



GOVERNMENT OF INDIA

OFFICE OF THE PRINCIPAL COMMISSIONER OF CGST & CENTRAL TAX:
KOLKATA- NORTH COMMISSIONERATE, CGST BHAWAN:

1ST FLOOR:180, SHANTIPALLY, RAJDANGA MAIN ROAD, E.M BYPASS KOLKATA-700107
C. No. V(30)146/RTI/HQ/CGST & CX/Kol-North/2021

Dated: -

To

Shri Somnath Mondal,
Biswayan, Flat No.A6 (3rd Floor),
121/7C, Purbachal Kalitala Road,
Kolkata-700078

Sir/Madam,

Sub: Information under the RTI Act, 2005 — Regarding.

Please refer to your RTI application dated-18.11.2021, which has been received in this Commissionerate on 18.11.2021 and received to this section on 18.11.2021. Subsequently the said RTI application was registered at this office vide Registration No.149/RTI/Kol-North/2021 dated- 26.11.2021.

The desired informations as received from the AO(DPC), Kolkata North CGST&CX Commissionerate is enclosed herewith.

If you are aggrieved or dissatisfied with the above information, you may prefer an appeal within 30 (thirty) days of receipt of the information before the 1st Appellate Authority namely Ms Mohsina Tabassum, Joint Commissioner & FAA, CGST & CX, Kolkata-North Commissionerate, O/o The Principal Commissioner of CGST & CX, 2nd Floor, Kendriya Utpad Shulk Bhawan. 180, Shantipally, Rajdanga Main Road, Kolkata-700107.

Encl: 12 (Twelve) sheets.



Yours faithfully,

Sdf

(Indu Bikash Das)
CPIO & Assistant Commissioner
HQ, RTI Cell
CGST: Kol-North Comm'te.

Dated: **13 DEC 2021**

C. No. As above/ **21763**
Copy forwarded for information to: -

- 1 The Assistant Commissioner (Systems), Computer Cell, CGST & CX, Kolkata North Commissionerate with a request to upload the RTI application dated-18.11.2021, submitted by Shri Somnath Mondal, Biswayan, Flat No.A6 (3rd Floor), 121/7C, Purbachal Kalitala Road, Kolkata-700078(enclosed Thirteen sheets).

Sdf
13/12/21

(Indu Bikash Das)
CPIO & Assistant Commissioner
HQ, RTI Cell
CGST: Kol-North Comm'te.

15172
22/11/21

To
The CPIO & Assistant Commissioner,
CGST & CX,
Kolkata North Commissionerate
Kolkata



Date: 18/11/2021

Sir,

Sub: Application under Right To Information Act, 2005 – Reg.

You are requested to furnish following information/documents:

1. Details of actions taken w.r.t. DoPT O.M. No. 20011/2/2019-Estt.(D) dated 13.08.2021 circulated by CBIC under F. No.A.23024/01/2007-Ad.IIIA(Pt.) dated 18.08.2021 regarding "Judgement of the Hon'ble Supreme Court of India in Civil Appeal No. 8833-8835 of 2019 of K. Meghachandra Singh & Ors. Vs Ningam Siro & Ors - revised instructions relating to seniority of direct recruits and promotces and inter-se seniority thereof."
2. All the notesheet pages from relevant file(s) from initiation to present date w.r.t. Pt. No.1.
3. Details of legal and/or administrative bar/hindrance to publish/issue seniority list of LDC and TA in accordance to DoPT OM mentioned in Pt. No.1.

I am a citizen of India and address is given below. Requisite RTI application fee for Rs.10/- is being remitted vide Indian Currency Note of Sl. No 23E 434465 is enclosed.

Encl: Indian Currency Note of
Sl. No 23E 434465

Yours faithfully,

(Somnath Mondal)

Address: Biswayan, 3rd Floor, Flat - A6
121/7c, Purbachal Kalitala Road
Kolkata - 700078

Suf of Suf



भारत सरकार
GOVERNMENT OF INDIA
प्रधान आयुक्त का कार्यालय

OFFICE OF THE PRINCIPAL COMMISSIONER

CENTRAL GST AND CENTRAL EXCISE, KOLKATA NORTH COMMISSIONERATE

केन्द्रीय वस्तु एवं सेवा कर भवन, 180, शांतिपल्ली, आर. बी. कनेक्टर, कोलकाता - 700 107

Central GST Bhawan, 180 Shanti Pally, R. B. Connector, Kolkata - 700 107

Phone No. 033-2441-8137: Fax No. 033- 2441-6871

II(39)5-ET/CON/RTI/CGST & CX/Kol North/2019

Dated:

10 DEC 2021

To
The Assistant Commissioner & CPIO,
HQ, RTI Cell, CGST & CX,
Kolkata North Commissionerate,
180, Shanti Pally, Rajdanga Main Road,
Kolkata - 700 107.

