



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.31396 of 2024

Along with
batch of Writ Petitions

(In W.P.(C) No.31396 of 2024)

(In the matters of applications under Articles 226 and 227 of the Constitution of India, 1950).

Pramath Kumar Mallick ***Petitioner(s)***

-versus-

State of Odisha & Anr. ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Sidheswar Mallik, Adv.*
Mr. S. S. Pratap, Adv.
Mr. Satyabrata Mohanty, Adv.
Mr. Surya Narayan Patnaik, Adv.
Mr. A. K. Jena, Adv.
Mr. R. K. Behera, Adv.
Mr. Avijit Patnaik, Adv.
Mr. C. S. Panda. Adv.

For Opposite Party (s) : *Mr. Sonak Mishra, AGA,*
Mr. S. Patnaik, Adv.,
Mr. Biswabihari Mohanty, Adv.

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-16.01.2025

DATE OF JUDGMENT:-28.03.2025

W.P.(C) No.31396 of 2024 Along with W.P.(C) No.18010 of 2020,
W.P.(C) No.3739 of 2021, W.P.(C) No.25143 of 2021, W.P.(C)
No.38458 of 2021, W.P.(C) No.11638 of 2022, W.P.(C) No.32067 of
2022, W.P.(C) No.2434 of 2023, W.P.(C) No.3722 of 2023, W.P.(C)
No.41643 of 2023, W.P.(C) No.11551 of 2024



Dr. S.K. Panigrahi, J.

1. Since common question of facts and law are involved in all the above-mentioned Writ Petitions, the same were heard together and are being disposed of by this common judgment. However, this Court felt it apposite to deal with the W.P.(C) No.32067 of 2022 as the leading case for proper adjudication of all these cases.
2. In W.P.(C) No.32067 of 2022, the Petitioners who are at present working as Administrative Officers in the Odisha Heads of the Department common cadre working in different heads of the Departments under the Administrative Control of different Departments of Government, for the year 2022, have sought for a direction from this Court to the Opposite Parties to fix their names in the appropriate place (at Sl. Nos.13, 14, 16, 17, 21, 22, 23, 28, 29, 30, 31, 32, 33, 34 and 35 respectively) in the gradation list of Administrative Officers of the Odisha Heads of the Department common cadre.
3. The Petitioners have also challenged the final common gradation list of Administrative Officers dated 02.11.2022/Annexure-1 wherein the Petitioners are placed much below their juniors in clear violation of provisions contained under Odisha Civil Service (Rehabilitation Assistance, Rules) 1990 and G.A. Department resolution dated 09.09.2021.
4. Moreover, the Petitioner in W.P.(C) No.31396 of 2024 has challenged the order dated 30.11.2024 issued by the Deputy Secretary, Home Department, Government of Odisha rejecting his claim for convening DPC for consideration of promotion to the rank of Senior



Administrative Officer on the plea that an interim order has been passed by this Court in W.P.(C) No.32067 of 2022 directing that, as an interim measure, DPC may proceed, however, final decision of the DPC shall be kept in a sealed cover and the same shall not be intimated without leave of the Court.

I. FACTUAL MATRIX OF THE CASE:

5. The brief facts of the case are as follows:
- (i) The petitioners in this case are currently serving as Administrative Officers in the Odisha Heads of Departments Common cadre. They are posted in various Heads of Departments under the administrative control of different Government departments.
 - (ii) The petitioners were originally appointed under the Rehabilitation Assistance Scheme in the years 1985, 1986, and 1987. Their names have consistently appeared at appropriate places in the gradation lists, in accordance with their year of appointment. However, in the preparation of the recent common cadre gradation list, their positions were unexpectedly and significantly altered. Instead of being placed in accordance with their seniority, their names were listed at Serial Nos. 57, 58, 61, 62, 63, 64, 67, 69, 70, 71, 72, 73, 74, 75, and 76, which are much lower in the list and beneath officers who were appointed in later years. More specifically, Petitioners No. 1 to 4, who were recruited in 1985, should have been placed below other 1985 recruits and above those recruited in 1986. Similarly, Petitioners No. 5 to 7, who were recruited in 1986, ought to be positioned below other 1986 recruits but above those recruited in 1987. Petitioners No. 8 to 15, having been appointed in 1987,



should be ranked below the other 1987 recruits but above those recruited in 1988. It is argued that, contrary to this logical and rule-based sequence, the final gradation list published by the opposite party on 02.11.2022 reflects an erroneous placement of the petitioners, placing them below officers recruited in 1986, 1987, 1988, and even 1989.

