

Dated : __.03.2023

To,

The Director General,
Employees' State Insurance Corporation,
Headquarters Office,
Panchdeep Bhawan, CIG Marg,
New Delhi-110002.

THROUGH PROPER CHANNEL

SUBJECT: OBJECTION/REPRESENTATION TO THE MEMORANDUM DATED 14.02.2023 TITLED AS 'PROVISIONAL GRADATION/SENIORITY LIST OF OFFICERS IN THE GRADE OF DEPUTY DIRECTOR IN PB-3 RS.15,600 – 39,100/- WITH GRADE PAY OF RS. 5400/- (PRE-REVISED) AS ON 01.02.2023' ['Provisional Seniority List'].

Dear Sir

1. This is with reference to the above captioned subject. Before dilating on the Objections of the undersigned to the Provisional Seniority List, the undersigned begs to submit the following factual matrix for your kind perusal:

DATE	EVENT
<u>22.12.1959</u>	The Department of Personnel & Training [DoPT] by way of an OM dated 22.12.1959 [1959 OM], inter alia, issued instructions relating to Direct Recruits and Promotees. Para 6 of Annexure of the 1959 OM posited the following under the head of ' <i>Relative seniority of Direct Recruits and Promotees.</i> ': “The relative seniority of direct recruits and of Promotees shall be determined according to the rotation of vacancies

	<p>between direct recruits and Promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.”</p> <p>The 1959 OM, therefore, provided for inter-se seniority between the direct recruits and promotees on the principle of rotation of quotas.</p>
07.02.1986	<p>In view of various Court Cases pending before Hon’ble Courts, the DoPT issued an OM dated 07.02.1986 [February 1986 OM]. By way of the February 1986 OM, the DoPT while reiterating the principle of rotation of quotas as contained in the 1959 OM, dispensed with the practice of keeping vacant slots for being filled by direct recruits of later years, as the same was resulting in giving <i>‘unintended seniority over promotees’</i>.</p> <p>The relevant extract of the February 1986 OM is quoted hereunder:</p> <p>“3. This matter, which was also discussed in the National Council has been engaging the attention of the Government for quite some time and <u>it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by</u></p>

direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate numbers of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be benched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years.”

<p>03.07.1986</p>	<p>The February 1986 OM was followed by another OM dated 03.07.1986 [July 1986 OM] issued by the DoPT. The aim of the July 1986 OM was to consolidate the existing instructions issued by the Respondent No. 3 from time to time. Para 2.4.1 and 2.4.2 dealt with the issue of inter-se seniority between Direct Recruits and promotees, the same are extracted hereunder:</p> <p style="padding-left: 40px;">“2.4.1 The relative seniority of direct recruits and of promotee shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.</p> <p style="padding-left: 40px;">2.4.2 If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees.”</p>
<p>03.03.2008</p>	<p>On receiving various references seeking clarification regarding the term '<i>available</i>' used in Para 2.4.2 of the July 1986 OM, the DoPT vide OM dated 03.03.2008 [2008 OM] clarified as follows:</p> <p style="padding-left: 40px;">“3. It is hereby clarified that while the inter-se seniority of direct recruits and promotees is to be fixed on the basis of the rotation of quota of vacancies, <i>the</i></p>

	<p><u>year of availability, both in the case of direct recruits as well as the promotees, for the purpose of rotation and fixation of seniority, shall be the actual year of appointment after declaration of results/selection and completion of pre-appointment formalities as prescribed. It is further clarified that when appointments against unfilled vacancies are made in subsequent year or years either by direct recruitment or promotion, the persons so appointed shall not get seniority of any earlier year (viz. year of Vacancy/panel or year in which recruitment process is initiated) but should get the seniority of the year in which they are appointed on substantive basis. The year of availability will be the vacancy year in which a candidate of the particular batch of selected direct recruits or an officer of the particular batch of promotees joins the post/service.”</u></p> <p>The undersigned submit that the DoPT through the 2008 OM specified the well-established rule of seniority viz. that seniority has to be determined from the date of recruitment.</p>
<p>24.07.2012</p>	<p>The undersigned was appointed on promotion to the post of Deputy Director (Administration/ Training/ Insurance) w.e.f from 24.07.2012, by way of an Office Order dated 03.08.2012. The appointment of the undersigned was for the vacancy year 2011-12.</p>