Sir/Madam,

Sub: RTI application dated 18.11.2021 filed by Shri Somnath Mondal, Biswayan, Flat No. A6
(3rd floor), 121/7C, Purbachal Kalitala Road, Kolkata-700078 being transferred under Sec.
5(4) of RTI Act, 2005-Reg.

Please refer to your letter C. No. V(30)146/RTI/HQ/CGST & CX/Kol North/2021/20644 dated
26.11.2021 on the above heading.

In accordance with the available office records and as far as this section (DPC) is concerned, the
point wise reply is furnished as under.

Point 1: Preparation of Seniority List is in progress as per the DoPT O.M. No. 20011/2/2019-Estt
(D) dated 13.08.2021 keeping in mind pending CAT cases/Court Cases.

Point 2: Notesheet pages are annexed herewith.

Point 3: As already mentioned in point no 01 Seniority List is in progress.

This for your information and necessary action please.

Yours faithfully,

Encls: As above (10 pages)

H Saha
10.12.2021(Mallika Saha)
Administrative Officer (DPC)

Please go through the DoPT's O.M. No. 20011/2/2019-Estt (D) dated 13.08.2021, opposite (C/p-123 to 132) for the guide lines for re-fixation of inter se seniority between Recruitment and Promotee.

Before preparation of the re-fixation process it is necessary to clear some doubts out of the O.M. stated above as to ensure equal treatment of DR & PR appointees.

Firstly, as O.M. dated 04.03.2014 (C/p-119 to 122) is treated as non-est/withdrawn whether the seniority position which was functional before 27.11.2012 in CGST & CX, K Zone would be restored to its original position upto the date of 26.11.2012.

Secondly, it is clear from the para 7(iv) of the O.M. dated 13.08.2021 that inter se seniority between DR and PR appointees whose recruitment process have been initiated by 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 should be prepared in accordance with O.M. dated 04.03.2014 (N.R. Parmar Judgement) to ensure fair treatment of such appointees.

However, it is not clearly mentioned for what should be the relative seniority between appointees who have joined on or after 27.11.2012 i.e. the date of N.R. Parmar Judgement whose recruitment process was initiated before 27.11.2012. For example what should be the inter se seniority between two appointees say, 'A' & 'B', if recruitment process for 'A' was started in the year of 2009 and for 'B' it was 2010 but for which 'A' joined before 27.11.2012 and 'B' joined on or after 27.11.2012. In this case equal treatment as mentioned in para 7(iv) is not possible to maintain if NR Parmar Principles is to be employed because N.R. Parmar principle is not effective on the appointee 'A'. Generally it is seen that the candidates used to join in a department two or three years after SSC or any other recruiting agency has initiated recruitment process.

On the other hand, such ambiguities may be avoided if the N.R. Parmar principle is employed for the appointees whose Recruitment Year falls/initiated between the period 27.11.2012 and 18.11.2019 including these two dates.

As above the advice of the competent authority is necessary for future course of action in preparing a flawless Seniority list and further holding effective DPC for promotion which is pending up since long in the grade of Ministerial (Gazetted/Non Gazetted) posts.

It would be important to mention here that several representations has been submitted by the Ministerial Officers (Non Gazetted) who are affected by the delay of preparation of indisputable seniority list and thereby future promotion prospects in their service life.

Put up for kind perusal and necessary advice/instructions please.

FA
(Sukanta Nath)
EA, 01.10.2021

AO (DPC)
H. Saha
01.10.2021

Asst H. Commr.
As discuss
in person.
C. B. B. B.
04.10.21

AO (APC)

Discussed the matter and as directed another fresh note be prepared and resubmit the file.

MEGHACHANDRA CGST & CX/KOL NORTH/2021/PT-II

Please go through DoPT's O.M. No. 20011/2/2019-Estt (D) dated 13.08.2021 communicated vide boards letter F. No.23024/01/2007-Ad.III (Pt.) dated 18.08.2021 among other letters receive from various quarters placed opposite and also see the representations of various stake holders regarding the issue of Seniority List placed in separate folder.

1. In the DoPT's OM dated 13.08.2021 guidelines for determination of inter se seniority of direct recruits and promotees are laid down in the light of Hon'ble Supreme Court's Judgement on 19.11.2019 in K. Meghachandra Singh Case. DoPT being the nodal Department examined the Judgement dated 19.11.2019 and has treated its guidelines circulated vide OM dated 04.03.2014 as non-est/withdrawn with effect from 19.11.19 in para 7(i) of the OM dated 13.08.2021. The guideline has made it clear that this decision will not affect the inter se seniority already based on N R Parmar and the same is protected w.e.f 27.11.2012 till 18.11.2019 prospectively i.e. the day before the date of Judgement of the Hon'ble Supreme Court of India in K.Meghachandra Singh &Ors. Vs Ningam Siro & Ors on 19.11.2019.

