



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 12, 2023

+ W.P.(C) 14908/2022, CM APPLs. 45835/2022 & 53190/2022

UNION OF INDIA AND ANR.

..... Petitioners

Through: Ms. Arunima Dwivedi, CGSC with  
Ms. Pinky Pawar and Mr. Aakash  
Pathak, Advs. for UOI

versus

PALLAVI GUPTA AND ORS.

..... Respondents

Through: Mr. Arun Bhardwaj, Sr. Adv. with  
Mr. Nishant Bahuguna, Adv.  
Mr. Naresh Kaushik & Ms. Shikha  
John, Advocates for UPSC.  
Mr. Shivam Garg, Advocate.  
Mr. Shashibhushan P. Adgaonkar,  
Adv. with Mr. Omkar Jayant  
Deshpande, Adv. for R-7 to 28

AND

+ W.P.(C) 16852/2022, CM APPL. 53356/2022

UNION OF INDIA & ORS.

..... Petitioners

Through: Ms. Arunima Dwivedi, CGSC with  
Ms. Pinky Pawar and Mr. Aakash  
Pathak, Advocates for UOI.

versus

MR. SUNIL RATHEE & ORS.

..... Respondents



Through: Mr. Naresh Kaushik & Ms. Shikha John, Advocates for UPSC.  
Mr. Shivam Garg, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**J U D G M E N T**

**V. KAMESWAR RAO, J**

1. These two writ petitions have been filed by the Union of India through its functionaries, Ministry of Civil Aviation / Director General of Civil Aviation challenging the common order dated March 24, 2022 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Original Application Nos.1776/2020 and 130/2020 ('OA', for short) whereby the Tribunal has disposed of both the OAs directing the petitioners herein to re-fix the seniority of the respondent No.1 in W.P.(C) 14908/2022 and respondent Nos.1 and 2 in W.P.(C) 16852/2022 at the appropriate place by taking into account the marks obtained by them in the selection process to the post of Assistant Director, Operations and Deputy Director, Operations respectively, by issuing a revised Seniority List.

**FACTUAL MATRIX OF W.P.(C) 14908/2022**

2. In the year 2014, the Union Public Service Commission ('UPSC', for short) / respondent No.6, invited applications for filling up 44 posts (17-UR, 16-OBC, 8-SC and 3-ST) of Assistant Director, Operations *vide* advertisement No.09/2004. Subsequent to the interviews conducted, the UPSC recommended successful candidates



for appointment. It so happened that some persons who were recommended did not join the post, resulting in the petitioners approaching the UPSC for recommending other candidates to the post. The UPSC through its letter dated May 17, 2016 operated the Reserve List and recommended the names of six candidates, including the respondent No. 1 for being appointed as Assistant Director, Operations. A provisional Seniority List was issued on November 26, 2019, wherein according to the respondent No. 1, she was placed below the persons who had scored less than her in the selection. Aggrieved by her position in the provisional Seniority List, the respondent No. 1 made a detailed representation for correction of her position. The said representation was rejected by the petitioners herein on October 1, 2020, when they issued a Final Seniority List wherein the respondent No. 1 was again placed below candidates from the Main List who had obtained lesser marks in the selection process. It is against this Final Seniority List that the respondent No. 1 approached the Tribunal.

### **FACTUAL MATRIX OF W.P.(C) 16852/2022**

3. Subsequent to reporting of vacancies to the UPSC (respondent No. 5 in this petition) by the petitioner No.2, the UPSC invited applications to the post of Deputy Director, Operations for filling up eight posts (5-UR, 2-OBC and 1-SC). The UPSC on January 28, 2016 recommended seven candidates for appointment. Further as the candidate recommended at serial No.4 in the Main List did not join the service, nomination/recommendation from the Reserve List was sought for by the petitioners. The UPSC *vide* communication dated August 23,



2016 recommended respondent No.1 from the Reserve List, who joined the service on October 28, 2016. Subsequently, as the candidate at serial No.5 in the Main List refused to join, another nomination was sought from the UPSC, which recommended respondent No.2 from the Reserve List. After completion of formalities, respondent No.2 joined the service from March 31, 2017.

