

[2019] 16 S.C.R. 651

K. MEGHACHANDRA SINGH & ORS.

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v.

NINGAM SIRO & ORS.

(Civil Appeal Nos. 8833–8835 of 2019)

NOVEMBER 19, 2019

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**[R. BANUMATHI, A. S. BOPANNA AND
HRISHIKESH ROY, JJ.]**

Service Law : Seniority – Manipur Police Service Grade-II Officers Cadre – Inter- se seniority amongst direct recruits and promotees – Final Seniority list of MPS Grade II Officers wherein promotees-respondents who entered the cadre on 01.03.2007, placed below the direct recruits-appellants, who joined the cadre on 14.08.2007 and 24.11.2007 respectively – Challenge to, by the promotees that they should be regarded senior to direct recruits – Single Judge of the High Court held that promotees must be given seniority above the direct recruits – Division Bench upheld the order – On appeal, held: Seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre – Rule 28(i) applicable to both promotees and direct recruits, provides that seniority shall be determined by the order in which the appointments are made to the service – If seniority under Rule 28(i) is to be determined based on the date of appointment, it cannot be said that for the purpose of Rule 28(iii), the seniority of direct recruits should be determined on the basis of the date of initiation of the recruitment process – Term “Recruitment Year” does not and cannot mean the year in which, the recruitment process is initiated or the year in which vacancy arises – On facts, it was not permissible to prepare a fresh seniority list as an independent exercise, ignoring the decision of the Single Judge as affirmed by the Division Bench – Thus, the orders of the High Court are upheld and in view thereof, the State is directed to prepare a revised inter- se seniority list in the MPS Grade-II cadre – Manipur Civil Service Rules, 1965 – r. 28(iii), 28(i), 16(iii).

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Disposing of Civil Appeal No. 8838 of 2019 and dismissing Civil Appeal No. 8833–35 of 2019 and Civil Appeal No. 8836–37 of 2019, the Court

HELD: 1.1 The Manipur Civil Service Rules, 1965 never provided that seniority should be counted from the date of

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- A vacancy. For those covered by the *MPS Rules, 1965* the seniority for them will be reckoned only from the date of appointment and not from the stage when requisition for appointment was given. [Para 33] [665-F-H]
- 1.2 The relevant advertisement issued in 2005 for direct recruitment allowed the aspirants to apply even if, their result in the qualification examination is awaited. Even more intriguing and significant is the relaxation that those proposing to appear in the qualifying examination are also allowed to respond to the advertisement. If such be the nature of the process initiated (in the year 2005) for making direct recruitment, a situation can easily be visualised where, in the event of granting seniority from the stage of commencing the process, a person when eventually appointed, would get seniority from a date even before obtaining the qualification, for holding the post. The applicable Rules in the instant 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 concerned Memorandums referred to in N.R. Parmar's case which deal with general principles for determination of seniority of persons in the Central Government service, should not have any overriding effect for the police officers serving in the State of Manipur. [Para 34, 35] [665-H; 666-A-B-D-E]
- 1.3 After the judgment in N.R. Parmar's case was delivered, the Union of India issued the Office Memorandum on 04.03.2014 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 04.03.2014 prospectively with effect from 01.01.2018. 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 01.01.2018 with the publication in the Gazette". Thus, 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. [Para 36, 37] [666-E-H; 667-A-B]

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1.4 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. The law on the issue is correctly declared in *J.C. Patnaik's case* and consequently the norms on assessment of inter-se seniority, suggested in *N. R. Parmar's case* are disapproved. Thus, 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. [Para 40] [668-C-E]

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Union of India and others v. N.R. Parmar, (2012) 13 SCC 340 – Overruled.

Jagdish Chandra Patnaik v. State of Orissa, (1998) 4 SCC 456 : [1997] 4 Suppl. SCR 470; *Suraj Prakash Gupta & Ors. v. State of J&K & Ors.* (2000) 7 SCC 561; *Pratap Singh and Ors. v. Reevan Singh & Ors.*, (2011) 3 SCC 267 – relied on.

