

Hyderabad  
Date: 02.09.2022.

To  
All the Head of Offices in  
Andhra Pradesh & Telangana Region.

Sir/Madam,

Sub: 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 - implementation thereof - in Andhra Pradesh and Telangana Region – Tentative revised draft seniority lists of erstwhile cadres of LDC, UDC, TA(old), Head Clerk, Supervisor, Gr.I/II and present cadres of TA(New), Sr.TA, Office Superintendent, ITI & ITOs - Calling for objections /representations - reg.

- Ref: 1) DoPT OM No.20011/2/2019-Estt.(D) dtd. 13th August, 2021  
2) Board's letter in F.No.A-35015/26/2018-Ad.VI dtd.26/10/2021  
3) Pr. CCIT, AP & TS's memorandum in F.No.CCAP/Estt/ITI/36/2015-16/Vol.III, dated 03.12.2015.

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The process of revision of seniority of direct recruits vis-a-vis promotees is initiated as per the directions of the DOPT Office Memorandum in No.20011/2/2019-Estt.(D) dated 13th August, 2021 and Board's letter in F.No.A35015/26/2018-Ad.VI dated 26.10.2021. Instructions were issued by DOPT from time to time regarding the manner in which the inter-se seniority of direct recruits and promotees are to be determined in a cadre. The extracts of these OMs are annexed to this Memorandum. Before proceeding with the initiation process, it is deemed appropriate to brief on the procedure followed in this region with reference to the instructions issued by DOPT/CBDT leading to the initiation of this process.

2. Ministry of Home Affairs O.M.No.9/11/55-RPS dated 22.12.1959 laid down the rules 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. Further in General Principle 6 below Explanatory Memorandum it was stated that "If for any reason, a direct recruit or promotee ceases hold the appointment in the grade, the seniority shall not be re-arranged merely for the purpose of ensuring the promotion referred to above." As per the above OM, the unfilled vacancies under promotion quota or direct recruitment quota in a year were utilized for filling up through promotions/direct recruits made during later years, thus promotees / direct recruits of later years taking higher position than such officials who were promoted / recruited during earlier years leading to litigation. This issue was contested in various courts and the Courts have expressed their concern on the same.

3. To undo this litigation, DOPT vide O.M. In No.35014/2/86-Estt(D) dated 07.02.1986 brought out modified principles for arriving inter-se seniority between promotees and direct recruits that "the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees." The instructions issued in O.M dated 07.02.1986 were duly followed in this Region for determination of inter-se seniority.

4. Later, on the directions of Honourable Supreme Court in case of N.R. Parmar and Ors Vs. Union of India, DOPT issued instructions for revision of seniority through O.M. dated 04.03.2014 that the principle laid down in the judgement of Hon. Supreme Court in the said case (that the seniority of direct recruits to be placed in the year of initiation of recruitment process i.e. the year in which the requisition for filling up of vacancies intimated to the recruiting agency) is to be adopted from 27.11.2012 only, the date of judgment of Hon. Supreme Court. It was clearly directed that;

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. UOI & Ors.

i) The cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in DoPT O.M .dated 7.2.86/3.7.86 may not be reopened.

5 . However, the Board vide letter in F.NO.C-18013-4/2014-Ad.VII dated 06.06.2014 issued advisories directing that;

*"In the specific context of Income Tax Department, wherein the inter-se seniority of direct recruits and promotees have been under dispute on the grounds of misinterpretation of the provisions of OM dated 7.2.86/3.7.86 and has led to Parmar judgement of Supreme Court. It is unambiguously confirmed that the entire issue of seniority of officers of Income Tax Department would have to be revisited in compliance of the judgement of the Supreme Court."*

6. Further, Board vide letters dated 29.09.2014, 07.11.2014 and 16.01.2015 issued advisories through FAQ for uniform implementation of revision of seniority in all regions in the country in all Group B and C cadres and directed to conduct review DPCs for implementation of the same. As per the Board's advisories, the inter-se seniority between direct recruits and promotees from 1986 were reviewed based on the principle laid down in Hon'ble Supreme Court judgment in case of N.R.Parmar and Others. Accordingly, orders revising the seniority and consequential promotions were issued vide this office Memorandum dated 03.12.2015.