4. On June 04, 2019, a provisional Seniority List for the post of Deputy Director, Operations, was issued to which the respondent Nos.1 and 2 objected by submitting their representations. On September 13, 2019, the UPSC vide letter No.F.1/246(60)/2014-R-VI provided the consolidated Merit List in which the respondent Nos.1 and 2 were placed below the candidates of the Main List.

5. On October 16, 2019, while disposing of the representations made by respondent Nos.1 and 2 on June 10, 2019, the petitioners issued a Final Seniority List. It is this list that was challenged by the respondent Nos.1 and 2 before the Tribunal, as they were placed below the candidates from the Main List despite having obtained higher marks than them even joining the service much earlier than them.

6. The case of the respondent No. 1 in W.P.(C) 14908/2022 and respondent nos. 1 and 2 in W.P.(C) 16852/2022, who were applicants before the Tribunal was based on the OM dated August 8, 2013 issued by the Department of Personnel and Training ('DoP&T', for short) which stipulates as under:

*“2. It is informed that CCAs may like to assign inter-se seniority of the candidates recommended on the basis of a particular service through the Civil Service Examination and also allocated to a particular service, on the basis of*



*the aggregate marks obtained by the candidates. The merits of the candidates for determining inter-se seniority may be determined on the aggregate marks of the candidates revealed by the UPSC.”*

7. Reliance was also placed on the OM dated January 9, 2014 and also the decision taken by the Ministry of Corporate Affairs *vide* OM dated May 22, 2017 wherein the seniority of candidates appointed from a reserve panel were shown higher than those from the Main List on the basis of the aggregate marks obtained by a direct recruit officer. The case of the petitioners before the Tribunal was that the Final Seniority Lists dated October 16, 2019 and January 10, 2020 have been prepared in accordance with the “*Instructions and Guidelines of Seniority*” dated November 11, 2010 issued by the DoP&T, wherein paragraph 2.1.1 reads as under:

*“2. 1. 1. Clarification: Appointment from the Reserve panel at a later date. The inter se seniority of candidates nominated from reserve panel will be fixed as per consolidated merit given by UPSC/SSC/ Recruiting Agency. However, instructions circulated vide this Department's OM No. 41019/18/ 97-Estt(B) dated 13th June, 2000 should be strictly followed in operating or requesting for nominations from the reserve panel.”*

8. It was the case of the petitioners herein that they have prepared the Seniority Lists on the advice of the UPSC as well as on the basis of the “reserve policy”, but there was no instructions to prepare the lists on the basis of marks obtained by the candidates. The Tribunal by relying upon the decision of its Bangalore Bench in *Smt. Umesh Kuwar v. Union of India & Ors.*, OA No.971/2016, decided on September 19,



2017 and also its Ernakulam Bench in *Mr. Vindumadhav Shukla v. Union of India & Ors.*, OA No.180/00411/2017, decided on April 18, 2019, allowed the OAs directing the petitioners herein to fix the seniority of the applicants before it (who are respondents herein, namely *Pallavi Gupta-respondent No. 1 in W.P.(C) 14908/2022* and *Sunil Rathee & Manoj Kumar Garg- respondent Nos. 1 & 2 in W.P.(C) 16852/2022* respectively) by taking into account the marks obtained by them in the selection as communicated by the UPSC.

9. Ms. Arunima Dwivedi, learned CGSC appearing for the petitioners submitted that the guidelines for fixing *inter-se* seniority of candidates nominated from Reserve List were issued by the by DoP&T on November 11, 2010 *vide* OM No.2011/1/2018-Estt.(D) titled “*Instructions and Guidelines on Seniority*”. The petitioners in accordance with the guidelines in the OM, approached the UPSC to provide a consolidated Merit List. The UPSC *vide* letter No.F.1/246(60)/2014-R-VI dated September 13, 2019 advised the Directorate General of Civil Aviation (‘DGCA’, for short) to prepare a consolidated Merit List using the following principles:

“(i) *Candidates recommended from the main list in order of Merit and,*

*(ii) After that candidate from reserve list in order of date of recommendation letter, in the order of merit within that.”*

10. On October 16, 2019 and January 10, 2020 the DGCA issued Final Seniority Lists in accordance with the OM dated November 11, 2010 and the communication of UPSC dated September 13, 2019, wherein Pallavi Gupta, Sunil Rathee and Manoj Kumar Garg were



placed below candidates (who belonged to reserved categories) from the Main List who had secured lower marks. Thereafter, they challenged the Final Seniority Lists before the Tribunal which culminated in the impugned order.