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1.5 The Single Judge based his judgment on two propositions but the Division Bench was of the view that result would be the same merely on the basis of one of the two propositions and, therefore, it was unnecessary to pronounce upon the other proposition. Such an approach cannot therefore be described as a conflict (as has been suggested), between the two judgments. Both Benches were absolutely consistent in their conclusion that promotees would have to be given seniority over direct recruits. It cannot therefore be argued that by some convoluted reasoning, it is possible to come to the conclusion that the orders passed by the two Courts would result in diametrically opposite situation namely, that direct recruits would have to be given seniority over *promotees*. [Para 41] [668-E-H]

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- A 1.6 The Single Judge had directed the State Government to prepare the seniority list after taking into account the observations made by the Court where the Court had clearly observed that the direct recruits cannot get seniority over and above the promotees and that the principle of dovetailing cannot be applied while determining the inter-se seniority between the appellants and the private respondents. This observation is undoubtedly a part of the Court's directions and while implementing this order, the Government could not have given seniority to the direct recruits over the promotees. By doing so, they have acted in violation of the Court Orders and not in conformity therewith. [Para 44] [669-C-E]
- B 1.7 The *Rule 28 of the MPS Rules, 1965* shows that seniority in the service shall be determined based on the date of appointment to the service. In particular *Rule 28(i) of the MPS Rules, 1965* which is applicable to both promotees and direct recruits, provides that seniority shall be determined by the order in which the appointments are made to the service. If seniority under Rule 28(i) is to be determined based on the date of appointment, it cannot be said that for the purpose of Rule 28(iii), the seniority of direct recruits should be determined on the basis of the date of initiation of the recruitment process. The term "Recruitment Year" does not and cannot mean the year in which, the recruitment process is initiated or the year in which vacancy arises. [Para 47] [670-A-D]
- C 1.8 Although the *promotees* approached the concerned authority for compliance of the direction passed in their favour, the Manipur Government did not take any action. Then the respondents filed the Contempt Case where the Government Advocate appeared and requested for time for reporting compliance. The State's Advocate General thereafter informed the Court that the seniority list has been revised and sought time for submitting compliance report. On the next date, the Advocate General produced a copy of proceeding, dated 29.06.2019 issued by the Under Secretary (DP), Government of Manipur and submitted that the order of the High Court has been complied. Accepting this submission, the closure of the Contempt Case was ordered on 02.07.2019. As it appears the seniority list published on 29.06.2019 could not be an independent exercise

but its purpose should be to give effect to the judgments passed by the High Court. Since the judgment of the Single Judge was affirmed by the Division Bench, the seniority list must be prepared in accordance with the High Court's direction. It is certainly not permissible to prepare a fresh seniority list as an independent exercise, without reference to the decisions of the Court. When the validity of the list (29.06.2019) is tested, there is no escape from the conclusion that the list ignores the decision of the Single Judge as affirmed by the Division Bench. [Para 27, 48] [662-E-H; 670-D-F]

1.9 The orders of the High Court in the Writ Petition and the Writ Appeal are upheld. The State is directed to prepare a revised inter-se seniority list in the MPS Grade-II cadre in light of the said discussion and the High Court's Orders. [Para 50] [671-A-B]

Nani Sha & Ors. v. State of Arunachal Pradesh & Ors., [2013] 11 SCR 846 ; State of Uttar Pradesh and others v. Ashok Kumar Srivastava and Anr. (2014) 14 SCC 720 ; All India Judges Association & Ors. v. Union of India and Ors., (2002) 4 SCC 247 – referred to.

Case Law Reference

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|-------------------|-------------|-------------|
| (1998) 4 SCC 456 | relied on. | Para 29, 40 |
| [2013] 11 SCR 846 | referred to | Para 30 |
| (2014) 14 SCC 720 | referred to | Para 31 |
| (2012) 13 SCC 340 | overruled. | Para 40 |
| (2011) 3 SCC 267 | relied on. | Para 40 |
| (2000) 7 SCC 561 | relied on. | Para 40 |
| (2002) 4 SCC 247 | referred to | Para 45 |

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8833-8835 of 2019.