2. The seniority of DR & PR for the officers of all grades coming under the jurisdiction of this CCA was fixed/determined in terms of guidelines prescribed in DoPT's O.M dated 04.03.2014 retrospectively, which implies that it does not comply with the very basics of the DoPT's guideline as per NR Parmar Judgement for fixation of inter se seniority between DR and PR effecting it with from 27.11.2012. As a result various OA's and MA's were filed in CAT by the officer disadvantaged in seniority position.

3. Among the CAT cases, verdict of O.A. No.350/00508 of 2018 in the matter of Shri Shyam Sundar Sethi Vs union of India & Ors and O.A No. 350/119/2021 in the matter of Shri Pradip Kumar Prasad & five other has been given by the Honb'le CAT.

(a) Shri Shyam Sundar Sethi, working as Inspector under the Cadre Controlling Authority of CGST & CX, Kolkata Zone, had filed an OA No. 350/00508/2018 before the Hon'ble CAT, Kolkata Bench and sought relief inter-alia to quash the final seniority list of LDC (Pre-restructured) issued (retrospectively) vide OM under C.No. II(39)01-ET/Con/NR Parmar/CGST & CX/Kol North/2017/10721-10759 dated 22.03.2018. The Hon'ble CAT, Kolkata Bench passed an Order dated 29.01.2021 and directed to the authorities to decide on the claim of the applicant strictly in terms of O.M. of DoPT dated 04.03.2014 in particular Para 5(h) and 5(i) and consequent benefits, if any, should be made available to the applicant.

The matter was referred to Board vide letter dated 05.03.2021. Board vide letter under F.No. A.32022/58/2018-Ad.III.A(Pt.) dated 20.04.2021 further clarified that the provision contained in Para 5(c) to 5(g) of OM F.No. 2011/1/2012-ESTT. (D) dated 04.03.2014 have been applicable w.e.f. 27.11.2012 i.e. the date of judgement of Hon'ble Supreme Court in NR Parmar Case. In the said letter it was also requested to take further action on the basis of directions as contained in DoPT's OM and F. No 28027/1/2016-Estt.A-III dated 16.03.2016 in respect of the CAT's Order dated 29.01.2021. In serial no 1 of the OM of DoPT dated 16.03.2016 following direction has been given:

Sl. No	Orders of Court	Action to be taken
01.	A decision/order has been quashed by Tribunal/Court on the ground that it is violative of the Rules/Government instructions, but Government's policy has not come in for adverse comments..	The Administrative Department may implement the CAT Order/Judgement if it is in consonance with Government policy and the government case has been lost due to Administrative infirmities.

(b) Shri Pradip Kumar Prasad and five (5) Executive Assistants had filed 6 Nos of Original Applications bearing Nos. 350/119-124/2021, before Hon'ble CAT, Kolkata Bench regarding finalisation of seniority issue in the grade of erstwhile STA which was prepared by implementing NR Parmar judgment w.e.f 2003. i.e. introduction of the post. The operative part of the Common Order passed by the Hon'ble CAT, Kolkata Bench on 08.03.2021 on the subject referred 6 (Six) matters. is reproduced as follows:

Continued from NSP-1

"Since the matter is pending before the DOPT for consideration, the OA is disposed of with a direction to the respondent authority to pass an appropriate order after finalizing the issue which is pending before the DOPT and issue an appropriate order within 3 month thereafter."

Thus, the OAs would stand disposed of. No costs."

A letter had been sent on 13.05.2021 to Board and necessary direction was sought for. In reply, Board vide its letter dated 03.08.2021 has stated that "CCA to go with the CAT Order in the present matter. So far the issue of implementation of CAT order in Shyam Sundar Sethi case, the instruction in the matter have already been conveyed to the CCA vide letter dated 20.04.2021 and it is directed to take action accordingly".

4. Finally, Board vide its letter F. No.23024/01/2007-Ad.III (Pt.) dated 18.08.2021 categorically instructed that, "Now, in supersession of all instructions issued on the subject, henceforth, all the cases of seniority of Direct recruits and promotee officers of group 'B' (Non-Gazetted) and Group 'C' [i.e. upto the grade of Inspector CGST/Examiner/PO] including inter se seniority thereof, shall be decided in terms of DoPT O.M dated 13.08.2021.