11. It is her contention that the DoP&T in paragraph 2 of the OM No.28011/6/76-Estt.(D) dated June 24, 1978 regarding – “*Starting point in the recruitment roster for the purpose of seniority*” has illustrated that there are two different types of selection and the criteria for determining the time of completion of selection process is different for both types, as shown below:

<b><i>Direct Recruitment</i></b>	<b><i>Date of completion of selection process</i></b>
<i>(a) Through examination conducted by UPSC or any other authorities.</i>	<i>Date of publication / announcement of results.</i>
<i>(b) Through interview conducted by UPSC or any other authorities.</i>	<i>Date of Commission's letter containing their recommendations.</i>

12. The respondent No. 1 in W.P.(C) 14908/2022 and respondent Nos. 1 and 2 in W.P.(C) 16852/2022, who were applicants before the Tribunal, having been selected through interviews conducted by the UPSC, fall under the second category above and therefore, their seniority need to be decided in order of the date of their recommendation by the UPSC. The names of the candidates in the Main List were recommended by the UPSC *vide* their letter dated April 13, 2015. The respondent No.1 in W.P.(C) 14908/2022 Pallavi Gupta was recommended by the UPSC only on May 17, 2016. The



respondent Nos. 1 and 2 in W.P.(C) 16852/2022- Sunil Rathee and Manoj Kumar Garg, were recommended by the UPSC on August 23, 2016 and January 2017 respectively. Therefore, they were placed below the candidates (reserved category) selected through the Main List, who were recommended much earlier, in the order of seniority. In other words, since the candidates in the Main List were recommended for appointment earlier, they would be senior to the respondents/applicants before the Tribunal.

13. She has also submitted that the Tribunal erred in relying upon the decision of its Bangalore Bench in *Smt. Umesh Kuwar (supra)* and Ernakulam Bench in *Mr. Vindumadhav Shukla (supra)*, as the said orders have been overruled/set aside by the Bangalore Bench of the Tribunal and the Kerala High Court respectively.

14. She has placed reliance upon the judgment of the Supreme Court in *Gujarat State Deputy Executive Engineers Association v. State of Gujarat, 1994 Supp(2) SCC 591* to contend that a reserve / waiting list is a list of eligible and qualified candidates who, in the order of merit are placed below the last selected candidate. She has prayed that the impugned order be set aside.

15. Similarly, Mr. Naresh Kaushik, learned counsel appearing for the UPSC has supported the stand taken by the petitioners through Ms. Arunima Dwivedi by stating that the Merit/Main List is prepared by the UPSC strictly in terms of the requirements and exactly for the number of vacancies which are requisitioned. However, in some cases, as per the requirement of DoP&T OMs and guidelines, Reserve Lists are also prepared, which are invoked and operated only to meet the



exigencies that arise on account of non-joining or resignation by the candidates who figure in the Main/Merit List. The two lists are necessarily different and the Main/Merit List takes precedence over the Reserve List.

16. According to Mr. Kaushik, the procedure followed for preparing the consolidated order of merit and *inter-se* seniority of candidates recommended for appointment should be with reference to the date of recommendation of the UPSC. That apart, he submitted that the candidates recommended from the Reserve List necessarily need to be placed below the candidates in the Main List. The consolidated orders of DoP&T on seniority *vide* OM dated November 11, 2010 stipulates that *inter-se* seniority of candidates nominated from the Reserve List will be fixed as consolidated merit given by the recruiting agency. He reiterated that the Seniority Lists have been prepared on the basis of consolidated Merit List, according to which, a general category candidate with higher marks (than those being filled up under reservation quota) may not find his name in the consolidated Merit List in the Main List, if he secures less marks than the cut-off for general category candidates.

17. He stated that going by the above principles, the impugned order of the Tribunal is anomalous and needs to be set aside.