7. This method of determining the seniority of promotees with reference to the year of initiating the recruitment process was contested before Hon'ble High Court of Delhi in the case of Veena Kothawale Vs. Union of India in WP No.2087/2016 dated 22.01.2018. Hon'ble High Court declared **that seniority already decided with reference to the O.M. dated 07.02.1986/03.07.1986 is a settled seniority and cannot be disturbed by applying the principles laid down in the case of N.R. Parmar.** The decision of Hon'ble High Court was further confirmed by Hon'ble Supreme Court while pronouncing judgment on the SLP filed by Shri Diwakar Singh in SLP No.11905-11906/2018 on 16.05.2018.

7.1 It is worthwhile to note that even the DOPT vide O.M. dated 04.03.2014 had emphasized that the decision of Hon'ble Supreme Court in case of Parmar would be prospective i.e. to be effective from 27.11.2012.

8. Consequentially, the CBDT vide letter dated 27.05.2019 withdrew ab-initio its earlier advisories vide letters dated 29.09.2014, 07.11.2014 and 16.01.2015 (directing the implementation of N.R. Parmar Judgement and review of DPCs held prior to 27.11.2012) and directed that

ii) **That the N.R. Parmar case judgment of Hon'ble Supreme Court of India shall be implemented in the Department in the respective grades prospectively i.e. w.e.f. 27.11.2012** as has been implemented in the various Ministries /Departments of Government of India in terms of DOP&T's OM No.20011/1/2012-Estt.(D) dated 04.03.2014. **The cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in DOP&T OM dated 7.2.86/3.7.86 shall not be reopened. The regions are required to undo the actions taken by them in the light of advisories dated 29.09.2014, 07.11.2014 and 16.01.2015 issued by O/o DGIT(HRD) and restore the seniority position of respective officers in the respective grade that was maintained before N.R. Parmar Order.**

8.1 CBDT has made its directions clear that the review DPCs conducted with reference to the judgment of Hon SC in case of N.R. Parmar for the period from 1986 up to 26.11.2012 needs to be revisited and the original seniority that existed prior to implementation of Parmar Judgement is to be restored up to 26.11.2012. This can be perceived from the declaration made by Board in Para 3v) that "AIISL of ITOs circulated by CBDT, vide letter dated 01.09.2015, which did not have any effect of N.R.Parmar order of Hon'ble Supreme Court of India and DOP&T's OM dated 03.03.2008, is a valid and legal AIISL."

9. Meanwhile, the issue of determining seniority as per the decision of Hon'ble Supreme Court in case of N.R. Parmar was further contested before Hon'ble Supreme Court in the case of Meghachandra Singh and Ors Vs. Ningam Siro and Ors in Civil Appeal No.8833-8835 of 2019 arising out of SLP(C) Nos. 19565-19567 of one. 2019. Hon'ble Supreme Court vide order dated 19.11.2019 overruled the decisio of Hon'ble Supreme Court in case of N.R. Parmar and heldthat;

***"29. .... 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. .... the Supreme Court held in J.C.Patnaik(Supra) 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.*

*40. .... We also feel that N.R. Parmar (Supra) had incorrectly distinguished the long-standing seniority determination principles propounded in, inter-alia, J.C. Patnaik (Supra), Suraj Prakash Gupta & Ors. vs. State of J&K & Ors. 5 and Pawan Pratap Singh & Ors. Vs. Reevan Singh & Ors.(Supra). These three judgments and several others with like enunciation on the law for determination of seniority (1991) 3 SCC 47 (2000) 7 SCC 561 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. .... 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."*

9.1 Hon'ble Supreme Court has overruled the decision in case of N.R. Parmar relying on the well settled principle pronounced in the case of J.C.Patnaik and catena of other judgments that a person cannot claim seniority from a date prior to his date of joining on appointment, as he was not yet borne in relevant cadre i.e. to say that he has not yet started performing his functions/service in the particular cadre.

