

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 194/2020

Date of decision: 23.06.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Smt. Hina P. Shah, Member (J)**

1. Rajkumar Meena S/o Late Shri Laxman Meena, Aged about 33 years, R/o VPO Datali, Goner Road, Jaipur, Presently working as UDC at Regional Office Jaipur, Employees' State Insurance Corporation, Rajasthan. (Group-C) M. 9784386818.
2. Sh. Jitendra Pal S/o Sh. Gulab chandra, Aged about 31 years R/o E-811, Avadhपुरी LalkothiYojna, Tonk Road, Jaipur Presently Posted as UDC at Branch office Employees State Insurance corporation, Kamdhenu Complex Jaipur.
3. Dinesh Kumar Meena S/o Sh. Brijlal Meena, Aged about 31 years R/o BhorikikothiVPOMandawari Tel. Lalsot(Dausa) Presently Posted as UDC at Model hospital Employees State Insurance corporation Laxmi Nagar, Sodala, Jaipur.
4. Sitaram Meena S/o Late Shri Tejaram Meena, Aged about 38 years, R/o VPO Sonad, Tehsil Ramgarh, Pachwara, District Dausa, presently posted as UDC at Regional Office, ESIC, Jaipur.
5. Harlal Meena S/o Shri Ram Chandra Meena, Aged about 38 years, R/o Badala Ki Dhani, VPO Jhar, Tehsil Bali, Jaipur,

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presently posted as UDC at Branch Office, Pratapnagar, Jaipur.

6. Pankaj Swami S/o Shri Chand Ratan Swami, Aged about 30 years, R/o II/5, EPFO Colony, Shankar Nagar, Jodhpur, presently posted as UDC at Sub Regional Office, Jodhpur.
7. Vishnu Kumar S/o Late Shri Hari Narayan Meena, Aged about 39 years, R/o Outside Delhi Gate, Behind Khas School, Alwar, presently posted as UDC at Branch Office, ESIC, Alwar.
8. Dharmesh Gehlot (Dharm Singh Gehlot) S/o Shri Gaje Singh Gehlot, Aged about 32 years, R/o G.S. Bhawan, Mayali Mandawata, Post Mandore, Jodhpur, presently posted as UDC at Sub Regional Office, ESIC, Jodhpur.
9. Ganesh Choudhary S/o Shri Lala Ram Choudhary, Aged about 26 years, R/o Opp. Ganesh Mobile E-Mitra, New Bhakari Bas, Soorsagar, Jodhpur, presently posted as UDC at Sub Regional Office, Jodhpur.
10. Harsh Jangid S/o Shri Sunil Kumar Sharma, Aged about 30 years, R/o B-193, Chandravardai Nagar, Ahilya Bai Marg, Ajmer, presently posted as UDC at Regional Office, Employees' State Insurance Corporation, Jaipur.
11. Jasraj Singh Ranawat S/o Dalpat Singh, Aged about 32 years, R/o 488, Bapu Nagar Ext., Pali, Rajasthan, presently posted as UDC at Branch Office, Pali, Marwar.

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12. Vikas Kumar Meena S/o Late Shri Rajendra Kumar Meena, Aged about 30 years, R/o Village Patan Ka Bas, Post Patan, Tehsil Raisi, District Alwar, presently posted as UDC at ESIC Hospital Alwar.
13. Rajiv Kumar Yadav S/o Shri Rohitashwa Yadav, Aged about 32 years, R/o VPO BawadSakatpura, Tehsil Mundawar, Alwar, presently posted as UDC at Branch Office, Behror.
14. Rajendra Kumar Deegwal S/o ShriBabulal Deegwal, Aged about 34 years, R/o 43, BhuneshwariVatika, Bajri Mandi Road, Panchyawala, Vaishali Marg West, Jaipur, presently posted as UDC at Regional Office, ESIC, Jaipur.
15. Sh. Kapil Sharma s/o Sh. Tikam chandra Sharma, age about 30 years R/o Mahesh Nagar, Rajgadh (Alwar) Presently posted as UDC at Regional office Employees State Insurance corporation Jaipur.
16. Jitender Singh C/o Dhanpati Devi, Aged about 33 years, H.N. 20/459, Gali No. 11, Vijay Nagar Rewari, Haryana Presently posted as UDC at ESIC Hospital, Employees' State Insurance Corporation, Bhiwadi (Alwar).