From the Judgment and Order dated 24.05.2019 in I.A. (Civil) No. 1741 of 2019 in Review Petition No. 10 of 2019, order dated 10.04.2019 in Review Petition No. 10 of 2019 and order dated 26.09.2018 in Writ Appeal No. 66 of 2018.

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Civil Appeal Nos. 8838, 8836-8837 of 2019.

B Jaideep Gupta, P.S. Patwalia, Ahanthem Bimol Singh, V. Giri, Sr. Advs., Ms. Punam Kumari, Sapan Biswajit Meitei, Saurav Gupta, Anindita Mitra, Ahanthem Henry, Vivek Kumar, Kumar Mihir, Leishangthem Roshmani Kh, Aribam Jankinath Sharma, Anando Mukherjee, Advs. for the appearing parties.

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

C 1. Leave Granted.

D 2. These matters pertain to an inter-se seniority dispute in the Manipur Police Service Grade II Officers Cadre, hereinafter referred to as “*MPS Grade II Cadre*”. The appellants before us in the SLP (C) No. 19565-67 of 2019 were few of the respondents in the W.P.(C) No. 366 of 2013. They are to be described hereinafter as “*direct recruits*”. The respondents in this SLP were the Writ Petitioners in the High Court who were appointed on promotion to the MPS Grade II Cadre. For clarity and ease of understanding, they are being referred as “*promotees*” in this judgment.

E 3. Prior to their induction (on 01.03.2007) to the MPS Grade II Cadre, the *promotees* were serving as Inspector of Police and they were granted promotion on the basis of a duly constituted Departmental Promotion Committee (DPC). On the other hand, the Private Respondents 3 to 32 and no. 33 in the Writ Petition (C) No. 366 of 2013 were directly recruited into the MPS Grade II Cadre, vide the respective orders dated 14.08.2007 and 24.11.2007.

F 4. Appointment and seniority in the Manipur Police Service is governed by the *Manipur Police Service Rules, 1965* (hereinafter referred to as “*the MPS Rules, 1965*”). After considering the claims and objections and in compliance with the Court’s direction (18.02.2013) in W.P(C) No. 235 of 2012, the Govt. of Manipur, applying the principle of dovetailing between the *promotees* and the *direct recruit* officers, issued the Order on 17.5.2013 publishing the final seniority list (as on 01.04.2013), of the MPS Grade II Officers. The *promotees* challenged this through the Writ Petition (C) No. 366 of 2013 in the High Court of G Manipur. By amending their Writ Petition, the *promotees* also challenged H

the subsequent Govt. orders dated 20.01.2014 and 19.02.2014 where A
the *direct recruits* were placed above them.

5. Before the Writ Court, the *promotees* contended that they entered the MPS Grade II Cadre on 01.03.2007 whereas the private respondent nos.3 to 33 were appointed subsequently (on 14.08.2007 and 24.11.2007 respectively) and, therefore, they should be regarded as B senior to the *direct recruits*.

6. The *direct recruits* on the other hand claimed seniority over the *promotees* by contending that seniority has to be decided in accordance with the year of the vacancy and not by the fortuitous date on which, the appointment could be finalized for the *direct recruits*. C

7. In an earlier proceeding i.e., Writ Petition (C) No. 235 of 2012, in an inter-se seniority dispute amongst the *direct recruits* and *promotees* in the MPS Grade II Cadre, the State in their counter affidavit took the stand that seniority should be determined from the date on which the person was appointed but not from the date of vacancy. For the *direct recruits* appointed on 14.08.2007 against the vacancy of 2004-2005 it was averred that their seniority should be counted from the date of appointment. D

8. The learned Judge heard the parties, applied his mind to the Office Memorandums produced before him and by the common judgment dated 07.07.2017 quashed the impugned orders. It is seen that single Judge directed that the batch of *promotees* appointed on 01st of March 2007 must be given seniority above the *direct recruits* appointed on 14th August, 2007 and he justified this by stating that a direct recruit can claim seniority only from the date of his regular appointment and cannot claim seniority from a date when he is not borne in the service. E For this conclusion, the learned Judge had relied upon, *inter alia*, the ratio in *Jagdish Chandra Patnaik' vs. State of Orissa*¹. The Court also held that the expression "year" must refer to *financial year* and not *calendar year*. Support for such conclusion is based on the Office Memorandum dated 29.4.1999 which contains instructions to be followed by DPC in the matter of holding its meetings towards promotion which is one of the methods of recruitment. This Memo specifies that the recruitment year would be treated as the financial year. Besides F the *Manipur Reservations of Vacancies in Posts and Services (for*