- (iii) The petitioners had earlier raised objections to the provisional/tentative gradation list dated 06.10.2022 by submitting formal representations to Opposite Party No. 2. However, their objections were not considered, and the final gradation list was published without any revision in their placement. As a result, the petitioners now seek a direction from this Court to fix their names in the appropriate positions in the gradation list in accordance with the rules and with all consequential service benefits.
- (iv) The petitioners further challenge the legality and validity of the final common gradation list dated 02.11.2022 allegedly issued in violation of the provisions laid down in the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 and the General Administration (G.A.) Department Resolution dated 09.09.2021. Hence, this Writ Petition.

II. SUBMISSIONS ON BEHALF OF THE PETITIONERS:

- 6. Learned counsel for the Petitioners earnestly made the following submissions in support of his contentions:
 - (i) The Petitioners were appointed under the Rehabilitation Assistance Scheme in the years 1985, 1986, and 1987 respectively. Their positions in the gradation list were erroneously fixed below all candidates appointed in the respective years of 1985, 1986, and 1987. The fixation of



seniority ought to have been made in strict adherence to the provisions of Rule 13 of the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990, read with the General Administration Department Resolution dated 09.09.2021.

- (ii) As per Rule 13 of the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990, the seniority of a person appointed under these Rules shall be fixed below those appointed in the same calendar year through regular recruitment under the rules framed in accordance with Article 309 of the Constitution. In all other cases, seniority shall be determined based on the date of joining the post.
- (iii) Furthermore, Rule 15 of the said Rules stipulates that the provisions of the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 shall prevail over any other recruitment rules framed under Article 309 of the Constitution. Rule 13, read with Rule 15, thus clarifies that appointees under the RA Rules shall be placed below regular appointees of the same calendar year, and these Rules shall override any contrary provisions, including those in the Orissa Ex-Servicemen (Recruitment to the State Civil Services and Posts) Rules, 1985.
- (iv) In the final gradation list dated 02.11.2022, individuals at serial numbers 6, 7, 8, 20, 21, 22, 26, 33, 37, 40, 43, 44, 48, and 54, who are junior to the Petitioners have been improperly placed above them, in clear contravention of the aforementioned Rules and the G.A. Department Resolution dated 09.09.2021.
- (v) In the provisional gradation list dated 06.10.2022, the Petitioners were placed below candidates appointed between 1985 and 1990. However,



in accordance with the applicable statutory provisions, their seniority ought to have been fixed above the appointees of the years 1986, 1987, and 1988.

- (vi) A tentative common gradation list of Administrative Officers serving under various Heads of Departments of the Government of Odisha was prepared for the year 2022-23. Vide Memo No. 33738 dated 06.10.2022, objections were invited from concerned officers. The Petitioners submitted their objections on 14.10.2022 to Opposite Party No. 2, clearly asserting that, being appointees of the years 1985, 1986, and 1987, their seniority should be fixed accordingly; below the regular recruits of their respective years but above recruits of subsequent years.
- (vii) The Supreme Court, in *K. Meghachandra Singh v. Ningam Siro*,¹ categorically held that seniority among direct recruits and other appointees cannot be reckoned from the date of occurrence of vacancy or initiation of recruitment, but from the actual date of appointment within the same calendar year, in terms of the relevant service rules.
- (viii) In view of the said judgment, the General Administration Department issued a Resolution dated 09.09.2021 (Annexure-4), clarifying the inter-se seniority between direct recruits and those appointed under the Rehabilitation Assistance Rules in a given calendar year. It was explicitly stated therein that the seniority of appointees under the Rehabilitation Assistance Scheme shall be fixed below those appointed through regular recruitment in that calendar year.

¹ (2020) 5 SCC 689



- (ix) Despite the settled legal position and the binding Circular dated 09.09.2021, Opposite Party No. 2 proceeded to prepare a tentative gradation list that is in clear violation of the aforementioned Rules and Circular, rendering the said list arbitrary, illegal, and mala fide.
- (x) Although the Petitioners duly submitted objections to the tentative gradation list dated 06.10.2022, Opposite Party No. 2, without verifying the applicable law and the G.A. Department Circular dated 09.09.2021, summarily rejected the Petitioners' claims on 27.10.2022 and published the final gradation list on 02.11.2022.
- (xi) The Petitioners further submit that their seniority, fixed since their initial appointments under Rules 13 and 15 of the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990, has been consistently recognized for over 35 years. However, the final gradation list of Administrative Officers published on 02.11.2022 places them at serial numbers 57, 58, 61, 62, 63, 64, 67, 69, 70, 71, 72, 73, 74, 75, and 76; below individuals appointed in 1986 to 1990, despite the Petitioners being appointees of the years 1985, 1986, and 1987.
- (xii) Consequently, the Petitioners filed objections to the tentative gradation list, requesting that their seniority be corrected and fixed at serial numbers 13, 14, 16, 17, 21, 22, 23, 28, 29, 30, 31, 32, 33, 34, and 35, respectively. The failure of the Opposite Parties to fix the Petitioners' seniority in accordance with Rules 13 and 15 of the OCS (RA) Rules, 1990 and the G.A. Department Resolution dated 09.09.2021 is illegal, arbitrary, and in derogation of settled service jurisprudence.



