai v. Principal Secretary, Governor of Maharashtra*, 2023 SCC OnLine SC 607 has referred *Nabam Rebia* (supra) to a Larger Bench. However, the questions referred to the Larger Bench do not detract from the power to bring back status quo ante. That apart, it is settled that mere reference to a larger Bench does not unsettle declared law. In *Harbhajan Singh v. State of Punjab*, (2009) 13 SCC 608, a 2-Judge Bench said: 15. Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for

Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 21 of 23 exercise of jurisdiction under Section 319 of the Code was made out. Only because the

### **correctness of a portion of the judgment**

in *Mohd. Shafi* [(2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : (2007) 4 SCR 1023 : (2007) 5 Scale 611] has been doubted by another Bench, the same would not mean that we should wait for the decision of the larger Bench, particularly when the same instead of assisting the appellants runs counter to their contention. (emphasis supplied)

16. However, keeping in view that the reference is

pending before the Larger Bench, we direct that the seniority list, which shall be redrawn by the respondents pursuant to our judgment, shall be subject to the outcome of the reference.

17. The respondents shall rework the Seniority List and publish the revised list after considering objections, if any, filed to a draft seniority list, within six months from today.

20. This Court is in agreement with the observations made by the

Coordinate Bench of this Court. The seniority list even in the instant case, has been prepared after the judgment of K. Meghachandra (supra) and is based on the OM dated 04.03.2014. The seniority list has been drawn on the basis of the judgment in N.R. Parmar (supra), which has been prospectively overruled.

21. In view of the above, the present writ petitions are allowed.

22. The seniority list is directed to be re-drawn by the Respondents. Needless to state, as observed by the Coordinate Bench of this Court in Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 22 of 23 Ombeer Singh Parmar (supra), the seniority list shall be subject to the outcome of the reference to the Larger Bench.

23. Pending applications, if any, also stand disposed of. SUBRAMONIUM PRASAD, J VIMAL KUMAR YADAV, J JANUARY 07, 2026 SM Signed By:RAHUL W.P.(C) 4102/2020 etc. Page 23 of 23

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