27.11.2012	<p>The Hon'ble Supreme Court in Union of India v. NR Parmar, (2012) 13 SCC 340, while adjudicating upon a seniority dispute between Direct Recruit and Promotee Income Tax Inspectors interpreted various OMs passed by the DoPT from time to time on the issue of relative seniority between Direct Recruits and Promotees.</p>
04.03.2014	<p>Pursuant to the judgment of the Hon'ble Supreme Court in Parmar (<i>Supra</i>), the DoPT issued an OM dated 04.03.2014 [2014 OM].</p> <p>The relevant extracts of the 2014 OM are as follows:</p> <p style="padding-left: 40px;">“a) <u>DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as non-existent/ withdrawn ab initio;</u></p> <p style="padding-left: 40px;">b) <u>The rotation of quota based on the available direct recruits and promotees appointed against the vacancies of a Recruitment Year, as provided in DOPT O.M. dated 7.2.1986/3.07.1986, would continue to operate for determination of inter se seniority between direct recruits and promotees;</u></p> <p style="padding-left: 40px;">c) The available direct recruits and promotees, for assignment of inter se seniority, would refer to the direct recruits and promotees who are appointed against the vacancies of a Recruitment Year;</p>

d) Recruitment Year would be the year of initiating the recruitment process against a vacancy year;

e) Initiation of recruitment process against a vacancy year would be the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits; in the case of promotees the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up the vacancies through promotion would be the relevant date.

f) The initiation of recruitment process for any of the modes viz. direct recruitment or promotion would be deemed to be the initiation of recruitment process for the other mode as well;

g) Carry forward of vacancies against direct recruitment or promotion quota would be determined from the appointments made against the first attempt for filling up of the vacancies for a Recruitment Year;

h) The above principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012, the date of Supreme Court Judgment in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar Vs. UOI & Ors;

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

It is relevant to state herein the undersigned was promoted on 24.07.2012 and as such the 2014 OM is not applicable for the determination

	<p>of Seniority of the undersigned and per se the Seniority of the undersigned has to be determined on the basis of, inter alia, the February and July 1986 OM.</p>
29.07.2019	<p>The ESIC by way of a Memorandum dated 29.07.2019 released the '<i>Final Gradation/Seniority List of Officers in the cadre of Deputy Director in PB-3, Rs. 15600-39100 + Grade Pay Rs. 5400/- upto the vacancy year 2010-11</i>' [2019 Seniority List].</p>
19.11.2019	<p>The Hon'ble Supreme Court in K. Meghchandra Singh & Ors. v. Ningam Siro & Ors., (2019) SCC OnLine SC 1494 was pleased to overrule the judgment in Parmar (<i>Supra</i>), the relevant extracts of Meghchandra (<i>Supra</i>) are quoted hereunder:</p> <p style="padding-left: 40px;"> <u>"38. When we carefully read the judgment in N. R. Parmar (<i>Supra</i>), 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</u> </p>

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.

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 India⁴, where it was held even upon

	<p><u>empanelment, an appointee does not acquire any right.</u></p> <p>40. The Judgment in N. R. Parmar (Supra) relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. <u>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 assessment of inter-se seniority, suggested in N. R. Parmar (Supra). Accordingly, the decision in N.R. Parmar is overruled...</u></p> <p style="text-align: center;">XXX</p> <p>46.....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 in our considered opinion, is not a correct view.”</p>
<p>14.08.2020</p>	<p>The ESIC vide Memorandum dated 14.08.2020 issued the <i>‘Final Gradation/Seniority List of</i></p>