---Applicants

(By Advocate: Shri Banwari Sharma)

Versus

1. The Union of India through the Secretary, Ministry of Department of Labour & Employment, Government of India,

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Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi-110002.

2. The Director General, Department of Employees State Insurance Corporation (E.S.I.C.), Panchdeep Bhawan CIG Marg, New Delhi-110002.
3. The Regional Director, E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.302005
4. The Dy. Director (Administration), E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.302005
5. The Ministry of Department of Personnel and Training, Central Secretariat, New Delhi 110001.
6. Shri Ankit Khandelwal S/o Shri Ghanshyam Prasad Gupta, Presently posted as UDC at Regional Office, Jaipur through Regional Director 302006.
7. Shri Yugveer Sharma S/o Shri Subhash Sharma, Presently posted as UDC at Regional Office, Jaipur through Regional Director 302006.
8. Shri Krishan Kumar S/o Shri Hema Ram, Presently posted as UDC at Sub Regional Office, Udaipur through Regional Director 313004.
9. Shri Sachin Kumar Jaiswal S/o Shri Bhagwan Singh, Presently posted as UDC at Branch Office, Bharatpur through Regional Director 321001.

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10. Shri Pradeep Kumar Sharma S/o Shri Ramniwas Sharma, Presently posted as UDC at Sub Regional Office, Jhodhpur through Regional Director 342006.
11. Shri Ajay Kumar Yadav S/o Shri Ram Lal Yadav, Presently posted as UDC at Branch Office, Bhiwadi through Regional Director 301019.
12. Shri Pawan Gupta, S/o Shri Giriraj Gupta, Presently posted as UDC at Branch Office, Bhawani Mandi through Regional Director 320502.
13. Shri Ashutosh Goyal, S/o Shri Anil Kumar Goyal, Presently posted as UDC at Sub Regional Office, Udaipur through Regional Director 313001.
14. Shri Kuldeep Singh Baghela, S/o Shri Ghirdhari Lal baghela, Presently posted as UDC at Sub Regional Office, Udaipur through Regional Director 313001.
15. Shri Dinesh Kumar Chaudhary, S/o Shri Vedpal Singh, Presently posted as UDC at Sub Regional Office, Udaipur through Regional Director 313001.
16. Shri Heera Lal, S/o, Shri Laxman Ram, Presently posted as UDC at Sub Regional Office, Jhodhpur through Regional Director 342006.
17. Ku. Shaifali Sharma D/o Shri Chandra Shekhar Maharshi. Presently posted as UDC at Branch Office, Khamdhenu Complex through Regional Director 302001.

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18. Shri Bheemsingh Choudhary, S/o Nainaram Choudhary, Presently posted as UDC at Sub Regional Office, Udaipur through Regional Director 342006.
19. Shri Ujala Garg, S/o Shri Vipin Garg, Presently posted as UDC at ESIC Hospital, Bhiwadi through Regional Director 301019.
20. Shri Mahipal Chhaba, S/o Shri Pukhraj, Presently posted as UDC at Sub Regional Office, Jhodhpur through Regional Director 342006.
21. Shri Munindra Yag, S/o Shri Ratan Lal Yag, Presently posted as UDC at Sub Regional Office, Udaipur through Regional Director 313004.

...Respondents.