5. In the context of all above mentioned facts from Para 01 through 4 it is pertinent to say that the Seniority lists which were prepared in accordance with the DoPT's OM dated 04.03.2014 were not in accordance to what it says and its intention.

(a) As above it is necessary to have direction/advice from the competent authority whether to undo all seniority list which were prepared in the light of NR Parmar Judgement retrospectively i.e. since 1986 or 2003 or any other date/year, instead of w.e.f the date of the Judgement on 27.11.2012 and restore the original seniority position of the respective officers in the respective grade that was maintained before N.R. Parmar Judgement.

(b) Further, approval may please be given to prepare seniority list as per the guideline mentioned in the DoPT's O.M. No. 20011/2/2019-Estt (D) dated 13.08.2021 communicated vide boards letter F. No.23024/01/2007-Ad.III (Pt.) dated 18.08.2021 if deem it fit.

Put up for kind perusal and necessary instruction/direction/advice and approval from the competent authority please.

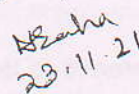
EA (DPC)



23/11/21

(Sukanta Nath)

AO (DPC)


23.11.21

Asstt. Commr. (px)

Please go through DoPT's O.M. No. 20011/2/2019-Estt (D) dated 13.08.2021 communicated vide boards letter F. No.23024/01/2007-Ad.III (Pt.) dated 18.08.2021 among other letters receive from various quarters placed opposite and also see the representations of various stake holders regarding the issue of Seniority List placed in separate folder.

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2. The seniority of DR & PR for the officers of all grades coming under the jurisdiction of this CCA was fixed/determined in terms of guidelines prescribed in DoPT's O.M dated 04.03.2014 **retrospectively**, which implies that it does not comply with the very basics of the DoPT's guideline as per NR Parmar Judgement for fixation of inter se seniority between DR and PR effecting it with from 27.11.2012. As a result various OA's and MA's were filed in CAT by the officers disadvantaged in seniority position.

3. Among the CAT cases, verdict of O.A. No.350/00508 of 2018 in the matter of Shri Shyam Sundar Sethi Vs Union of India & Ors and O.A No. 350/119/2021 in the matter of Shri Pradip Kumar Prasad & five other has been given by the Honb'le CAT.

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The matter was referred to Board vide letter dated 05.03.2021. Board vide letter under F.No. A.32022/58/2018-Ad.III.A(Pt.) dated 20.04.2021 further clarified that the provision contained in Para 5(c) to 5(g) of OM F.No. 2011/1/2012-ESTT. (D) dated 04.03.2014 have been applicable w.e.f. 27.11.2012 i.e. the date of judgement of Hon'ble Supreme Court in NR Parmar Case. In the said letter, it was also requested to take further action on the basis of directions as contained in DoPT's OM and F. No 28027/1/2016-Estt.A-III dated 16.03.2016 in respect of the CAT's Order dated 29.01.2021. In serial no 1 of the OM of DoPT dated 16.03.2016 following direction has been given:

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01.	A decision/order has been quashed by Tribunal/Court on the ground that it is violative of the Rules/Government instructions, but Government's policy has not come in for adverse comments.	The Administrative Department may implement the CAT Order/Judgement if it is in consonance with Government policy and the government case has been lost due to Administrative infirmities.

(b) Shri Pradip Kumar Prasad and five (5) Executive Assistants had filed 6 Nos of Original Applications bearing Nos. 350/119-124/2021, before Hon'ble CAT, Kolkata Bench regarding finalisation of seniority issue in the grade of erstwhile STA which was prepared by implementing NR Parmar judgment w.e.f 2003. i.e. introduction of the post. The operative part of the Common Order passed by the Hon'ble CAT, Kolkata Bench on 08.03.2021 on the subject referred 6 (Six) matters, is reproduced as follows;

Continued from NSP-45

"Since the matter is pending before the DOPT for consideration, the OA is disposed of with a direction to the respondent authority to pass an appropriate order after finalizing the issue which is pending before the DOPT and issue an appropriate order within 3 months thereafter.

Thus, the OAs would stand disposed of. No costs."

A letter had been sent on 13.05.2021 to Board and necessary direction was sought for. In reply, Board vide its letter dated 03.08.2021 has stated that "CCA to go with the CAT Order in the present matter. So far the issue of implementation of CAT order in Shyam Sundar Sethi case, the instruction in the matter have already been conveyed to the CCA vide letter dated 20.04.2021 and it is directed to take action accordingly".

4. Finally, Board vide its letter F. No.23024/01/2007-Ad.III (Pt.) dated 18.08.2021 categorically instructed that, "Now, in supersession of all instructions issued on the subject, henceforth, all the cases of seniority of Direct recruits and promotee officers of group 'B' (Non-Gazetted) and Group 'C' [i.e. upto the grade of Inspector CGST/Examiner/PO] including inter se seniority thereof, shall be decided in terms of DoPT O.M dated 13.08.2021.