	<p><i>Officers in the grade of Deputy Director in the Pay Band-3, Rs. 15600-39100 + Grade Pay Rs. 5400/- (pre-revised) for the vacancy year 2011-12, 2012-13 and 2013-14' [2020 Seniority List'].</i></p>
<p>09.10.2020</p>	<p>An Original Application was filed before the Hon'ble Central Administrative Tribunal, Principal Bench [Hon'ble Tribunal] being Original Application No. 1545 of 2020 titled as '<i>Praveen Kumar v. Employees' State Insurance Corporation & Ors.</i>' [Original Application'], impugning the 2014 OM, 2019 and 2020 Seniority Lists issued by the ESIC. Notice was issued by the Hon'ble Tribunal on 15.10.2020.</p>
<p>11.12.2020</p>	<p>The ESIC thereafter on the direction of the Union Public Service Commission was pleased to issue a further Memorandum dated 11.12.2020 titled as '<i>Final Gradation/Seniority List of Officers in the grade of Deputy Director in the Pay Band-3, Rs. 15600-39100 + Grade Pay Rs. 5400/- (pre-revised) for the vacancy year 2011-12, 2012-13 and 2013-14' [December, 2020 OM'].</i></p>

<p>04.01.2021</p>	<p>The Hon'ble Tribunal vide Order dated 04.01.2021 was pleased to allow an Amendment in the Original Application and was further pleased to direct as under:</p> <p style="padding-left: 40px;">“6.....In case, the promotions take place in the meanwhile, serious complications would arise. We, therefore, stay further promotions to the post of Senior Deputy Director on the basis of the three seniority lists mentioned in the prayer in the MA.”</p> <p>Therefore, the Hon'ble Tribunal was pleased to stay the 2019, 2020 and December 2020 Seniority Lists.</p>
<p>11.05.2021</p>	<p>The Hon'ble Tribunal vide Order dated 11.05.2021 in MA No. 1214 of 2021 was pleased to modify the Interim Order dated 04.01.2021 as follows:</p> <p style="padding-left: 40px;">“4. We are of the view that for the present, the promotions can be made on the basis of the seniority arranged according to the date of promotion or appointment as the case may be, referable to a particular year. In other words, the appointment of persons made by way of direct recruitment or promotion in a particular year shall be arranged on the basis of the respective dates unless there exist any rule to the contrary. Under no circumstances, the persons who were appointed in the subsequent year, shall be placed above the persons who were appointed in the earlier years. The</p>

	<p>promotions made on the basis of the impugned order shall be subject to the outcome of the OA.”</p>
<p>13.08.2021</p>	<p>The DoPT vide OM dated 13.08.2021 [2021 OM] was pleased to issue a further OM in consonance with the judgement of the Hon’ble Supreme Court in Meghachandra (<i>Supra</i>). Relevant extracts thereof are quoted hereunder:</p> <p>“7. Based on the above, it has been decided to modify the instructions relating to determination of <i>inter se</i> seniority between promotees and direct recruits as under:</p> <p>(i) DoPT's O.M. No. 20011/I/2012-Estt.(D) dated 4.3.2014. issued in pursuance of Order dated 27.11.2012 in N.R. Parmar case. is treated as non-est/withdrawn well 19.11.2019.</p> <p>(ii) As the Order dated 19.11.2019 is prospective, cases of <i>inter se</i> seniority of direct recruits and promotees already decided in terms of O.M. No. 2001 I/I/2012-Estt.(D) dated 4.3.2014, shall not be disturbed. i.e. old cases are not to be reopened.</p> <p>(iii) <u><i>In case of direct recruits and promotees appointed/joined during the period between 27.11.2012 and 18.11.2019 and in which case inter se seniority could not be finalised by 18.11.2019, shall also be governed by the provisions of O.Ms. dated 7.2.1986/3.7.1986 read with OM dated 4.3.2014, unless where a different formulation/manner of determination of</i></u></p>