18. Mr. Shivam Garg, learned counsel appearing for the respondent Nos. 2 to 5 in W.P.(C) 14908/2022 and respondent No. 4 in W.P.(C) 16852/2022, has supported and adopted the submissions made by Ms. Dwivedi and Mr. Kaushik. Additionally, he stated that it is an admitted fact that the respondent Nos.2 to 5 in W.P.(C) 14908/2022



joined the service prior to respondent No.1 and therefore, they would stand senior to respondent No.1 on the basis of the principle that seniority is required to be fixed on the basis of the date of joining of the candidate from the selected list. If all 44 candidates had joined the service, there was no question of calling the respondent No.1 for appointment, and as such she could not be put at par with the respondent Nos.2 to 5.

19. Mr. Shashibhushan P. Adgaonkar, learned counsel appearing for the respondent Nos.7 to 27 in W.P.(C) 14908/2022, while agreeing with the submissions made by Ms. Dwivedi and Mr. Kaushik stated that the respondent No.1 had challenged the Seniority List based on certain OMs dated August 8, 2013 and January 9, 2014 allegedly issued by the DoP&T. He stated that such OMs were never issued by the DoP&T as they are neither available on the website of DoP&T, which is the nodal department to issue circulars/OMs/instructions etc. for all service related matters, nor finds mention in the consolidated information document on seniority published by the DoP&T *vide* OM No.20011/2/2022-Estt.(D) dated September 16, 2022.

20. He further argued that even if it is assumed that the alleged OMs have been issued by the DoP&T, the instructions of the said alleged OM is not applicable to posts under the General Central Service like that in DGCA. It is addressed to specific Cadre Controlling Authorities as per the list enclosed therewith, which does not include DGCA, which is the Cadre Controlling Authority for the post of Assistant Director, Operations. Further, the alleged OM is addressed for fixation of ranks to the candidates selected through



competitive service examination which does not include the post of Assistant Director, Operations, as is clear from the subsequent OM of January 9, 2014.

21. Further the respondent No.1 has relied upon a seniority list of Junior Time Scale post, Indian Corporate Law Service from Ministry of Corporate Affairs in support of her arguments. The Indian Corporate Law Service under Ministry of Corporate Affairs is an organised Group A service as per DoP&T OM dated April 03, 2017 and comes under Central Civil Post, Group-A as per Rule 6 of Central Civil Service Rules of 1965. Whereas Assistant Director, Operations in DGCA comes under General Central Service as per Rule 7 of Central Civil Service Rule 1965. Further Group-A post under DGCA are not Organised Group A service.

22. His contention is that seniority will depend on the date of advice / recommendation and not on the date of appointment or joining. He further stated that it is a law well settled that a person is disentitled to claim seniority from a date he was not borne in service. In this regard, he has relied upon the judgments of the Supreme Court in *K. Meghachandra Singh & Ors. v. Ningam Siro & Ors., (2020) 5 SCC 689* and *K.R. Babu v. State of Kerala, (2018) 11 SCC 167*.

23. He has prayed that the impugned order is erroneous and be set aside.

24. Mr. Arun Bhardwaj, learned senior counsel appearing for the respondent No. 1 in W.P.(C) 14908/2022 and respondents No. 1 and 2 in W.P.(C) 16852/2022, submitted that it was their grievance before the Tribunal that their seniority was fixed below the candidates in the



Main List, despite them having obtained more marks in the result, and thus having a higher merit. To substantiate his submission, he has referred to the Final Seniority List of Assistant Director, Operation, dated January 10, 2020, wherein the respondent No. 1 in W.P.(C) 14908/2022 is placed below the Main List candidates, despite having obtained higher marks in the result than them. Similarly, he stated that in the Final Seniority List dated October 16, 2019, the respondent No. 1 in W.P.(C) 16852/2022 is placed below the Main List candidates, despite joining the service before them and having secured higher marks.

25. He contended that as per Government of India OM's dated November 04, 1992 and July 03, 1986, and in view of the settled position of law, the seniority of direct recruits is fixed on the basis of merit obtained in the selection. Further DoP&T OM dated November 11, 2010 at paragraph 2.1.1, clearly indicates that the *inter-se* seniority of candidates nominated from the Reserve List will be fixed as per consolidated merit given by UPSC/SSC/recruiting agency. Another DoP&T OM dated June 13, 2000 at paragraph 2, clearly specifies that a request for nomination from the Reserve List, if any, is made to the UPSC in the event of an occurrence of a vacancy caused by the non-joining of the candidates within a period of one year, then such a vacancy should not be treated as fresh vacancy. According to Mr. Bhardwaj, the analogy laid down above in the OM dated June 13, 2000 squarely applies to the instant case as the vacancies were due to non-joining/resignation within a year. Hence, it would be proper to treat the list as part and parcel of the original select list and to fix the seniority



as per the overall merit position irrespective of the date of joining.