¹ (1998) 4 SCC 456

- A *Schedule Castes and Schedule Tribes) Act of 1976* which was enacted on 24th February, 1977, for short “*the Manipur (SC & ST) Act, 1976*”, provided that the term meant financial year. It was also seen that on 18.12.2009, the State of Manipur amended the *Manipur Police Service Rules of 1965* by introducing *sub-rule 2(g)* defining the word “year” to mean calendar year. This amendment had provided that it would come into force with effect from the date of publication in the official gazette of Manipur thereby making it plain that the same was not intended to have any retrospective effect. The learned Single Judge relied on this to hold that prior to the date of this notification, the word “year” could not be said to be calendar year but would mean the financial year.

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- D 9. In consequence, the learned Single Judge held that the *promotees* get entry into the cadre in the recruitment year 2006-2007 whereas the *direct recruits* would stand appointed in the recruitment year 2007 -2008. There being no overlap between the *promotees* and *direct recruits* as far as the year of recruitment is concerned, applying *Rule 28(iii)* to dovetail the two streams using the principle of rotation of quota, would not arise. It was accordingly determined that the impugned seniority lists are bad in law and all action taken thereunder are rendered null and void. The following directions were then issued by the learned Judge in his common judgment dated 07.07.2017:-

- E “.....
- F (14) For the reasons stated herein above, the writ petitions being WP(C)No.366 of 2013 and WP(C)No.120 of 2014 are allowed and consequently, the Government orders dated 17-05-2013, 20-01-2014 and 19-02-2014, impugned herein, in respect of the petitioners and the private respondents, are quashed and set aside with the following directions:
 - G (a) The State Government shall prepare a seniority list afresh in respect of the MPS Officers, after taking into account the observations made by this Court hereinabove, within a period of three months from the date of receipt of a copy of this judgment and order;
 - H (b) While preparing the seniority list of MPS Officers, the State Government shall follow the guidelines/instructions contained in the Office Memorandum dated 07-02-1986

which is adopted by the State Government vide its Office Memorandum dated 13-11-1987 as directed vide order dated 18-02-2013 passed by the Hon'ble Gauhati High Court in WP(C)No.235 of 2012. There shall be no order as to costs.

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10. Aggrieved by the declaration of inter-se seniority favouring the *promotees*, few *direct recruits* including the respondent no.14 K. Meghachandra Singh and others filed the Writ Appeal No.49 of 2017. This Appeal in the Manipur High Court was transferred to the Gauhati High Court and was re-numbered as Writ Appeal No. 66 of 2018. The State Government did not however challenge the analogous judgment (07.07.2017) rendered in the Writ Petition (Civil) No.366 of 2013.

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11. The Division Bench upheld the conclusion of the Single Judge but confined its justification to the principle that seniority for *direct recruits* could not be reckoned from a date prior to their appointment. In doing so, it approved the finding of the Learned Single Judge to the same effect.

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.12. The Division Bench did not however feel it necessary to go into the question as to whether “year” means “calendar year” or “financial year”. They felt that the position being very clear, there was no reason to embark upon the interpretation of the word/words “year” or “for that year”, as was done by the Learned Single Judge.

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13. It was also made clear that the *promotees* will naturally have seniority over the Appellants as they had entered the cadre of MPS Grade II, before the Writ Appellants were borne in the cadre.

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14. Following the above judgment (26.09.2018) in the Writ Appeal No.66 of 2018 against the *direct recruits*, K. Meghachandra Singh and others filed the Review Petition No. 10 of 2019. But neither on 04.04.2019 nor on 10.04.2019, the counsel for the *direct recruits* were present before the Gauhati High Court and accordingly the Review Petition was dismissed for non-prosecution, through the order dated 10.04.2019. The I.A.(C)No.1741 of 2019 was then filed by K. Meghachandra Singh for restoration of the Review Petition; but the restoration was held to be unmerited and accordingly the I.A. filed by the *direct recruits* was dismissed on 24.05.2019.