	<p><u>seniority has been decided by any Tribunal or Court.</u></p> <p>(iv) For cases where the recruitment process has been initiated by the administrative Department/Cadre Authority before 19.11.2019 and where some appointments have been made before 19.11.2019 and remaining on or after 19.11.2019, the <i>inter se</i> seniority of direct recruits and promotees shall also be governed by the provisions of O.Ms. dated 7.2.1986/3.7.1986 read with OM dated 4.3.2014 to ensure equal treatment of such appointees.”</p>
<p>12.07.2022</p>	<p>The Hon’ble Tribunal vide final order and judgement dated 12.07.2022 [2022 Judgement’] was pleased to allow the aforementioned Original Application and was pleased to observe & direct as under:</p> <p>“16. We find that the seniority list issued on 13.07.2019 is only upto the year, 2010-11, as discussed in the forgoing paras of this judgement. <u>There is nothing on record to justify or substantiate as to why the incumbents who were holding the position of Deputy Director till the date of issue of seniority list and after the year 2011-12 do not figure in the said seniority list.</u></p> <p>17. We also find that the subsequent seniority lists issued on 14.08.2020 & 11.12.2020 are only the seniority lists for a particular vacancy year. <u>We again find it a bit intriguing that while the 13.07.2019 list mentions “up to the vacancy year 2010-11”, the subsequent seniority list are titled “for the vacancy year 2011-12, 2012-13 & 2013-14”. Why the first seniority list is up to a particular date and why the second</u></p>

seniority list is only for a particular year is a question that remains un- answered".

18. ***We are not inclined to treat the list of 11.12.2020 and 14.08.2020 as seniority list. At the most, they are list of people recruited/appointed/promoted to the post of Deputy Director against the vacancies of a particular year.*** The seniority list is a list of all persons holding that position in order of seniority; It certainly is not the list whether in order of seniority or otherwise of a persons recruited only for a particular year.

19. It is apparent on the face of the facts of the case as borne out by the voluminous record and the arguments put forth by the learned counsel for the parties that there is only one seniority list dated 13.07.2019 which too is only for up to the year 2010-2011. All the lists subsequently issued cannot be treated as seniority lists, as they do not contain the names of all officers holding the post of Deputy Direction on the date of its issue.

20. **Moreover, the seniority list of 2019 assigned seniority to various persons with effect from the date when they were neither recruited nor appointed. No doubt both the learned counsel for the respondents have vehemently argued that this seniority list adheres to 2014 DOP&T memorandum which itself was an outcome of the judgement rendered by the Hon'ble Supreme Court in N.R. Parmar case (supra), we are not inclined to agree to this interpretation of the Hon'ble Supreme Court in N.R. Parmar case nor does the DOP&T memorandum anywhere state that the seniority is to be assigned in the vacancy year for which the recruitment is made.** At the most it allows assignment of the seniority during the year when the

recruitment process was set in motion. Nowhere has it been established that the recruitment process has been set in a motion w.e.f. the date on which the seniority has been assigned to various persons.

21. Learned counsel for the applicant draws attention to several names in the seniority list wherein the persons have been assigned seniority in the year 2010-11 whereas they got to be recruited in 2013-14 and even 2015. It defies logic that a person who is initially appointed in the year 2015 gets the seniority of 2010-11 when he was not even in existence in the organisation. Whereas, on the other hand, the applicant had been promoted in July, 2012 but his name does not figure in the seniority list of 2010-11, even though the seniority list got issued in July, 2019 when several persons had been occupying the position for up to seven years. The respondents may have their own reason for issuing the said seniority list, they may have interpreted the N.R. Parmar case (supra) and the DOP&T Memorandum of 2014 in their own way, **but we are of the considered view that the seniority list of 2019 does not adhere to either of the communications. Accordingly, we have no hesitation in setting aside the seniority list dated 30.07.2019. Further since the subsequent impugned seniority lists have been held not to be seniority lists by us, we quash the same too. We direct the respondents to issue a fresh seniority list for the post of Deputy Director strictly in accordance with the office memorandums issued by the DOP&T from time to time, specific guidelines/rules/memorandum which shall be applicable as on date, and strictly in accordance with the law as enshrined and as laid down by the Hon'ble Apex Court. The directions of the Tribunal**