5. In the context of all above mentioned facts from Para 01 through 4, it is pertinent to say that the Seniority lists which were prepared in accordance with the DoPT's OM dated 04.03.2014 were not in accordance to what it says and its intention.

(a) As above, it is necessary to have direction/advice from the **competent authority** whether to undo all seniority list which were prepared in the light of NR Parmar Judgement retrospectively i.e. since 1986 or 2003 or any other date/year, instead of w.e.f the date of the Judgement on 27.11.2012 and restore the original seniority position of the respective officers in the respective grade that was maintained before N.R. Parmar Judgement.

(b) Further, approval may please be given to prepare seniority list as per the guidelines mentioned in the DoPT's O.M. No. 20011/2/2019-Estt (D) dated 13.08.2021 communicated vide boards letter F. No.23024/01/2007-Ad.III (Pt.) dated 18.08.2021 if deem it fit.

Put up for kind perusal and necessary instruction/direction/advice and approval from the competent authority please.

EA (DPC)

AO (DPC)

29/11/21
(Sukanta Nath)

Notes from pre-page to above may kindly be seen.

Submitted for kind perusal and necessary direction please.

H. S. Saha
29.11.21

Ass.H. Commr. (P&V)

pl. prepare a comprehensive chart in tabular form.

29/11/21


AO

Pls. prepare a chart in this regard in new direction.

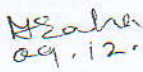
"NSP-07"

Please peruse NSP-06 below regarding the instruction of AC (P & V) for the preparation of a comprehensive tabulated format for the Seniority issue. Accordingly a Chart has been prepared and placed opposite for kind perusal and necessary advice please

EA (DPC)


06/12/21
(Sukanta Nath)

AO (DPC)


09.12.2021
(Mallika Saha)

Asstt. Commr. (prv)

"Brief History & Proposal regarding Seniority List Issues & Promotional Channels"

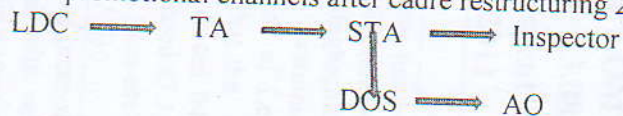
Since the time of Cadre Restructuring 2002, the following pattern of promotional channel are/were in existence.

(1)

Sl. No.	Name of the post	Feeder cadre	PR : DR	Remarks (if any)
1	LDC	Sepoy/Havalder	100% promotional post	Previous LDC RRs 2002. Later on LDC RRs amended & notified on 04.06.2013.
2	TA	LDC	10 : 90	Previous TA RRs 2003. Later on TA RRs amended and notified on 10.01.2014.
3	STA	TA	100% promotional post	The STA RRs 2003. Later on the STA post was abolished w.e.f. 18.12.2013.
4	DOS	STA	100% promotional post	The DOS RRs 2009 (upon merging DOS L-I & L-II). Later on the DOS post was abolished w.e.f. 18.12.2013
5	Inspector	STA	33.33 : 66.67 (in terms of Inspector RRs 2002). Later on, 10 : 90 (in terms of Inspector RRs 2016)	The Inspector RRs 2002. Later on, the RRs was amended & notified on 26.12.2016.
6	A.O.	DOS	100% promotional post	AO RRs 1987. Later on, the RRs amended in 2013 and further amended on 21.05.2020.
7	EA	TA	60 : 40	The EA post came into force w.e.f. 18.12.2013 upon merger of erstwhile DOS & erstwhile STA posts. The RRs of EA was notified on 28.09.2015.

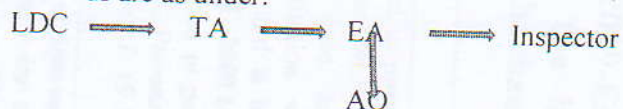
(2)

The promotional channels after cadre restructuring 2002 to 17.12.2013 were as under:



(3)

The promotional channels at present (since 18.12.2013) (cadre Restructuring) onwards are as under:



SENIORITY SCENARIO

Hon'ble Supreme Court of India's verdict on inter se Seniority between Promotees and Direct recruits in the case of K. Meghachandra Singh & Ors. Vs. Ningham Siro & Ors on 19.11.2019 and corresponding DoPT's Order on 13.08.2021 has drawn the guidelines for preparation of Seniority list in the Grade of Ministerial Cadre and thus clear the deadlock of promotional flow in the Cadre. Following is the tabulated form in a nutshell to understand the whole process.