10. Consequently, Department of Personnel and Training issued a Memorandum dated 13.08.2021 (annexed to this OM as Annexure E) and laid down the principle in which the inter-se seniority between direct recruits and promotees are to be determined.

(i) .... 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.

7(ii) As the Order dated 19.11.2019 is prospective, cases of inter se seniority of direct recruits and promotes, **already decided in terms of O.M. No. 2001 1/1/2012-Estt.(D) dated 4.3.2014, shall not be disturbed.** i.e. old cases are not to be reopened.

7(v)(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".

10.1 With reference to the point no.7(ii) above, it is to be noted that in the DOPT O.M. dated 04.03.2014, instruction was given to implement the principle laid down in the decision of Parmar prospectively, w.e.f. 27.11.2012, the date of decision of Hon. SC in case of Parmar (Ref. para 5 above).

11. Based on the instructions of DOPT vide OM dated 13.08.2021, Board issued advisories vide letter dated 26.10.2021 for implementation of the decision of Hon. SC in case of Meghachandra as communicated therein. Further, it was clarified that "*With the cancellation of various advisories issued, the letter No.C-18013/4/201 4Ad.V11 dated 06.06.2014 was deemed to have been cancelled/modified in line with CBDT's letter of even number dated 27.05.2019*".

12. As such, it has been decided to implement the instructions issued by DOPT vide O.M. dated 13.08.2021 as communicated by the Board vide letter dated 26.10.2021. As per the DOPT O.M. dated 13.08.2021 and Board's letter dated 26.10.2021, the following actions need to be taken to set right the inter-se seniority between direct recruits and promotees.

**(i) From 1986 to 26.11.2012:**

In this period, two groups of officials are placed. The first group pertains to officials whose inter-se seniority was fixed prior to 27.11.2012, and which was later revised in light of the three guidelines issued by the HRD Directorate of CBDT on 29.09.2014, 07.11.2014, 16.01.2015 and Board's letter in F.No. C-18013-4/2014-Ad.VII, dated 06.06.2014. The second group pertains to officials whose inter-se seniority was not fixed prior to 27.11.2012, although they had joined/been appointed before this date.

As per para 5 (i) of CBDT's letter dtd. 26.10.2021, seniority of direct recruits and promotees already decided in terms of DoP&T's OM dated 07.02.1986/03.07.1986 shall not be disturbed. This principle is coming from DOP&T's OM dated 04.03.2014 and Para 7(ii) of DOP&T's OM dated 13.08.2021. Accordingly, for the period from 1986 till 26.11.2012, the action taken in the form of review DPCs in the light of the advisories issued by HRD Directorate, New Delhi on 29.09.2014, 07.11.2014, 16.01.2015 and Board's letter dated 06.06.2014 (w.e.f. RY 1986-87 onwards), has been undone for the purpose of re-fixing the seniority in the grade of LDC (Erstwhile), UDC (Erstwhile), Tax Assistant (Pre-restructure), Head Clerk/Assistant(Erstwhile), Office Superintendent, Tax Assistant(Post Re-structure), Sr. Tax Assistant, Inspector of Incometax and Incometax Officer.

Thus, for this period, the seniority in the grade of Incometax Officer and all the feeder cadres of Incometax Officer (such as LDC, UDC, Tax Assistant(Pre-restructure), HC/Assistant, OS, Tax Assistant (Post Re-structure), Sr. Tax Assistant & Inspector of Incometax), whose inter-se seniority was fixed prior to 27.11.2012, has been restored by undoing any action taken as per the three advisories issued by HRD Directorate, New Delhi on 29.09.2014, 07.11.2014 and 16.01.2015, in Andhra Pradesh and Telangana Region and carried out strictly as per CBDT's letter dated 26.10.2021 read with DOPT OM of 13.08.21.