	<u>be complied with within a period of 12 weeks from the date of this order. The OA stands allowed with the aforesaid directions.”</u>
27.09.2022	<p>The final order and judgement dated 12.07.2022 was impugned before the Hon’ble High Court of Delhi in Writ Petition (Civil) No. 13948 of 2022 titled as ‘<i>Sanjay Kumar & Anr. v. Employees’ State Insurance Corporation & Ors.</i>’.</p> <p>The Hon’ble High Court vide Order dated 27.09.2022 has been pleased to observe as under:</p> <p style="padding-left: 40px;">“3. In case any seniority list is drawn up pursuant to the impugned order, the same shall be subject to further orders of this Court.”</p> <p>The Writ Petition is as on date pending consideration and is next listed on 27.03.2023 before the Hon’ble High Court.</p>

2. Furthermore, there are certain observations in the Instant Provisional Seniority List which appear to be in teeth of the 2022 Judgement especially Para 21 and 22 thereof, and showcases that the ESIC has already come to a final conclusion as regards the directions of the Hon’ble Tribunal contained in the 2022 Judgement. Additionally, it appears that there is only a selective reading of the 2022 Judgement rendered by the Hon’ble

Tribunal and a misreading of Para 7 (iii) of the 2021 OM relevant extracts of the Instant Provisional Seniority List are quoted hereunder:

- (1) "All three seniority lists of Deputy Director dated 30.07.2019, 14.08.2020 and 11.12.2020 have been merged in this provisional seniority list by making a solitary list, as per observations of Hon'ble Tribunal in the said order dated 12.07.2022 and legal opinions as well.
- (2) The Hon'ble CAT, in para 10, 17 & 19 of its judgement dated 12.07.2022, also, observed that the seniority list may be prepared till a particular date instead of vacancy year and all Officers occupying the said post on the date of issuance of seniority list may also be enlisted in the said seniority list. Keeping In view the said observation, all Deputy Directors who are holding the post of Deputy Director on regular basis as on 01.01.2023, have been included in this redrawn provisional seniority list.
- (3) As per direction of Hon'ble Tribunal the redrawn seniority lists shall be in accordance with as per DoP&T OMs issued from time to time and in accordance with the law as enshrined and as laid down by the Hon'ble Apex Court. **Accordingly, Officers enlisted in seniority list dated 30.07.2019 have been placed above to the Officers enlisted in the seniority lists dated 14.08.2020 and 11.12.2020 in this redrawn provisional seniority list and the order of their seniority position has not been changed as the same is in accordance with DoP&T O.Ms. issued from time to time and the law enshrined and laid down by the Hon'ble Apex Court and also as per legal opinions.**
- (4) **The Officers enlisted in seniority list dated 14.08.2020 are also enlisted in the seniority list dated 11.12.2020 in right order of their seniority position except blank slots in between. Therefore, the Officers enlisted in the seniority list dated 11.12.2020 have been placed below the Officers enlisted in the seniority list dated 30.07.2019 in this redrawn provisional seniority list in the same order after removing the blank slots. This is in the light of the decision of the Hon'ble Apex Court in the Meghachandra case and as per legal opinion.**
- (5) Thereafter, the names of Officers who were promoted/appointed on regular basis after the Officers **enlisted in the seniority lists dated 30.07.2019 & 11.12.2020 and not**

enlisted in these seniority lists, have also been placed in this redrawn provisional seniority list in order of select panel recommended by DPC which is in accordance with aforesaid judgement dated 12.07.2022 and in accordance with existing DoP&T O.M. dated 13.08.2021."

3. The Objections of the undersigned are as follows:

A. ***THE PROVISIONAL SENIORITY LIST IS FINAL AND CONCLUSIVE IN VIEW OF THE OBSERVATIONS IN PARAS (3), (4) AND (5) OF THE PROVISIONAL SENIORITY LIST.***

As stated hereinabove, from a bare perusal of Paras (3), (4) and (5) of the Provisional Seniority List, it is unequivocally clear that the ESIC has already decided that the Provisional Seniority List is deemed to be the Final Seniority List inasmuch as:

- (i) It has been conclusively opined in Para (3) thereof '*Accordingly, Officers enlisted in seniority list dated 30.07.2019 have been placed above to the Officers enlisted in the seniority lists dated 14.08.2020 and 11.12.2020 in this redrawn provisional seniority list and the order of their seniority position has not been changed as the same is in accordance with DoP&T O.Ms. issued from time to time and the law enshrined and laid down by the Hon'ble Apex Court and also as per legal opinions'*;
- (ii) Para (4) and (5) also read as the ESIC has already formulated its mind as regards its erroneous interpretation of the 2022 Judgement, judgement of the Hon'ble Supreme Court in Meghachandra (*Supra*) and the DoPT OMs issued from time to time on the basis of legal opinions received;

(iii) In the submission of the undersigned it is expressly clear that the release of the Provisional Seniority List is an empty formality inasmuch as the ESIC has already on the basis of legal opinions adjudicated any possible representation/objections of the officers mentioned in the Seniority List.

B. THE PROVISIONAL SENIORITY LIST IS IN EXPRESS DEROGATION TO THE JUDGEMENT OF THE HON'BLE SUPREME COURT IN K. MEGHACHNDRA (SUPRA) AND 2022 JUDGEMENT RENDERED BY THE HON'BLE TRIBUNAL IN THE ORIGINAL APPLICATION.

- (i) It is submitted that the Provisional Seniority List is in derogation to the judgement of the Hon'ble Supreme Court in Meghachandra (*Supra*) wherein the well settled principle of Seniority was reiterated viz. 'seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre'.
- (ii) The Provisional Seniority List like the 2019 Seniority List again confers seniority on officers who were borne in the cadre after the promotion of the undersigned dated 24.07.2012. There are 52 officers who have been appointed in 2012, 2013, 2014 and 2015 who have been placed en-bloc senior to the undersigned despite the dictum of the Hon'ble Supreme Court in Meghachandra (*Supra*).
- (iii) Furthermore, there is a selective compliance of the 2022 Judgement passed by the Hon'ble Tribunal, the Corporation has wholly ignored the directions of the Hon'ble Tribunal contained in Para 21 and 22

of the 2022 Judgement, relevant extracts whereof are again quoted hereunder for your kind perusal:

“20. Moreover, the seniority list of 2019 assigned seniority to various persons with effect from the date when they were neither recruited nor appointed. No doubt both the learned counsel for the respondents have vehemently argued that this seniority list adheres to 2014 DOP&T memorandum which itself was an outcome of the judgement rendered by the Hon’ble Supreme Court in N.R. Parmar case (supra), we are not inclined to agree to this interpretation of the Hon’ble Supreme Court in N.R. Parmar case nor does the DOP&T memorandum anywhere state that the seniority is to be assigned in the vacancy year for which the recruitment is made. At the most it allows assignment of the seniority during the year when the recruitment process was set in motion. Nowhere has it been established that the recruitment process has been set in a motion w.e.f. the date on which the seniority has been assigned to various persons.

21. Learned counsel for the applicant draws attention to several names in the seniority list wherein the persons have been assigned seniority in the year 2010-11 whereas they got to be recruited in 2013-14 and even 2015. It defies logic that a person who is initially appointed in the year 2015 gets the seniority of 2010-11 when he was not even in existence in the organisation. Whereas, on the other hand, the applicant had been promoted in July, 2012 but his name does not figure in the seniority list of 2010-11, even though the seniority list got issued in July, 2019 when several persons had been occupying the position for up to seven years. The respondents may have their own reason for issuing the said seniority list, they may have interpreted the N.R. Parmar case (supra) and the DOP&T Memorandum of 2014 in their own way, but we are of the considered view that the seniority list of 2019 does not adhere to either of the communications. Accordingly, we have no hesitation in setting aside the seniority list dated 30.07.2019. Further since the subsequent impugned seniority lists have been held not to be seniority lists by us, we quash the same too. We direct the respondents to issue a fresh seniority list for the post of Deputy Director strictly in accordance with the office memorandums issued by the DOP&T from time to time, specific guidelines/rules/memorandum which shall be applicable as

on date, and strictly in accordance with the law as enshrined and as laid down by the Hon'ble Apex Court. The directions of the Tribunal be complied with within a period of 12 weeks from the date of this order. The OA stands allowed with the aforesaid directions."