(01)	(02)	(03)
Seniority List as per DoPT's OM 22011/7/86-Estt (D) dated 3.07.1986. & 20011/1/2006-Estt. (D) dated 03.03.2008 in the time of pre N.R Parmar Judgment i.e before the date of 27.11.2012	Seniority List prepared in the light of NR Parmar Judgement. O.M. 20011/1/2012-Estt. (D) dated 04.03.2014	Future Seniority List that would be prepared in accordance with the DoPT's OM 20011/2/2019-Estt.(FD) dated 13.08.2021 in the light of Judgement in K. Meghachandra on 19.11.2011
01. Prepared in accordance with the DoPT's O.M. No. 22011/7/86-Estt (D) dated 3.07.1986. & 20011/1/2006-Estt. (D) dated 03.03.2008	The matter has been examined in pursuance of Hon'ble Supreme Court Judgment on 27.11.2012, in civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar v UoI and others in consultation with the department of Legal Affairs and it has been decided, that the DoPT's O.M. 20011/1/2006-Estt. (D) Dated 03.03.2008 is treated as non-existent/withdrawn ab initio.	The matter has been examined in pursuance of Hon'ble Supreme Court Judgment on 19.11.2019, in K. Meghachandra Singh case. has been carefully examined in consultation with the Department of Legal Affairs, and it has been decided, that the DoPT's O.M. 20011/1/2006-Estt. (D) dated 04.03.2014 issued in pursuance of Order dated 27.11.2012 in N.R. Parmar case is treated as non-est/withdrawn w.e.f 19.11.2019 Sub Para 7 (i)
02. Instructions contained as per above OM provides that rotation of quotas for purpose of determining inter se seniority would take place only to the extent of available direct recruits and the promotes which would be done as per rotation of quota to the extent of number of vacancies for	In its judgement dated 27.11.2012, the Hon'ble Apex Court held that the available direct recruits and promotes, for assignment of inter se seniority, would refer to the recruitment process for either of the modes of recruitment (direct recruitment or promotion) for a	Seniority of promotes or direct recruits would be determined with reference to the year of their actual joining/appointment to the post. Thus, they would get seniority of the year in which they actually join i.e year in which formal appointment order is issued or they are borne in the

	direct recruits and promotes, as determined according to the quota for that year.	particular vacancy year is initiated viz. initiation of recruitment process against a vacancy year would mean the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits or the date on which a proposal, complete in all respects, is sent to DPC for convening of DPC to fill up vacancies earmarked for promotion.	service/cadre and that they shall not get seniority of any earlier year (viz. year of Vacancy/paid or year in which recruitment process is initiated) vide Sub Para 7 (v) (c)
03.	Essence of these O.M. in respect of inter se seniority is that the determination of seniority for recruits would depend on their actual appointment. Thus seniority used to be determined before NR Parmar Judgement, with reference to the date of joining of a person against a vacancy, irrespective of the fact that it may have arisen in the previous years and <u>not the initiation of recruitments process itself</u>	The intrinsic and central constituent of this Judgement is that the seniority of an incumbent is to be fixed from the date of vacancy/the date of advertisement even though he is not borne in the cadre or formal appointment order is issued to him.	Appointees who join in the concerned recruitment year and those who join in subsequent year(s), would figure in the seniority list of the respective years of their being appointed. To that extent it may not be necessary to go into the question of quota meant for direct recruits and promotes to find out as to the year in which the vacancy arose against which the recruitment is made.
04.	As per Para 5 (i) of DoPT's OM 2001/1/1/2012-Estt. (D) dated 04.03.2014 the cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in DoPT O.M. dated 7.2.86/3.07.86 may not be reopened. <u>Seniority for LDC, TA, STA etc was reopened.</u>	As per Para 7 (i) of DoPT's OM 2001/1/2/2019-Estt. (D) dated 13.08.2021 cases of inter se seniority of direct recruits and promotes, already decided in terms O.M No. OM 2001/1/1/2012-Estt. (D) dated 04.03.2014, shall not be disturbed i.e old cases are not to be reopened.	Board vide its letter dated 18.08.2021 categorically mentioned that in supersession of all instructions issued on the subject hereof, all the cases of seniority of direct recruits and promote officers of group B (Non General) and Group 'C' including inter se seniority thereof, shall be decided in terms of DoPT O.M dated 13.08.2021 vide Para 3
05.	Earliest form of Seniority List among these three.	<i>Principles for determination of inter se seniority of direct recruits and promotes would be effective from 27.11.2012</i> which implies that the implementation of the judgement should be prospective not retrospective whereas in this Zone it was followed retrospectively.	<i>Principles for determination of inter se seniority of direct recruits and promotes would be effective from 19.11.2019</i> which implies that the implementation of the judgement should be prospective.