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- A 15. Aggrieved by rejection of their Writ Appeal and the related petitions, the *direct recruits* have approached this Court with the Special Leave Petition (C) No.19565-67 of 2019 to challenge the decisions of the High Court.
- B 16. Assailing the impugned judgment and orders, Mr P.S. Patwalia, the learned Senior Counsel contends that seniority of the *direct recruits* in the MPS Grade-II Cadre must be reckoned from the time when vacancies occurred and should relate to the requisition (29.07.2005) made to the Manipur Public Service Commission, to fill up the vacancies. According to him, the date of actual appointment of the appellants on later dates (14.08.2007 and 24.11.2007), shouldn't impact the inter-se seniority of the *direct recruits* vis-à-vis the *promotees*, who were promoted to the cadre on 01.03.2007.
- C 17. The Senior Counsel cites *Union of India and others Vs. N.R. Parmar, (2012)13 SCC 340*, to argue that when action was initiated for filling up the 2005 vacancies, the administrative delay in finalization of the recruitment leading to delayed appointment should not deprive the individual of his due seniority. By referring to the rotation of quota principle, the counsel argues that initiation of action for recruitment in the year of the vacancy would be sufficient, to assign seniority from that year.
- D 18. According to Mr. Patwalia, the Learned Single Judge erroneously interpreted “*recruitment year*” as “*financial year*” in order to confer higher seniority position to the *promotees* vis-à-vis *direct recruits* as both groups were appointed in different months of the same year i.e. 2007. The Counsel refers to the 1989 Amendment (18.12.2009) of the *MPS Rules* to point out that *recruitment year* has been clarified as “*calendar year*” and therefore, there is no necessity to interpret the expression.
- E 19. The Senior Counsel then refers to *Rule 28(iii)* of the *MPS Rules* to highlight that seniority of the *direct recruits* and *promotees* are to be determined on the principle of rotation of vacancies under *Rule 5* for that year and therefore, the *promotees* cannot be placed *en-bloc* above the *direct recruits* merely because, they were promoted on an earlier date i.e. 01.03.2007, particularly when, the recruitment process for the *direct recruits* commenced in the year 2005 itself.

20. Representing the respondents/*promotees*, the learned Senior Counsel, Shri Jaideep Gupta refers to the *MPS Rules, 1965* to argue that the provisions of the *Rules* make it abundantly clear that inter-se seniority in the cadre of *MPS Grade-III* is to be determined by the order in which appointments are made to the service. The counsel pointedly refers to *Rules 28 (i)* where it is specified that the *seniority in the service shall be determined by the order in which appointments are made to the service.....* He also refers to the later part of *Rule 28(iii)*, where again it is specified that the “seniority of the officer..... shall be counted from the date, he/she is appointed to the service.....”. The provisions in *Rule 16(iii)* are pressed home by Mr Gupta to argue that only when the person is appointed, he shall be deemed to have been appointed to the service from the date of encadrement.

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21. The judgment in *N.R. Parmar* (Supra) is read with equal emphasis by Mr Gupta to firstly point out that this case does not lay down the correct law in determination of seniority. The counsel highlights the incongruity in a situation where a person who entered service later will claim seniority above those who joined service at an earlier point of time. The applicability of the ratio in *N.R. Parmar* (Supra) to the litigants in the present case is also questioned by Mr Gupta by pointing out that the provisions of *MPS Rules, 1965 applicable* for the officers in the Manipur Police Officers, was not the subject of consideration in *N.R. Parmar* (Supra), and, therefore, the said ratio relatable to Income Tax Inspectors, with different Service Rules, will not apply to the present case.