26. Further, he submitted that even while operating the Reserve List after a year, the overall merit position is maintained as per DoP&T clarification dated November 11, 2010, which we have already reproduced in paragraph 7 above.

27. The contention of Mr. Bhardwaj is that since admittedly the candidates in both Main Lists and Reserve Lists are selected in same selection process and are of the same batch, the rule determining *inter-se* seniority should be as enumerated by the Supreme Court in ***A. Raghu v. Government of Andhra Pradesh and Others., Civil Appeal No. 5862 of 2007***, wherein it was held as under:

*“.....From the factual position depicted hereinabove, it is not possible for us to accept, that the candidates, who were deputed for training on 15.7.1991, and those deputed for training on 14.6.1992 to fulfill the deficiency, can be described as two different batches. The selection process having been joint, and in furtherance of the same notification dated 22.1.1991 (issued by the Recruitment Board), it is inevitable for us to conclude, that the candidates deputed to the two different courses of training (on 15.7.1991 and 14.6.1992) were essentially candidates belonging to a singular batch, who were selected through a common process of selection.....”*

28. It is submitted that on the identical issue *qua* assigning of *inter-se* seniority, DoP&T *vide* OM dated August 8, 2013 had clarified as under:

*“2. It is informed that CCAs may like to assign inter-se seniority of the candidates recommended on the basis of a particular service through the Civil Service Examination and also allocated to a particular service, on the basis of the aggregate marks obtained by the candidates. The*



*merits of the candidates for determining inter-se seniority may be determined on the aggregate marks of the candidates revealed by the UPSC.”*

29. He stated that a similar clarification was also issued by the DoP&T *vide* OM dated January 9, 2014.

30. He has also submitted that the instant case is squarely covered by the decision of the Bangalore Bench of the Tribunal in *Smt Umesh Kuwar (supra)* dated September 19, 2017 wherein the issue of seniority has been discussed in paragraphs 16, 17, 18 and 19 extensively. The said judgment was discussed in the DoP&T noting dated November 20, 2017, received in reply to a query under the Right to Information Act, 2005, annexed at Serial No. 20 to the Brief Note filed by the respondent No. 1 in W.P.(C) 14908/2022. It is his contention that the DoP&T had implemented the judgment as can be seen from the noting.

31. He submitted that Seniority List has to be prepared as per marks/merit irrespective of Main List and Reserve List, as is followed in different government departments. Reference is also made to a decision of the Principal Bench of the Tribunal in OA No. 465/2013 decided on September 6, 2013.

32. He has submitted that in view of the above, the decision of the Tribunal is justified and that the seniority of the original applicants needs to be fixed taking into account the marks obtained by them in the selection, with all the promotional, financial and consequential benefits as deemed fit and proper in the interest of justice.

33. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the Tribunal is justified



in directing the petitioners herein to recast the *inter-se* Seniority List of the post of Assistant Director/Deputy Director, Operations, of the respondent No. 1 in W.P.(C) 14908/2022 and respondent Nos. 1 and 2 in W.P.(C) 16852/2022 herein who were the original applicants before the Tribunal on the basis of marks obtained by them in the selection process. The challenge before the Tribunal was to two Final Seniority Lists dated October 16, 2019 and January 10, 2020 the respondent No.1 in W.P.(C) 14908/2022 and respondent Nos.1 and 2 in W.P.(C) 16852/2022 were put below the candidates belonging to the Main List, despite having obtained higher marks than them. So, the controversy is whether the candidates appointed from the Reserve List, because of non-joining of the candidates initially recommended by the UPSC, would rank senior to the candidates initially recommended/appointed in terms of the first recommendation of the UPSC, as they possess higher marks and/or had joined the service prior to such initially recommended candidates.