- (xiii) In light of the foregoing, it is submitted that this Court may be pleased to direct the Opposite Parties/State to rectify the gradation list and fix the seniority of the Petitioners appropriately i.e., below the regular recruits of the year 1985, but above the recruits of the years 1986 to 1990, in accordance with law.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

7. The Learned Counsel for the Opposite Party No.2 earnestly made the following submissions in support of his contentions:
- (i) It is submitted that the General Administration and Public Grievance Department has restructured the Odisha Ministerial Services (Assistants and Section Officers) Cadre in the offices of the Heads of Departments and the Odisha Heads of Departments Establishment Officers Cadre for 51 Heads of Departments vide their Resolution No.2372 dated 24.01.2019. Thereafter, Odisha Heads of Department (Method of Recruitment and Condition of Service of Establishment Officer, Administrative Officer and Senior Administrative Officer of Heads of Department) Common Cadre Rules, 2019 (*hereinafter* "Common Cadre Rules, 2019") came into force on 02.03.2019.
- (ii) This new cadre consisted of posts of Establishment Officers as the base level post to be promoted from amongst the Section Officers of the Heads of Departments. Rule 7(3) of the Common Cadre Rules, 2019 speaks:

"The position in the select list prepared by the recruiting agencies for the post of Junior Assistant shall be the factor



for determination of inter-se seniority in each grade of Section Officer, Establishment Officer, and Administrative Officer:

Provided that in case of non-availability of select list prepared by the recruiting agencies, the date of appointment into the service as Junior Assistant shall be the factor for determination of inter se seniority for preparation of common gradation list of Section Officers, Establishment and Administrative Officers. In case the date of appointment of two or more officers is same, the officer elder in age will be assigned higher position in the gradation list over the younger in age."

- (iii) As per the above rule, information obtained from different Heads of Departments and Provisional Gradation List of Section Officers of Heads of Departments Common Cadre was prepared placing all the direct recruits of particular recruitment year as per their position in the Select List prepared by the recruiting agencies for the post of Junior Assistant first, thereafter, Junior appointed Rehabilitation Assistance Scheme following the Rule 13 of Odisha Civil Services (Rehabilitation Assistance Scheme) Rules, 1990 and then the Junior Assistants otherwise appointed vide Home Department letter No.57962, dated 30.12.2019, inviting objection, if any, within a period of 15 days. Some objections were received from Rehabilitation Assistance appointees regarding fixation of their inter-seniority fixed below the direct recruits of particular recruitment.
- (iv) The representations/objections filed by the petitioners on different dates were examined and it was ascertained that they joined the service as



Junior Assistant in the year 1985, 1986, and 1987 on being appointed under the Rehabilitation Assistance Scheme. Their seniority in the gradation list of Junior Assistant, Senior Assistant, and Section Officer under Odisha Ministerial Heads of Department Method of Recruitment and Conditions of Service Rules, 1994 was prepared correctly following provisions of OCS (RA) Rules by placing him at the end of all recruits of the calendar year 1985, 1986 and 1987 respectively.

- (v) But while preparing the provisional gradation list of Section Officers of HoDs under Common Cadre Rules, 2019 by Home Department, their names have been placed below the persons who joined in the year 1990.
- (vi) Regarding fixation of inter-se-seniority, views of GA& PG Department was obtained as stated below:

"1. The direct recruits of a particular year of the advertisement shall en-bloc be placed at the top of the gradation list and their names shall be arranged according to their respective position in the merit list irrespective of their date/year of appointment.

2. The RA appointees of the said year shall be treated as the recruit of that year and shall be placed at the bottom in the gradation list of that year.

3. In the year if there are two advertisements made by different recruiting agencies, the candidates appointed as per the first advertisement shall be placed en-bloc above the candidates appointed as per the second advertisement and the RA appointees of that year shall be placed at the bottom of gradation list.

4. In other years in which the advertisement was not published for direct recruitment and the RA candidates



were appointed, they will be the only candidate of that year, in the gradation list."