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22. The learned Senior Counsel, Mr Gupta, then refers to the office Memorandum dated 07.02.1986 and the illustration provided in the same Office Memorandum to explain the carry forward principle to argue that the judgment in *N.R. Parmar* (Supra) misconstrued the legal implication of the OM. According to the counsel, the *MPS Rules 1965* did not refer to the *financial year* as was done by the learned Single Judge or even the *calendar year* as was mentioned by the Division Bench in as much as the *Rules* make it abundantly clear that inter-se seniority has to be reckoned from the date of appointment. It is, therefore, argued that the 2005 requisition for the *direct recruit* vacancies, can have no bearing on the inter-se seniority of those who were borne in the cadre on an earlier date vis-à-vis those who entered service later, like the *direct recruits*.

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- A 23. The respondent's counsel would then submit that reference to the Office Memorandum and the other notifications to decide the inter-se seniority in the MPS Grade-II Cadre would be unnecessary inasmuch as the *Rules* i.e. *MPS Rules, 1965* makes it amply clear that the date of entry in service should be the basis of reckoning the seniority of an incumbent.
- B 24. The State of Manipur is represented by Mr V. Giri, the learned Senior Counsel and he refers to the somewhat inconsistent views between the Single Judge and the Division Bench in the matter of interpretation of the expression "*recruitment year*". He submits that while determining the inter-se seniority of the Manipur Police Service Officer, the *applicable Service Rules* should be the basis instead of resorting to an interpretive exercise particularly when, there is no scope for ambiguity in the Rules.
- C 25. The learned Senior Counsel for the State then points out that although the Single Judge interfered with the impugned seniority lists prepared by the Manipur Government, the State did not challenge this judgment but have filed the SLP(C) No.19568-69 of 2019 to challenge the Division Bench Judgment in the Writ Appeal No.66 of 2018.
- D 26. Mr Giri refers to the *MPS Rules, 1965 (2nd Amendment), 2009* published vide notification dated 18.10.2009 which defines the recruitment year as the "*calendar year*" but submits although the Govt. had issued the revised notification (29.06.2019) following *N R Parmar* (Supra), it will again revisit the seniority list as per the Court's directions.
- E 27. At this stage it needs to be recorded that although the *promotees* approached the concerned authority for compliance of the direction passed in their favour, the Manipur Government did not take any action. Then the respondents filed the Contempt Case(C) No.224 of 2018 where the Government Advocate appeared and requested for time for reporting compliance. The State's Advocate General thereafter informed the Court that the seniority list has been revised and sought time for submitting compliance report. On the next date, the Advocate General produced a copy of proceeding No.22/2/1989-MPS/DP(PT-II), dated 29.06.2019 issued by the Under Secretary (DP), Government of Manipur and submitted that the order of the High Court has been complied. Accepting this submission, the closure of the Contempt Case(C) No.224 of 2018 was ordered on 02.07.2019. As this case was filed by one of the *promotees* i.e., Ningam Siro, the aggrieved party

has filed the Special Leave Petition No.17007 of 2019 to challenge the High Court's closure Order. Representing him, the learned Senior Counsel Mr Jaideep Gupta submits that the High Court should have examined the purport of the proceedings dated 29.06.2019 to satisfy itself about the actual compliance instead of blindly accepting the submission of the Advocate General, to order closure of the contempt case.

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28. The contention raised by the learned Counsel for the parties have been considered and the impugned orders and the relevant materials on record have been perused.

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29. Before proceeding to deal with the contention of the appellants' Counsel vis-à-vis the judgment in *N.R. Parmar* (Supra), 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. For example, in *J.C. Patnaik* (Supra) 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 *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.

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30. The above ratio in *J.C. Patnaik* (Supra) 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 *pari materia* to the *MPS Rules, 1965*, (*vide* (2007) 15 SCC 406 - *Nani Sha & Ors. Vs. State of Arunachal Pradesh & Ors.*). 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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- A 31. We may also benefit by referring to the Judgment in *State of Uttar Pradesh and others vs. Ashok Kumar Srivastava and Anr*². 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.*³, 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:
- B 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:

- C “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.

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E 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.”