34. The answer to this question has to be in the negative. This we say so, in view of the instructions issued by the DoP&T dated June 24, 1978, July 3, 1986, contained in the consolidated document on “*Instructions and Guidelines on Seniority*” dated November 11, 2010.

35. The OM dated June 24, 1978 is reproduced as under:

“No.28011/6/76-Estt.(D)  
Government of India  
Ministry of Home Affairs  
Department of Personnel & Adm. Reforms

.....  
North Block, New Delhi, the 24<sup>th</sup> June, 1978



OFFICE MEMORANDUM

*Subject: Starting point in the recruitment roster for the purpose of seniority – procedure regarding.*

....

*The undersigned is directed to say that from the reference received in the Department and the representations made by the affected individuals, it has been noticed that there is no uniform practice in regard to the starting point in the recruitment roster when recruitment is made by more than one method, namely, direct recruitment/promotion/transfer on deputation etc.*

*The following are the among the diverse methods being adopted by various departments in regard to the starting point of the roster:*

- (a) the mode of recruitment for which action has been initiated first;*
- (b) the mode of recruitment through which first appointment was made after the notification of the recruitment rules;*
- (c) the mode of recruitment mentioned first in the recruitment rules for the post concerned.*
- (d) the mode of recruitment which is the most predominant.*

*In some other cases, the roster has been maintained according to the illustration given in “General principle (6)” in the annexure to M.H.A.O.M.No.9/11/55-RPS dated 22.12.1959.*

*2. This question has been examined in detail by this Department in consultation with the UPSC and it has now been decided that the starting point in the roster should be that mode of recruitment prescribed in the Recruitment Rules for which the selection process had been completed first. For this purpose, the date of completion of the selection process will be determined as follows:*

<u>Direct Recruitment</u>	Date of completion of selection process



(a) Through examination conducted by UPSC or any other authorities.	Date of publication / announcement of results.
(b) Through interviews conducted by UPSC or any other authorities.	Date of Commission's letter containing their recommendations.

### Promotion

(a) Where UPSC is associated.	Date of UPSC's letter containing their recommendations ratifying the promotion.
(b) Where UPSC is not associated or its formal concurrence is not required.	Last date of DPC meeting.
(c) Limited Departmental Examination.	Date of announcement of results.

3. A new roster will have to be started in the following cases:

- (i) From the date the recruitment rules are notified in the gazette.
- (ii) When there is an amendment to the Recruitment Rules which changes the percentage allotted for the various modes of recruitment.

4. These instructions shall come into force with effect from the date of issue of this Office Memorandum and recruitment rosters already maintained/started need not be reviewed on the basis of the above instructions. However, where the persons concerned have been approved for appointment but the Recruitment roster has not been started this may be started in the light of the instructions.

Sd/-

(N. Rangarajan)  
Deputy Secretary”

36. The relevant part of the OM dated July 3, 1986 is as under:

“2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of



*the U.P.S.C. or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.”*

37. Having noted the aforesaid instructions, it is necessary at this juncture to highlight the stand taken by the UPSC before this Court, inasmuch as, when the selection process is through examination conducted by UPSC or any other authority, the selection process is said to be completed on the date of publication / announcement of the result. However in a case where direct recruitment is through the process of interview conducted by the UPSC, it is on the date when the UPSC issues the letter of recommendation of the candidates, that the selection process can be said to be completed.

38. There is no dispute that the date of recommendation of the UPSC insofar as recruitment to 44 vacancies to the post of Assistant Director, Operations is concerned, was April 13, 2015. But pursuant to the petitioners' approaching the UPSC because of non-joining of a few recommended candidates, the UPSC operated the Reserve List and on May 17, 2016, made fresh recommendations of candidates including the respondent No. 1 in W.P.(C) 14908/2022 Pallavi Gupta. So, it is the date of May 17, 2016 which would be construed as the date of completion of her selection. Likewise, insofar as vacancies to the post of Deputy Director, Operations is concerned, the respondent Nos.1 and 2 in W.P.(C) 16852/2022 were recommended from the Reserve List for appointment on August 23, 2016 and January 2017 respectively.