- (vii) Accordingly, the gradation list of Section Officers was finalized vide Home Department letter No.26283, dated 07.08.2020 wherein the petitioners were placed at SI. No.216, 217, 222, 223, 226, 227, 231, 234, 235, 237, 239, 241, 242, 243, & 245. Based upon the said gradation list, they have got promotion to the rank of Establishment Officer under Heads of Departments Common Cadre.
- (viii) Meanwhile, GA & PG Department has issued Resolution No.24188, dated 09.09.2021 regarding fixation of inter-se-seniority wherein Point No.4 speaks that the inter-se-seniority of the employees appointed under Rehabilitation Assistant Rules in a calendar year shall be fixed below the persons recruited and appointed in that grade or cadre in that particular year.
- (ix) Since, objections were again raised by the RA recruits regarding inter-se-seniority, the Department further viewed that there is no need to update the gradation list of officers of Heads of Departments Common Cadre published in November & December, 2021.
- (x) Taking into above views/ Resolution of the GA & PG Department, the Provisional gradation list of Establishment Officer of 163 (One hundred sixty three) Establishment Officers of Heads of Departments Common Cadre was finalized and published vide Home Department letter No.41296, dated 23.11.2021 wherein the petitioners were placed Sl. No. 04, 105, 108, 109, 111, 112, 115, 117, 118, 121, 122, 123, 124, and 125. Thereafter, the petitioners have got the promotion to the next higher



rank of Administrative Officer from the said gradation list of Establishment Officer vide Home Department Notification No.5225, dated 18.02.2022.

- (xi) While the matter stood thus, the tentative gradation list of Administrative Officers of Heads of Departments Common Cadre was published on 06.10.2022 inviting objection, if any, from concerned Administrative Officers vide this Department letter No.33737 dated 06.10.2022.
- (xii) Some objections were received again from Rehabilitation Assistance appointees including the petitioners regarding fixation of their inter-se seniority fixed below the direct recruits of particular recruitment.
- (xiii) The Petitioners were not selected by any recruiting agency, rather, they were appointed under Rehabilitation Assistance Scheme in 1985, 1986, and 1987. Further, the revised final gradation list shows that the candidates selected by the recruiting agency i.e. Board of Revenue for the advertisement year 1985 have been correctly placed ahead of the Petitioners as per the provision of Rule 7 of the Common Cadre Rules, 2019 as well as views of GA & PG Department.
- (xiv) The present Gradation List of Administrative Officers of Heads of Departments Common Cadre has been finalized with above views of GA & PG Department, cited Resolution and taking into consideration the representations of Rehabilitation Assistance appointees including the petitioners and published vide Home Department letter No.36952, dated 02.11.2022.



(xv) Therefore, he contends that the allegations made by the Petitioners is baseless and deserves no merit for consideration. The Petitioners are not entitled to any relief. Hence, this Writ Petition may be dismissed.

8. The Learned Counsel for the Opposite Party No.10 earnestly made the following submissions in support of his contentions

- (i) Orissa Heads of Department E.O., A.O., & Senior A.O. Common Cadre Rules, 2019 was made in supersession of Orissa Heads of Department Establishment Officers Recruitment Rules, 1991 as per preamble of 2019 Rules which clearly presupposes that the Common Cadre Rules are not a Rule framed in supersession of O.M.S. Heads of Departments Rules 1975 as amended by Amendment Rules of 1982 under which all the appointments in favour of both the Petitioners and the Opposite Parties were made at the entry grade of Junior Assistants and as such O.M.S. Heads of Departments Rules, 1975 as amended by Amendment Rules of 1982 can have no material for determination of seniority in the grade of E.O. under Orissa Heads of Department E.O., A.O. & Senior A.O. Common Cadre Rules, 2019.
- (ii) Hence, any seniority fixed at the initial entry grade of Junior Assistants of Heads of Departments inter-se, more particularly, between the Petitioners and others at the entry grade does not have any relevance now in view of promotions made after the initial grade of Junior Assistants to Senior Assistant then to Section Officers in the individual Heads of Departments cadre to which each of the Petitioners belong separately.



- (iii) Moreover, there was no common seniority list of Junior Assistants prepared of all Heads of Departments earlier reflecting inter-se seniority among the Petitioners and the Opp. Party Nos.4 to 23 irrespective of their appointment and belongingness to different Heads of Department cadres.
- (iv) Moreover, there is no order placed on record whereby the Government has specifically relaxed the provisions of O.M.S. Heads of Departments Rules, 1975 as amended by Amendment Rules of 1982 in order to issue appointment orders in favour of the Petitioners by invoking the Power available under Rule 14 of O.M.S. Heads of Departments Rules 1975. Hence, in absence of any such document placed on record it cannot be accepted that the appointment of the Petitioners are in relaxation of the O.M.S. Heads of Departments Rules, 1975 as amended by Amendment Rules of 1982.
- (v) Hence, the claim of the Petitioners pertaining to fixation of seniority on the basis of their earlier appointment under Rehabilitation Scheme being confined to only those appointed in that particular Heads of Department cadre cannot be made the basis for determination of seniority in the new common cadre of E.O. & A.O. ignoring the date of promotions of all such individuals members with merit and suitability with due regard to seniority as the criteria for such promotion in all those grades of Senior Assistant, S.O., & E.O. in their individual Heads of Departments and in E.O. & A.O. under the common cadre. Hence, the claim of seniority put forth by the Petitioners relying upon their earlier appointment under RAS in the initial entry Grade of Junior



Assistant in a particular Heads of Department cannot be the basis for determination and fixation of seniority in favour of the above Opposite Parties.