(By Advocate: Shri T.P. Sharma for respondents No.1 to 5)

ORDER (ORAL)

Per: Dinesh Sharma, Member (A)

In the instant OA, the applicants have mainly prayed for quashing the draft seniority list dated 11.03.2020 (Annex. A/1), which is final qua the applicants in view of rejection of their objection, and for directing the respondents to prepare the final seniority list in the light of observation made by the Hon'ble Apex Court in the case of **K. Meghachandra Singh and Ors. Vs. Ningam Siro & Ors.** in Civil Appeal No 8833-8835/2019 decided on 19.11.2019. They have also prayed for direction to the

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respondents to hold the consequent review DPC for promotion from the post of UDC to Assistant/Head Clerk against the vacancies of the year 2020 (01.01.2020 to 31.12.2020) from the date when other candidates have been considered and recommended for promotion with all consequential benefits.

2. The case of the applicants is mainly based on the aforementioned recent decision of the Hon'ble Apex Court which has overturned the earlier decision of the Apex Court in the case of **Union of India & Others vs. N.R. Parmar & Others** (2012) 13 SCC 340. The applicants have come to Rajasthan Region, from other regions, following the Inter-regional Transfer Policy (Annex A/3). Clause 5 of this policy provides for fixing the seniority of such transferee below all the employees appointed during the year in the recipient region. The applicants joined their duties in Rajasthan in the months of August/October 2016. However, the draft seniority list (Annex. A/1) puts them below the officers who joined service in the year 2017. This has been obviously done following the now overruled N.R. Parmar case (supra), which had directed the seniority of direct recruits (vis-a-vis selectees through promotion) to be fixed with respect to the vacancy year to which any direct recruitment related (and not when it actually took place). An earlier OA filed by the applicants before this Tribunal (OA 291/777/2019) was dismissed as premature in view of the pendency of their representation

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before the authorities. Now, the impugned draft seniority list (Annex A/1) contains a remark with respect to the applicants' objections that the seniority list has been drawn on the basis of existing DoPT directions and they have not received any direction from the Corporate Headquarters or from the DoPT regarding the final decision of the Hon'ble Supreme Court in the two cases. The applicants have argued that this amounts to ignoring the law of the land. The respondents cannot deny their right on such ground.

3. A reply has been filed by the official respondents in which they have quoted the instructions/guidelines about determination of seniority under Inter Regional Transfer Policy, which puts transferees on request below all the employees appointed during the year in the recipient region. The respondents have not materially differed with the facts stated by the applicants and have also admitted [in Para 4(xiii)] the fact of judicial pronouncement and the observation of the Hon'ble Apex Court that "seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre". This paragraph goes on to state:

"Therefore Regional Director is to take necessary action as per existing instructions. However, in this regard DOPT has not issued any instruction on the order of Hon'ble Supreme Court. Hence it cannot be implemented to fix seniority pending DOPT instructions".

4. We have gone through the pleadings and have heard the learned counsels of the applicants and the official respondents. Though notices were issued, none appeared on behalf of the private respondents. There is a more or less clear admission by the official respondents that they have not taken into consideration the recent decision of the Hon'ble Supreme Court, only because of want of direction from the DOPT/ Corporate Headquarters. This is certainly not a valid ground for not following a clear decision of the Hon'ble Apex Court that leaves no doubt about not giving seniority to anyone from a date before that person is borne in the cadre. In the present case, it is not denied that the applicants came to Rajasthan Region in the year 2016, while the persons, who have been put above them in the impugned draft seniority list, joined service in later years. Giving such persons seniority over the applicants, *prima-facie*, falls foul of the judgment of the Hon'ble Apex Court in Meghachandra Singh's case (supra). We were informed by the learned counsel for the official respondents that the aforementioned judgment is to be implemented only prospectively. Since, in the present case, the impugned order is avowedly a draft seniority list, following Hon'ble Apex Court's decision in this case, would not be a retrospective implementation of the same.

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5. The impugned seniority list is therefore set-aside. The official respondents (respondents no 1 to 5) are directed to revisit the draft seniority list in the light of the current legal position, including the above mentioned judgment of the Hon Apex Court in Meghachandra Singh's case (supra), and publish a fresh seniority list, within 3 months from the date of receipt of a certified copy of this order. The OA is disposed of accordingly. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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