39. As noted already, paragraph 2.1.1 of the DoP&T OM dated November 11, 2010 prescribes that *inter-se* seniority of the candidates



nominated from Reserve List will be fixed as per the consolidated merit given by the UPSC. The said merit had no bearing insofar as the Main List of April 13, 2015 is concerned. In fact, the UPSC *vide* its letter dated September 13, 2019 had advised DGCA to prepare a consolidated Merit List using the following principle;

- (i) Candidates recommended from the Main List in order of Merit and
- (ii) After that candidate from Reserve List in order of date of recommendation letter, in the order of merit within that.

40. We agree with the aforesaid advise of the UPSC, which to us, is in conformity with the law laid down by the Supreme Court in the case of ***Gujarat State Deputy Executive Engineers Association (supra)*** wherein the following observation was made:-

*“8. Coming to the next issue, the first question is what is a waiting list?; can it be treated as a source of recruitment from which candidates may be drawn as and when necessary?; and lastly how long can it operate? These are some important questions which do arise as a result of direction issued by the High Court. A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate.....”*

41. The Kerala High Court in ***Bhupendra Sharma & Ors. v. Union of India & Ors., OP (CAT) No. 172/2019***, decided on February 19, 2020, while dealing with the similar issued, held as under:

*“26. ....As per Rule 13(v), candidates from the consolidated reserve list provided under sub-rule (iv) shall be allocated by the Government to the services and where certain vacancies still remained to be filled up, the*



*Government may forward a requisition to the Commission to recommend from the reserve list for the purpose of filling up the unfilled vacancies in each category. Therefore, having been placed in the consolidated reserve list pertaining to his category, the applicant cannot contend that, based on aggregate marks, he ought to be placed senior to respondents 6 to 8. As rightly pointed out by the learned Counsel for the petitioners, in the absence of a consolidated reserve list constituted in terms of Ext.P2, the applicant would not have been considered for selection and appointment.”*

42. The Tribunal has clearly erred in relying upon the judgment of its Bangalore Bench in *Smt. Umesh Kuwar (supra)* and *Mr. Vindumadhav Shukla (supra)*. In fact the latter judgment of the Tribunal was set aside by the Kerala High Court in *Bhupendra Sharma (supra)*.

43. It is surprising that the Tribunal has relied upon the judgment of the Ernakulam Bench, which, by that time was set aside by the High Court *vide* its order dated February 19, 2020. Even the SLP against the order was dismissed by the Supreme Court on February 10, 2022. We find no pleasure in stating that the Tribunal did not even bother to find out as to whether the judgment of its Ernakulam Bench stood upheld by a Higher Forum. Insofar as the decision of the Bangalore Bench of the Tribunal in *Smt. Umesh Kuwar (supra)* is concerned, we have been informed that the Bangalore Bench itself in another O.A. bearing O.A. No.170/001434/2018, decided on December 30, 2019 has set aside the revised Seniority List prepared on the basis of *Smt. Umesh Kuwar (supra)* and reinstated the earlier Seniority List of 2015.

44. In other words, both the judgments on which reliance has been



placed by the Tribunal have been either diluted or set aside and as such, could not have been considered by the Tribunal while allowing the O.A. filed by the respondent No.1 in W.P.(C) 14908/2022 and respondent Nos.1 and 2 in W.P.(C) 16852/2022.

45. Insofar as the submissions made by Mr. Bhardwaj by relying upon OMs dated August 8, 2013 and January 9, 2014 issued by DoP&T, are concerned, a perusal of paragraph 2 of both the OMs makes it clear that they relate to *inter-se* seniority of candidates recommended on the basis of a particular service through the Civil Service Examination, on the basis of aggregate marks obtained by the candidates. The said OMs do not relate to the situation with which this Court is concerned in these petitions; i.e., the manner in which seniority shall be determined between a candidate in the Main List and a candidate appointed later through the Reserve List. The said OMs have no applicability herein.

46. In view of the clear exposition of law, it must be stated that the impugned Seniority List issued by the petitioners is justified. We set aside the impugned order of the Tribunal dated March 24, 2022, in O.As.1776/2020 and 130/2020. The pending applications are dismissed as infructuous. No orders as to costs.

**V. KAMESWAR RAO, J**

**ANOOP KUMAR MENDIRATTA, J.**

**JULY 12, 2023/aky**