- (vi) Besides, Rule 7(3) & Rule 14 of the Common Cadre Rules, 2019 does not have any applicability to the claim of the Petitioners particularly when the aforesaid provisions clearly refers to the select lists prepared by the Recruiting Agency and its non-availability under proviso appended to Rule-7. Moreover, since Rule 7(3) or the proviso does not specifically mention about appointment made under Rehabilitation Assistance Scheme, the Petitioners cannot be permitted to import something into the Rules to claim benefit in their favour.
- (vii) Furthermore, Rule 7(3) and proviso appended thereto as well as Rule-14 of common cadre Rules 2019 has to be understood under the backdrop of fact that as per the O.M.S. Heads of Departments Recruitment Rules 1975 Board of Revenue was the “Recruiting Agency” or “Examining Body” which was conducting examination and recommending names for appointment to different Heads of Departments as per their requirement from a common merit list as Junior Assistants. Since all the posts of S.O.& E.O. are available in the Heads of Departments and all those appointees from the common merit list are now brought into a common cadre weightage to their respective position in the merit list of Junior Assistants has been prescribed under the Rules. Hence, the claim put forth by the Petitioners who are appointees under Rehabilitation Assistant schemes only cannot be permitted to claim benefit of Rules-



7(3) & 14 being oblivious of the background of their limited nature of appointments and lack of specific provision of Rules.

(viii) In the present case, the Opp. Parties were promoted at an earlier point of time in both the Grades of "Establishment Officer" and "Administrative Officer" which is clearly evident from the Gradation list and has been admitted by the Petitioners as well. Moreover, both the promotions in the Grade of E.O. & A.O. were made by applying O.C.S. criteria for promotion Rules, 1992 as the basis where the criteria is merit- cum-suitability with due regard to seniority where merit but not seniority is the primary criterion. Since, each individual Petitioners have neither challenged the promotion of each of the Opp. Parties and have also not challenged the gradation lists in appropriate Writ Petitions, the seniority fixed which is a consequence of such earlier promotions got crystallized and vested in favour of the Opp. Parties and as such cannot be unsettled now in view of settled principles of law.

IV. COURT'S REASONING AND ANALYSIS:

9. Heard Learned Counsels for the parties and perused the documents placed before this Court.
10. The core issue in the present matter concerns a dispute over inter-se seniority between two distinct categories of appointees in public service: the petitioners, who were appointed under the Rehabilitative Assistance Scheme, and certain direct recruits who were appointed in subsequent years. The grievance of the petitioners arises from their



placement lower in the cumulative seniority list despite having been appointed earlier in point of time than the said direct recruits.

11. It is the case of the petitioners that such placement is not only unjust but also contrary to the settled principles of service jurisprudence. The respondents, however, seek to justify this placement by relying on the chronology of vacancy notifications. Specifically, they contend that although the direct recruits were appointed after the petitioners, the vacancies for such direct recruitment had been advertised prior to the actual appointments of the petitioners under the Rehabilitative Assistance Scheme. On this basis, the direct recruits have been accorded higher seniority.
12. Thus, the controversy in the present case crystallizes into the following legal issue: whether, in matters of determining seniority, the effective date for reckoning seniority of direct recruits can be pegged to the date on which the vacancy was advertised or notified, as opposed to the actual date of their appointment and assumption of duties?
13. It is no longer *res integra* in law that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. This legal position has been consistently upheld by constitutional courts, emphasizing that the determination of seniority must be rooted in the actual date of appointment or entry into the service cadre in accordance with the applicable rules. The Supreme Court, in a catena of decisions, has held that notional or retrospective seniority is impermissible unless specifically provided for under



statutory rules or sanctioned by a judicial pronouncement in exceptional circumstances.

14. In *State of Bihar v. Arbind Jee*,² the respondent applied for compassionate appointment upon the death of his father, a Home Guard, and was provisionally shortlisted in 1985, subject to a physical fitness certificate. Upon being found medically unfit, his appointment was denied. Pursuant to a direction from the Patna High Court, and in light of his original shortlisting for the post of Adhinayak Lipik, the Supreme Court directed his appointment to the said post, which was effected on 27.02.1996. In 2002, the respondent sought seniority with effect from 1985, which was rejected on the ground that his appointment was made only in 1996. The Supreme Court held that as following:

“The jurisprudence in the field of service law would advise us that retrospective seniority cannot be claimed from a date when an employee is not even borne in service. It is also necessary to bear in mind that retrospective seniority unless directed by court or expressly provided by the applicable Rules, should not be allowed, as in so doing, others who had earlier entered service, will be impacted.”