Accordingly, while undoing the action taken as per three advisories, the seniority has been restored to its original status, as fixed prior to 27.11.2012. For carrying out this exercise, sources such as information available in year-wise published Establishment Lists, DPC Select Panels, Promotion Orders, revised seniority lists published in various cadres from time to time, etc have been utilised.

The DOPT O.M. of 04.03.2014 had instructed to implement N.R Parmar judgment prospectively from 27.11.2012 onwards. However, it is noted that in CBDT's letter dated 26.10.2021, it has been categorically mentioned in para 4 that the seniority of DR and Promotee Officers was never fixed/ determined by the respective CCA/Region (including AP & TS Region), in terms of guidelines prescribed in DoP&T's O.M. dated 04.03.2014. As has already been mentioned above, it was actually done on the basis of the three advisories issued by the HRD Directorate, New Delhi and Board's letter dated 06.06.2014, in a retrospective manner. Thus, in case of the officials whose inter-se seniority was not fixed, but who had joined/ been appointed prior to 27.11.2012, the fixation of seniority was done on the basis of the same three advisories. As per DOPT OM of 13.08.2021, the actions taken in accordance with DOPT OM of 04.03.2014 are protected. The actions which were not taken in accordance with DoPT OM are not protected. Thus, the seniority of such officials is to be fixed based on principles embodied in the two DOPT OMs of 1986 and in light of DoPT O.M dated 13.08.2021.

Taking the methodology adopted in DOPT OM of 13.08.2021 in case of cut off date of 19.11.2019, the inter-se seniority of all batches of Direct Recruits, whose appointments were done prior to 27.11.2012, is fixed on the basis of the following:

I. For cases where the recruitment process was initiated by the Administrative Department/Cadre Authority before 27.11.2012 and where all the appointments have been made before 27.11.2012, the inter-se-seniority of Direct Recruits and Promotees shall be governed by the provisions of DOPT's O.M.s dated 07.02.1986/03.07.1986.

II. For cases where the recruitment process has been initiated by the Administrative Department/Cadre Authority before 27.11.2012 and where some appointments have been made before 27.11.2012 and the remaining appointments on or after 27.11.2012, the inter se seniority of Direct Recruits and Promotees shall be governed by the provisions of DoPT's OMs dated 07.02.1986/03.07.1986 to ensure equal treatment of such appointees.

**(ii) From 27.11.2012 to 18.11.2019**

The seniority between direct recruits and promotees is to be determined based on the instructions issued in DOPT O.M. dated 04.03.2014, as it has been held by Hon'ble Supreme Court in the case of Meghachandra Singh that seniority determined as per the decision in case of N.R. Parmar is protected (to be implemented prospectively from 27.11.2012).

**(iii) From 19.11.2019**

The seniority between direct recruits and promotees is to be determined as per the instruction of DOPT O.M. dated 13.08.2021 based on the decision of Hon'ble Supreme Court in case of Meghachandra Singh that the seniority between direct recruits and promotees are to be reckoned in the year in which they are appointed.

13. As a first step in implementation of instructions relating to fixation of seniority of Direct recruits and Promotees and inter se seniority thereof contained in DoPT O.M dated 13.08.2021 consequent to implementation of judgment of Hon'ble Supreme Court of India in the case of K Meghachandra Singh, circulated by Board's letter dated 26.10.2021, the seniority of officials in the following cadres that was revamped vide memorandum dated 03.12.2015 is now restored:

S.No	Cadre	R.Y. from which the seniority is restored	Annexure No
1	LDC (Erstwhile)	1986-87 to 2001-02	I
2	UDC (Erstwhile)	1986-87 to 2000-01	II
3	Tax Assistant (Pre-restructure)	1993-94 to 2000-01	III
4	Head Clerk/ Assistant (Erstwhile)	1992-93 to 2000-01	IV
5	Office Superintendnet	2000-01 to 2014-15	V
6	Tax Assistant (Post Re-structure)	2000-01 to 2014-15	VI
7	Sr.Tax Assistant	2000-01 to 2014-15	VII
8	Inspector of Incometax	1986-87 to 2014-15	VIII
9	Incometax Officer	1996-97 to 2014-15	IX