Since long preparing Seniority List issue was kept in abeyance for various legal issues and as a result promotion in the Ministerial cadre has been held up. Following cases were filed due to retrospective effect of NR Parmar Judgement.

06.	Cases were filed by 1) Shri Shyam Sundar Sethi (OA No. 350/00508 of 2018), 2) Shri Sukumar Kundu (O.A. No. 350/1960 of 2018) 3) Shri Baladitya Barik (350/706 of 2019)	It was mentioned in this DoPT vide para 7(i) that <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.</i> The same principles were not followed in this CCA as a result three O.A.s were filed before the Hon'ble CAT, Kolkata Bench, against the seniority lists of LDC (pre-restructured), TA & erstwhile STA as per N.R. Parmar Principles in determination of inter-se-seniority of DR & PR (prospectively from the date of judgement of NR Parmar). Cases were filed by 1) Shri Shyam Sundar Sethi (OA No. 350/00508 of 2018), 2) Shri Sukumar Kundu (O.A. No. 350/1960 of 2018) 3) Shri Baladitya Barik (350/706 of 2019)	LDC is the base seniority list of other ministerial grades which were recasted in 2016 and later on in 2018.
Once M. Ajit Kumar, Chairman expresses in his letter D.O. No. 41/CH(UC)/2020 dated 16.11.2020 that "Timely promotions are events in one's career which every person in service looks forward to".			

To understand the intricacies of Seniority issues in present scenario at this CCA, under CGST & CX, Kolkata North Commissionerate, **three different aspects** of preparing of Seniority list should be discussed.

Preparation of Seniority List before N.R Parmar Judgement

1. Instructions contained in DoPT O.M No. 35014/2/80-Estt.(D) dated 7.2.1986 provides that rotation of quotas for purpose of determining seniority would take place only to the extent of **available** direct recruits and the promotes. For determining inter-se Seniority between direct recruits and promotes, would be done as per rotation of quota to the extent of number of vacancies for direct recruits and promotes, as determined according to the quota for that year. Vide O.M. No. 20011/1/2006-Estt.(D) dated 3.3.2008 term **available** was clarified that the actual year of appointment, both in the case of direct recruits and promotes, would be reckoned as the year of availability for the purpose of rotation and fixation of inter se seniority. **Therefore, inter se seniority between direct recruits and promotes, who are appointed against the vacancies of respective quota, would be reckoned with reference to the year in which they are appointed i.e. year in which they are borne in the cadre or formal appointment order is issued.** Essence of the all these O.M. in respect of inter se seniority is that the determination of seniority for recruitees would depend on their actual appointment. Thus seniority used to be determined before NR Parmar Judgement, with reference to the date of joining of a person against a vacancy, irrespective of the fact that it may have arisen in the previous years and *not the initiation of recruitments process itself which is emphasised in N.R Parmar Judgement and circulated vide O.M. dated 04.03.2014 (would be discussed in the following paragraphs).*

Preparation of Seniority List in accordance N.R. Parmar Judgement.

2. Above mentioned method of determining of seniority list was challenged before the Hon'ble Supreme Court of India in Civil Appeal No.7514-7515/2005 in the case of N.R.parmar v/s Union of India & Others. In its judgement dated 27.11.2012, the Hon'ble Apex Court held that the available direct recruits and promotes, for assignment of inter se seniority, would refer to the recruitment process for either of the modes of recruitment (direct recruitment or promotion) for a particular vacancy year is initiated viz. initiation of recruitment process against a vacancy year would mean the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits or the date on which a proposal, complete in all respects, is sent to DPC for convening of DPC to fill up vacancies earmarked for promotion. **The intrinsic and central constituent of this Judgement is that the seniority of an incumbent is to be fixed from the date of vacancy/the date of advertisement even though he is not borne in the cadre or formal appointment order is issued to him.** The instructions of the said judgement was conveyed to the all CCA concerned vide O.M. dated 04.03.2014.

It would be very relevant to mention here Para (a), (h), & (i) of the said O.M. to understand the fallacy of making Seniority list already prepared in this CCA in accordance with this judgement.

a) DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as non-existent/withdrawn ob initi.

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.

In this para it is clearly mentioned here that the *principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012.* which implies that the implementation of the judgement should be prospective not retrospective whereas in this Zone it was followed retrospectively. Further, the Para (i) of the same DoPT also strengthen the prospective nature of the judgement for fixation of inter se seniority between DR & PR Cadre in the Ministerial grade.

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.