“In this situation, the seniority balance cannot be tilted against those who entered service much before the respondent. Seniority benefit can accrue only after a person joins service and to say that benefits can be earned retrospectively would be erroneous.”

² 2021 SCC OnLine SC 821



15. In *J.C. Patnaik v. State of Orissa*,³ the Supreme 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 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. The relevant paragraph is produced hereinafter:

“The only other contention which requires consideration is the one raised by Mr. Raju Ramachandran, learned senior counsel appearing for the intervenors to the effect that expression ‘recruitment’ and ‘appointment’ have two different concepts in the service jurisprudence and, therefore, when Rule 26 uses the expression ‘recruited’ it must be a stage earlier to the issuance of appointment letter and logically should mean when the selection process started and that appears to be the intendment of the Rule Makers in Rule 26. We are, however, not persuaded to accept this contention since under the scheme of Rules a person can be said to be recruited into service only on being appointed to the rank of Assistant Engineer, as would, appear from Rule 5 and Rule 6. Then again incase of direct recruits though the process of recruitment starts when the Public Service Commission invites applications under Rule 10 but until and unless the Government makes the final selection under rule 15 and issues appropriate orders after the selected candidates are examined by the Medical Board, it cannot be

³ 1998 (2) SCR 676



said that a person has been recruited to the service. That being the position it is difficult for us to hold that in the Seniority rule the expression 'recruited' should be interpreted to mean when the selection process really started. That apart the said expression 'recruited' applies not only to the direct recruits but also to the promotees. In case of direct recruits the process of recruitment starts with the invitation of application by the Commission and in case of promotees it starts with the nomination made by the Chief Engineer under rule 16. But both in the case of direct recruits as well as in the case of promotees the final selection vests with the State Government under rules 15 and 18 respectively and until such final selection is made and appropriate orders passed thereon no person can be said to have been recruited to the service. In this view of the matter the only appropriate and logical construction that can be made of Rule 26 is the date of the order under which the persons are appointed to the post of Assistant Engineer. It the crucial date for determination of seniority under the said rule. mr. Raju Ramachandran's contention, therefore, cannot be sustained."

16. In *Shitla Prasad Shukla v. State of UP*,⁴ the Supreme Court held that seniority must follow the principle of first entry into the regular stream, and courts will not interfere with its determination by the competent authority unless there is a violation of statutory rules or principles of natural justice. The relevant excerpt is produced hereinbelow:

"The late comers to the regular stream cannot steal a march over the early arrivals in the regular queue. On principle the appellant cannot therefore succeed. What is more in matters of seniority the Court does not exercise jurisdiction akin to appellate jurisdiction against the determination by the competent authority, so long as the competent authority has

⁴ (1986)(Supp.) SCC 185



acted bona fide and acted on principles of fairness and fair play. In a matter where there is no rule or regulation governing the situation or where there is one, but is not violated, the Court will not overturn the determination unless it would be unfair not to do so..."

17. Then, again in ***Ganga Vishan Gujrati and Ors. v. State of Rajasthan***,⁵ the Supreme Court reiterated its stance and held the following:

"...retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade."

18. Accordingly, an incumbent cannot seek seniority over others merely on the basis of earlier selection, recommendation, or any notional consideration if the formal induction into the cadre occurred at a later date. This principle safeguards the integrity of service records and ensures uniformity in promotional and other service-related entitlements.
19. However, in ***Union of India v. N.R. Parmar***,⁶ the Supreme Court held that seniority of direct recruits should be counted from the date of initiation of the recruitment process, provided the appointment is made within a reasonable time. This judgment introduced the concept of retrospective seniority from the date of vacancy notification or selection, even if the actual appointment took place later; thereby allowing them to "catch up" for delays in the recruitment process beyond their control.

⁵ (2019) 16 SCC 28

⁶ (2012) 13 SCC 340



20. This approach, marking a significant departure from established jurisprudence on the fixation of seniority, led to practical inconsistencies and administrative challenges in cadre management, particularly in cases where appointees had been discharging duties well before direct recruits were formally appointed. It effectively diluted the well-settled principle that seniority cannot be claimed from a date when the individual is not yet borne in the cadre.
21. This position was revisited and decisively overruled in *K. Meghachandra Singh* (supra), where the Supreme Court marked a jurisprudential correction and clarified that seniority must be reckoned strictly from the date of actual appointment to the cadre and not from any notional or retrospective date. The Court held that the *N.R. Parmar* doctrine had led to anomalous situations where individuals who joined service later could be placed above those already in service. Reaffirming foundational principles of service law, the Court realigned the law with the fundamental service jurisprudence principle that seniority flows from actual entry into service. The relevant excerpt is produced hereinbelow:

37. From 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 acknowledgement 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.