H ² (2014) 14 SCC 720
H ³ (2011) 3 SCC 267

32. With the above understanding of the law on seniority, the provisions of the *MPS Rules, 1965* and more specifically *Rule 28(i)*, *Rule 28 (iii)* and *Rule 16 (iii)* will now bear consideration. For ready reference they are extracted: -

Rule 28(i)

In the case of persons appointed on the result of competitive examination or by selection under clause (b) of sub-rule (1) of Rule 5, seniority in the Service shall be determined by the Order in which appointments are made to the service.

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Rule 28(iii)

The relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between direct recruits and promotees as determined under Rule 5 for that year and the additional direct recruits selected against the carried forward vacancies of the previous year would be placed enbloc below the last promotees (or direct recruits as the case may be).

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The seniority of the officer so appointed under sub-rule (3) of the Rule 16, shall be counted from the date, he/she is appointed to the Service.

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Rule 16(iii)

In the case of a person who had been appointed to a post which is subsequently declared as duty post he shall be deemed to have been appointed to the Service from the date of encadrement of the post in the MPS Schedule.

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33. As can be seen from above, the *MPS Rules, 1965* never provided that seniority should be counted from the date of vacancy. For those covered by the *MPS Rules 1965* the seniority for them will be reckoned only from the date of appointment and not from the stage when requisition for appointment was given.

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34. In the above context, it is also necessary to refer to the relevant advertisement issued in 2005 for direct recruitment which

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- A allowed the aspirants to apply even if, their result in the qualification examination is awaited. Even more intriguing and significant is the relaxation that those proposing to appear in the qualifying examination are also allowed to respond to the advertisement. If such be the nature of the process initiated (in the year 2005) for making direct recruitment,
- B we can easily visualize a situation where, in the event of granting seniority from the stage of commencing the process, a person when eventually appointed, would get seniority from a date even before obtaining the qualification, for holding the post.

35. The judgment in *N.R. Parmar* (Supra) is now to be considered in some detail as this is heavily relied 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 OM's (dated 22.12.1959, 07.02.1986, 03.07.1986 and 03.03.2008). The judgment was rendered in respect of 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 concerned Memorandums referred to in *N.R. Parmar* (Supra) 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.

36. After the judgment in *N.R. Parmar* (Supra) was delivered, the Union of India issued the Office Memorandum on 04.03.2014 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 04.03.2014 prospectively with effect from 01.01.2018.

G 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 01.01.2018 with the publication in the Gazette.....*"

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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.

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

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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

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- A may usefully refer to the ratio in *vs. Shankarsan Dash Vs. Union of India*⁴, where it was held even upon empanelment, an appointee does not acquire any right.

40. The Judgment in *N. R. Parmar* (*Supra*) relating to the Central Government employees cannot in our opinion, automatically apply to
- B the Manipur State Police Officers, governed by the *MPS Rules, 1965*. 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 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 *J.C. Patnaik* (*Supra*) and consequently we disapprove the norms on
- D assessment of inter-se seniority, suggested in *N. R. Parmar* (*Supra*). Accordingly, the decision in *N.R. Parmar* is overruled. However, it is made clear that this decision will not affect the inter-se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy/the date of advertisement.

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41. As noted earlier, the Learned Single Judge based his judgment on two propositions but the Division Bench was of the view that result would be the same merely on the basis of one of the two propositions and, therefore, it was unnecessary to pronounce upon the other proposition. Such an approach cannot therefore be described as a conflict (as has been suggested), between the two judgments. Both Benches were absolutely consistent in their conclusion that *promotees* would have to be given seniority over *direct recruits*. It cannot therefore be argued that by some convoluted reasoning, it is possible to come to the conclusion that the orders passed by the two Courts
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- G would result in diametrically opposite situation namely, that *direct recruits* would have to be given seniority over *promotees*.

42. The Learned Single Judge in his Judgment interpreted the Office Memorandum (07.02.1986), as adopted by the State Government

H ⁴ (1991) 3 SCC 47

⁵ (2000) 7 SCC 561

vide its OM dated 13.11.1987 to mean that *direct recruits* could be given seniority only from the date of appointment. The Judgment in *N.R. Parmar* (Supra) was not cited and the principle contained therein cannot therefore be said to have been intended to be applied by the Learned Judge.