The same principles were not followed in this CCA as result three O.A.s (Sl. No. 1 to 3 as mentioned below) were filed before the Hon'ble CAT, Kolkata Bench, against the seniority lists of LDC (pre-restructured), TA & erstwhile STA as per N.R. Parmar Principles in determination of inter-se-seniority of DR & PR (prospectively from the date of judgement of NR Parmar). Cases were filed by Shri Shyam Sundar Sethi (OA No. 350/00508 of 2018), Shri Sukumar Kundu and Shri Baladitya Barik (O.A. No. 350/1960 of 2018 and 350/706 of 2019) respectively. LDC is the base seniority list of other ministerial grades which were recasted in 2016 and later on in 2018.

1. Hon'ble CAT, Kolkata Bench Order dated 29.01.2021 in O.A. No. 350/00508 of 2018 in the matter of Shri Shyam Sundar Sethi- Vs-Union of India & Ors. reg.

The applicant prayed that the implementation of N R Parmar Judgment in respect of the seniority list of LDC can only be applied w.e.f. 27.11.2012, i.e. the date of the Supreme Court's Judgment, and not prior to that.

Hon'ble CAT issued an Order dated 29.01.2021 wherein the operative part of the said Order is as follows;

"8) Accordingly, we deem it fit to direct the respondent authorities to decide on the claim of the applicant strictly in terms of O.M. of D.O.P.T. dated 04.03.2014 at Annexure A-2 to the O.A. and in particular Para 5(h) and 5(i) thereof within a period of 12 weeks from the date of receipt of a copy of this order. Consequent benefits, if any, should be made available to the applicant within a period of 10 weeks thereafter.

9) With these directions the O.A. is disposed of. There will be no orders on costs."

2. O.A. No. 350/1960/2018, MA No. 870/2018 and RA 16/2019 filed by Shri Sukumar Kundu & Ors.-Vs- U.O.I & Ors, in Hon'ble CAT, Kolkata Bench - Reg.

The petitioners have claimed that the DoPT and Board's instructions regarding implementation of judgement on N.R.Parmar clearly directs that the said judgement should be made prospectively from 2012. However, the Department has implemented it from 1986, which is irregular.

3. O.A. No. 350/706/2019 filed by Shri Baladitya Barik & Ors.-Vs- U.O.I & Ors, in Hon'ble CAT, Kolkata Bench - Reg.

The petitioners have claimed that the DoPT and Board's instructions regarding implementation of judgement on N.R.Parmar clearly direct that the said judgement should be made prospectively from 2012. However, the Department has implemented it from 1986, which is irregular.

3. Judgement of the Hon'ble Supreme Court of India of K. Meghachandra Singh 7 Ors. Vs. Ningam Siro & Ors on revised instructions on seniority of direct recruits and promotes and inter se seniority thereof.

Very recently, DoPT has issued an Office Memorandum dated 13.08.2021 regarding "Judgement of the Hon'ble Supreme Court of India in Civil Appeal No. 8833-8835 of 2019 of K. Meghachandra Singh & Ors. Vs Ningam Siro & Ors. – revised instructions relating to Seniority of direct recruits and promotes and inter-se-seniority thereof", which has been forwarded by the Board (CBIC) vide its letter dated 18.08.2021.

In para 7 (i) to (iv) of the latest O.M. it clarifies that DoPT's OM dated 04.03.2014 is treated as non-est/withdrawn w.e.f 19.11.2019. It also says that the order dated 19.11.2019 is prospective, cases of inter se seniority of direct recruits and promotes, already decided in terms of O.M. No. 2011/2012-Estt.(D) dated 4.03.2014, shall not be disturbed. i.e old cases are not to be reopened. *(However, it was mentioned earlier that the very basics of the DoPT's guideline as per NR Parmar judgement for fixation of inter se seniority between DR and PR effecting it with from 27.11.2012 was not followed in this CCA.)*

In a nutshell it could be said that seniority of promotes or direct recruits would be determined with reference to the year of their actual joining/appointment to the post. Thus, they would get seniority of the year in which they actually join i.e year in which formal appointment order is issued or they are borne in the service/cadre and that they shall not get seniority of any earlier year (viz. year of Vacancy/panel or year in which recruitment process is initiated).

Board vide its letter dated 18.08.2021 categorically mentioned that in supersession of all instructions issued on the subject, henceforth, **all the cases of seniority of direct recruits and promote officers of group B (Non Gazetted) and Group 'C' including inter se seniority thereof, shall be decided in terms of DoPT O.M. dated 13.08.2021.**

Since long preparing Seniority List issue was kept in abeyance for various legal issues and as a result promotion in the Ministerial cadre has been held up.

M. Ajit Kumar, Chairman expresses in his letter D.O. No. 41/CH(UC)/2020 dated 16.11.2020 that "Timely promotions are events in one's career which every person in service looks forward to".