13.1. Restoration of seniority in the above mentioned cadres is done on the basis of (i) information available in year-wise published Establishment Lists (ii) DPC Select Panels (iii) Revised seniority lists published in various cadres from time to time

13.2. Fixation of seniority of direct recruits and promotes in the respective grade/post between 27.11.2012 and 18.11.2019, where inter-se seniority could not be finalised by 18.11.2019, is done in accordance with the provisions of DOP&T's OM dated 07.02.1986/03.07.1986, read with DOPT's OM dated 04.03.2014.

13.3. In respect of DRs/Promotes in whose cases the recruitment process has been initiated before 19.11.2019 and continued after 19.11.2019, the inter-se seniority of DRs/Promotes is fixed in accordance with the provisions of DOP&T's OM dated 07.02.1986/03.07.1986, read with OM dated 04.03.2014. (Para 7(iv) of DOP&T's OM dated 13.08.2021).

13.4. For recruitments initiated on or after 19.11.2019, the inter-se-seniority of DRs/Promotes is fixed as per the guidelines issued by the DOP&T's OM No.20011/2/2019-Estt(D), dated 13.08.2021.

14. By following the instructions mentioned at Para No.13.2, 13.3 & 13.4, the inter-se-seniority of DRs/Promotes in the following cadres is fixed:

14. By following the instructions mentioned at Para No.13.2, 13.3 & 13.4, the inter-se-seniority of DRs/Promotes in the following cadres is fixed:

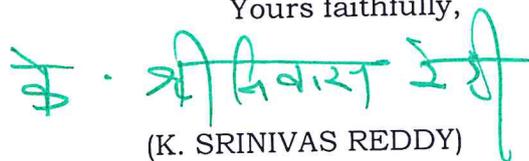
S.No	Cadre	R.Y.	Annexure No	Remarks
1	Tax Assistant (Post Re-structure)	2015-16 to 2021	VI A	DR/PR
2	Sr.Tax Assistant	2015-16 to 2021	VII A	Only by way of promotion
3	Office Superintendnet	2015-16 to 2021	V A	Only by way of promotion
4	Inspector of Incometax	2015-16 to 2021	VIII A	PR/DR
5	Incometax Officer	2015-16 to 2021	IX A	Only by way of promotion

15. The draft seniority lists of the above mentioned Group B & C cadres (as per para 13 and para 14), restoring the original seniority position of the respective Officials in the respective grade up to 26.11.2012, that was maintained before N R Parmar judgment and subsequently fixing the seniority as per the provisions of DOP&T's OM dated 13.08.2021 and Board's letter dated 26.10.2021, are enclosed.

16. Representation, if any, in connection with the above-mentioned draft seniority lists may be filed directly to the DCIT(H.Qrs)(Admn), O/o Pr.CCIT, AP & TS, 10<sup>th</sup> Floor, 'B' Block, Incometax Towers, Masab Tank, Hyderabad-500 004 or mail to [hyderabad.dcit.hq.admin@incometax.gov.in](mailto:hyderabad.dcit.hq.admin@incometax.gov.in) by **12.09.2022**. These representations will be considered as per the rules. Then the seniority list will be drawn. This seniority list will be presented before the review DPCs. (It) is requested that the representation may be brief and to the point. The relevant part of the para relied upon may be extracted. All the OMs quoted above are available in this office and need not be enclosed again to save paper.

17. Review DPCs will be conducted based on the final lists which will be issued subsequently. Seniority lists of subsequent years will be prepared and issued after holding review DPCs in all affected cadres.

Yours faithfully,



(K. SRINIVAS REDDY)

The Chairperson

Task Force Committee for

implementation of instructions w.r.t

Judgement in the case of Shri K. Meghachandra Singh

& Ors. Vs. Ningam Siro & Ors