- (iv) The aforementioned directions unequivocally posit that an officer cannot be assigned Seniority when he was not even borne in the cadre viz. 'It defies logic that a person who is initially appointed in the year 2015 gets the seniority of 2010-11 when he was not even in existence in the organisation. Whereas, on the other hand, the applicant had been promoted in July, 2012 but his name does not figure in the seniority list of 2010-11, even though the seniority list got issued in July, 2019 when several persons had been occupying the position for up to seven years'.
- (v) In the submission of the undersigned the purported proposed Provisional Seniority List is not only contrary to the direction of the Hon'ble Tribunal in the 2022 Judgement but is also an attempt to overreach the 2022 Judgement and as such ex-facie contemptuous.

C. THE PROVISIONAL SENIORITY LIST IS IN EXPRESS DEROGATION TO PARA 7 (iii) OF THE 2021 OM ISSUED BY THE DOPT.

- (i) The very attempt of the Corporation to place 52 officers who have been appointed in 2012, 2013, 2014 and 2015 who have been placed en-bloc senior to the undersigned once again despite the dictum of the Hon'ble Supreme Court in Meghachandra (*Supra*) and the 2022 Judgement of the Hon'ble Tribunal is also in teeth of the

clear, unequivocal language of the 2021 OM issued by the DoPT which provides:

“(iii) In case of direct recruits and promotees appointed/joined during the period between 27.11.2012 and 18.11.2019 and in which case *inter se* seniority could not be finalised by 18.11.2019, shall also be governed by the provisions of O.Ms. dated 7.2.1986/3.7.1986 read with OM dated 4.3.2014, **unless where a different formulation/manner of determination of seniority has been decided by any Tribunal or Court.**”

- (ii) In the submission of the undersigned once the 2022 Judgement has categorically laid down in Para 20 and 21 as regards the drafting of the Seniority List than even in terms of Para 7 (iii), the Corporation is bound to follow the 2022 Judgement, where a specific **formulation/manner of determination of seniority has been decided.** The same admittedly has not been followed once again by the Corporation.

D. WRONG ALLOCATION OF SENIORITY TO DIRECT RECRUITED PANEL DRAWN IN YEAR 2009, 2010 AND 2012 AGAINST VACANCY YEAR 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 AND 2011-12.

- (i) Many of the DR officers who were appointed in year 2009 to 2015 and assigned seniority of five six years back when neither they were born in cadre nor they were eligible for post in vacancy year against which they were assigned seniority.

E. LEGAL ADVICE : The ESIC has also received contrary opinions to opinion which were cited in this provisional list which are not cited in the Instant Provisional Seniority List. The information on this point is requested under RTI Act, 2005 by some of our officers.

F. WITHOUT PREJUDICE TO ALL OTHER SUBMISSIONS THE UNDERSIGNED BEING PROMOTED ON 24.07.2012, THERE CAN BE NO CASE WHATSOEVER OF APPLICATION OF THE 2014 OM OR THE 2021 OM AND THE FEBRUARY AND JULY 1986 OMs ARE THE NECESSARY INSTRUCTIONS APPLICABLE IN DRAFTING THE SENIORITY OF THE UNDERSIGNED.

- (i) As is clear from a reading of Para 5 (h) of the 2014 OM, the 2014 OM is applicable from the date the Hon'ble Supreme Court had adjudicated NR Parmar (*Supra*) i.e. 27.11.2012, whereas the undersigned was promoted on 24.07.2012.
- (ii) Therefore, in any case whatsoever, the 2014 OM or the 2021 OM can have no application to the placement of Seniority of the undersigned and the case of the undersigned has to be covered by the *February and July 1986 OMs*.
- (iii) In view of the factual matrix dilated and submissions made hereinabove, it is submitted that the undersigned has to be placed above 52 officers who have been appointed in 2012, 2013, 2014 and 2015 who have been placed en-bloc senior to the undersigned despite the dictum of the Hon'ble Supreme Court in Meghachandra (*Supra*), 2022 Judgement rendered by the Hon'ble Tribunal and in consonance with Para 7 (iii) of the DoPT OM.

Your's Faithfully