43. That apart, the paragraph (14) of the judgment (7.7.2017) expressly refers to the earlier WP(C) No.235 of 2012 and the 18.02.2013 order passed therein. In that case, the State of Manipur filed counter affidavit categorically stating that, seniority of *direct recruits* would be counted from their date of appointment and not from the date of initiation of the recruitment process.

44. The Learned Single Judge in paragraph 14 of the judgment directed the State Government to prepare the seniority list after taking into account the observations made by the Court where the Court had clearly observed that the *direct recruits* cannot get seniority over and above the *promotees* and that the principle of dovetailing cannot be applied while determining the inter-se seniority between the appellants and the private respondents. This observation is undoubtedly a part of the Court's directions and while implementing this order, the Government could not have given seniority to the *direct recruits* over the *promotees*. By doing so, they have acted in violation of the Court Orders and not in conformity therewith.

45. It is now necessary to deal with Mr Patwalia's final contentions in reply, placing reliance on *All India Judges Association & Ors. Vs. Union of India and Ors.*⁶. He emphasizes the following passage in paragraph 29 of the Judgment:-

“.....Hardly if ever there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited.....”

46. The above would however refer to an incumbent whose roster points have been fixed after their recruitment as per the prescribed quotas. The cited judgment does not propose to say that seniority by roster points be fixed, ignoring the date, when the person is recruited. The judgment obviously was not considering a situation, where seniority is being fixed even before the incumbent is borne in service. In any

⁶ (2002) 4 SCC 247

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- A case, having regard to the specification made in the *MPS Rules, 1965*, which squarely governs the litigants here, the ratio in the *All India Judges Association*' (Supra) would be of no assistance, for the appellants.

47. As earlier discussed, the *Rule 28* of the *MPS Rules, 1965*

- B shows that seniority in the service shall be determined based on the date of appointment to the service. In particular *Rule 28(i)* of the *MPS Rules, 1965* which is applicable to both *promotees* and *direct recruits*, provides that seniority shall be determined by the order in which the appointments are made to the service. If seniority under *Rule 28(i)* is to be determined based on the date of appointment, it cannot be said that for the purpose of *Rule 28(iii)*, the seniority of *direct recruits* should be determined on the basis of the date of initiation of the recruitment process. The term "Recruitment Year" does not and cannot mean the year in which, the recruitment process is initiated or the year in which vacancy arises. The contrary declaration in *N.R. Parmar*² in our considered opinion, is not a correct view.

48. In view of the foregoing, let us now consider the Government order (29.06.2019) produced by the Manipur Advocate General in the Contempt Case. As it appears the seniority list published on 29.06.2019 could not be an independent exercise but its purpose should be to give

- E effect to the judgments passed by the High Court. Since the judgment of the learned single Judge was affirmed by the Division Bench, the seniority list must be prepared in accordance with the High Court's direction. It is certainly not permissible to prepare a fresh seniority list as an independent exercise, without reference to the decisions of the Court. When we test the validity of the list (29.06.2019), there is no escape from the conclusion that the list ignores the decision of the single Judge as affirmed by the Division Bench. It is declared so accordingly.

49. In consequence, the appeals arising out of SLP (C)No.19565-67 of 2019 filed by the *direct recruits* are dismissed. On the same

- G reasoning, the appeals arising out of SLP (C)No. 19568-69 of 2019, filed by the State of Manipur are not entertained and the same shall stand dismissed. With the above finding on the Contempt Case No.224 of 2018 and quashment of the 29.06.2019 proceeding produced in that case before the High Court, the appeals arising out of SLP (C)No. 17007 of 2019 filed by Ningam Siro against the High Court's order in H the Contempt Case No.224/2018 is disposed of.

50. In view of the foregoing, the orders of the High Court in the Writ Petition and the Writ Appeal are upheld. The State of Manipur is accordingly directed to prepare a revised inter-se seniority list in the MPS Grade-II cadre in light of the above discussion and the High Court's Orders. This shall be done within 8 weeks from today. All consequential actions will follow from this judgment. It is ordered accordingly.

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Nidhi Jain

Appeals disposed of.