38. When we carefully read the judgment in N. R. Parmar (Supra), it appears to us that the referred OM's (dated 07.02.1986 and 03.07.1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OM's 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 OM's 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 OM's.

39. At this stage, we must also emphasize that the Court in N.R. Parmar (Supra) 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 in as much 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



(Supra) 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 vs. Shankarsan Dash vs. Union of India, where it was held even upon empanelment, an appointee does not acquire any right."

(Emphasis supplied)

22. The counsel for the Opp. Parties have not tried to reason against the dictum of the Apex Court in *K. Meghachandra Singh*, however, submitted that *K. Meghachandra Singh* clarifies that if there is a rule to determine the inter-se seniority, the said judgment has no application. In this case, in the peculiar facts and circumstances, Common Cadre Rule, 2019 will only have the application to this case for determination of inter-se seniority. From the aforesaid clear position of law, now let us see the fact involved in this case.
23. The counsel of the Opp. Parties highlighted Rule 14 takes care of the fixation of inter-se seniority to the number of the staffs under this Rule, which reads as follows:

"14. The inter-se seniority:-

The inter-se seniority of the officers appointed to any post in the service in a particular year shall be in the order in which their names are arranged in the select list of Junior Assistants from which they were appointed."

24. Now, *K. Meghachandra Singh* *inter alia* expressly held that seniority in a service must be determined in accordance with the applicable service rules, with the date of entry into the service or the date of substantive appointment serving as the most reliable basis for such determination.



However, it is mentioned that seniority cannot be assigned from the date of vacancy or granted retrospectively unless ‘explicitly’ provided for under the relevant rules, as doing so would unjustly prejudice those already validly appointed and borne in the cadre during the intervening period. The Supreme Court relied on its previous judgements in *Pawan Pratap Singh v. Reevan Singh* and *State of Uttar Pradesh and others vs. Ashok Kumar Srivastava and Anr* and held as following:

“31. We may also benefit by referring to the Judgment in State of Uttar Pradesh and others vs. Ashok Kumar Srivastava and Anr. This judgment is significant since this is rendered after the N.R. Parmar (supra) decision. Here the Court approved the ratio in Pawan Pratap Singh and Ors. vs. Reevan Singh & Ors., 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 for 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 (supra) being the one appealing to us, is profitably extracted as follows:

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

“45. (ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or



the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

.....

45. (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."

25. It is evident from the judgment in *K. Meghachandra Singh* that the Supreme Court unequivocally disapproved of determining seniority based on the date of vacancy, however, the Court carved out a limited exception, permitting such determination only where the relevant service rules explicitly provide for seniority to be reckoned from the date of vacancy or advertisement. In this context, the Opposite Parties' reliance on Rule 14 is of little assistance, as the said rule does not expressly stipulate seniority determination based on either the date of vacancy or advertisement. Furthermore, the reliance placed by learned counsel for Opposite Party No. 2 on the views expressed by the GA & PG Department is equally unavailing; as such administrative



instructions do not possess the force of statutory rules and cannot override or dilute the binding precedent laid down by the Supreme Court or the settled principles of service jurisprudence.

26. Addressing the next significant contention raised by the Opposite Parties concerning the applicability of the said Rules to the issue of inter se seniority, it was argued that the judgment in *K. Meghachandra Singh* would have limited applicability in the present matter. It was submitted that although the Supreme Court in *K. Meghachandra Singh* overruled *N.R. Parmar* for having erroneously departed from the settled principle that seniority cannot be claimed from a date prior to one's actual induction into the cadre, the Court simultaneously protected seniority already determined under the *N.R. Parmar* regime, thereby limiting the retrospective operation of its ruling. The relevant paragraph is produced hereinbelow:

"39. The judgment in N.R. Parmar 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 had incorrectly distinguished the long-standing seniority determination principles propounded in, inter alia, Jagdish Ch. Patnaik, Suraj Prakash Gupta v. State of J&K, and Pawan Pratap Singh v. Reevan Singh. These three judgments and several others with like enunciation on the law for determination of seniority make 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 and consequently we disapprove the norms on assessment of inter se seniority, suggested in N.R. Parmar.



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."

(Emphasis supplied)

27. Be that as it may, counsel for Opposite Party No. 11 contended that the petitioners are governed by the provisions of the Common Cadre Rules, 2019 which were notified in the Official Gazette on 15.03.2019 and, accordingly, came into force from the said date. It was further submitted that as on the said date, the judgment in *K. Meghachandra Singh* had not yet been rendered, the same having been delivered subsequently on 19.11.2019. Thus, the relevant rules and their prescribed formula for determination of seniority are protected from the prospective application of the judgment in *K. Meghachandra*, provided such rules explicitly stipulate seniority to be reckoned from the date of vacancy or advertisement, in conformity with the exception carved out by the Court.

28. Here, Rule 7 sub-rule 3 Common Cadre Rules, 2019 must be studied.

"7.

.....

(3) The position in the select list prepared by the recruiting agencies for the post of Junior Assistant shall be the factor for determination of inter-se-seniority in each grade of



Section Officer, Establishment Officer and Administrative Officer.

Provided that in case of non-availability of select list prepared by the recruiting agencies, the date of appointment into the service as Junior Assistant shall be the factor for determination of inter-se seniority for preparation of common gradation list of Section Officers, Establishment Officers and Administrative Officers. In case, the date of appointment of two or more officers is same, the officer elder in age will be assigned higher position in the gradation list over the younger in age."

(Emphasis supplied)

29. A perusal of the abovementioned provision makes it evident that the determining factor for inter se seniority among Junior Assistants, and consequently in the grades of Section Officer, Establishment Officer, and Administrative Officer, is the position secured in the select list prepared by the recruiting agency. However, the proviso to the said rule clarifies that in the absence of such a select list, the date of appointment to the post of Junior Assistant shall be the determining factor for fixing inter se seniority.
30. This clearly demonstrates that even within the statutory framework, the date of appointment has been contemplated as a fallback basis for determination of seniority. Therefore, any construction of the rules must account for the express legislative intent that seniority is not to be assigned retrospectively or notionally from the date of vacancy, but only on the basis of actual selection and appointment, in line with the jurisprudence laid down in *K. Meghachandra Singh*.



31. Now, to settle the question of occupied fields; it is evident that the seniority position of the petitioners vis-à-vis the Opposite Parties in the present matter was never conclusively settled on the basis of the principles laid down in *N.R. Parmar*. Although the Common Cadre Rules, 2019 were notified prior to the pronouncement of the judgment in *K. Meghachandra Singh*, the method adopted for determination of inter-se seniority relied upon the select list purportedly prepared by the recruiting agencies following the recruitment of both the petitioners and the Opposite Parties; appointments that occurred well before even the *N.R. Parmar* decision.
32. As discussed previously, service jurisprudence has consistently favoured the reckoning of seniority from the date of actual appointment into the cadre, rather than any notional or retrospective date notwithstanding the aberration of *N.R. Parmar*. In the present case, there is no indication, either by submission or by record, that the inter-se seniority list was prepared or revised specifically in accordance with the *N.R. Parmar* judgment. Thus, it is erroneous for the Opposite Parties to contend that their seniority, having been settled on the basis of *N.R. Parmar*, must now be protected under the prospective application clause of *K. Meghachandra Singh*. On the contrary, since the seniority determination was itself questionable and not grounded in any crystallised legal position under *N.R. Parmar*, the correct legal course is to apply the authoritative ratio of *K. Meghachandra Singh*.



V. CONCLUSION:

33. In light of the foregoing discussion, this Court is of the considered view that the Opposite Parties have failed to justify the seniority based in the impugned gradation list dated 02.11.2022. It is abundantly clear that the seniority list in question was not settled in explicit reliance upon *N.R. Parmar*, nor has it been demonstrated that any administrative action was taken to re-determine inter se seniority in terms of that judgment. Moreover, the Common Cadre Rules, 2019 having come into force prior to the decision in *K. Meghachandra Singh* do not explicitly provide for seniority to be reckoned from the date of vacancy or advertisement.
34. In accordance with the binding principles laid down in *K. Meghachandra Singh* and the long-standing jurisprudence reaffirmed therein, it is held that seniority must be determined from the date on which an officer is actually borne in the cadre, unless the service rules expressly provide otherwise. In the absence of such a specific stipulation in the 2019 Rules, the attempt to claim seniority from a date prior to the actual appointment is impermissible in law.
35. Accordingly, the following directions are issued:
- The seniority list dated 02.11.2022 impugned herein, to the extent it is inconsistent with the law declared in *K. Meghachandra Singh*, shall be revisited and revised by the competent authority.
 - The competent authority shall re-determine the inter se seniority of the petitioners and the private respondents strictly in accordance with the principles laid down in *K. Meghachandra Singh*, i.e., by reckoning seniority from the date of appointment into the cadre.



- c. Such re-determination shall be undertaken and completed within a period of 6 months from the date of receipt of a copy of this judgment/order.
36. This petition i.e. W.P.(C) No.32067 of 2022 is, accordingly, *allowed* and disposed of with the above directions.
37. Consequently, all the above-mentioned connected Writ Petitions are disposed of in view of the judgment/ order passed in W.P.(C) No.32067 of 2022.
38. Interim order, if any, passed earlier in any of the above-mentioned Writ Petitions stands vacated.
39. No order as to costs.

(Dr.S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 28th March, 2025/*