

No. A.23020/1/2019-P&AR (GSW)
Government of Mizoram
Department of Personnel & Administrative Reforms
(General Service Wing)

Mizoram Secretariat, MINECO
Aizawl, the 28th March, 2023

OFFICE MEMORANDUM

Subject: Revised instruction relating to fixation of inter-se-seniority between direct recruits and promotees thereof.

Reference is invited to this department's instructions issued vide O.M No. A.32020/1/2019-P&AR dated 13.12.2019, which inter alia provided that, the relative seniority of direct recruits vis-a-vis promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, which shall be based on the quotas of vacancies, provided in the relevant recruitment rules/service rules for direct recruitment and promotion respectively.

2. The fixation of relative seniority between direct recruits and promotees is contained in subparagraphs 1) to 10) of paragraph 5 of the aforementioned guidelines. Following the implementation of the guidelines, the government received a number of references regarding the fixation of seniority between employees appointed through direct recruitment and through promotion against vacancies in a vacancy year.

3. After careful consideration on multiple occasions, it has been determined that there are no alternative provisions for determining the respective status of the two employees, aside from the guidelines established and issued by the government. However, the law laid down in the N.R. Parmar case relating to determination of *inter-se-seniority* between direct recruits and promotees in a grade/post was reviewed by the Hon'ble Supreme Court of India in Civil Appeal No. 8833-8835 of 2019 (arising out of SL P(C) Nos.19565-19567 of 2019] in the matter of K. Meghachandra Singh & Ors. Vs Ningam Siro & Ors. In its Order dated 19.11.2019 in CA No. 8833 35/2019 of IC. Meghachandra Singh & Ors. Vs Ningam Siro & Ors, the Hon'ble Supreme Court of India has overruled the decision of the Court in N.R Parmar case.

In para 40 of the Order dated 19.11.2019, the Hon'ble Court *inter-alia* held that "***The law on the issue is correctly declared in J.C. Patnaik (Supra). 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. However, it is made clear that this decision will not affect the inter-se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy/ the date of advertisement.***" Further, in para 38, the Hon'ble Court had held as under:-

"When we carefully read the judgment in N. R. Parmar (Supra), it appears to us that the referred OMs (dated 07.02.1986 and 03.07.1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OMs had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process. But surprisingly, the judgment while referring to the illustration given in the OMs 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".



4. In light of this judicial pronouncement, as well as revised instructions from the Department of Personnel and Training vide No.20011/2/2019-Estt.(D) Dt 13.08.2021, it has been decided to modify the guidelines issued by the Government of Mizoram relating to the determination of inter-se-seniority between direct recruits and promotees as under:

- (i) Sub-para (1) to (10) of Para 5 of DP&AR (GSW) O.M No. A.32020/1/2019-P&AR dated 13.12.2019 in relation to fixation of inter-se-seniority between direct recruits and promotees is hereby withdrawn.
- (ii) Fixation of relative seniority between direct recruits and promotees already decided in pursuance of the said O.M dated 13.12.2019 shall not be disturbed and old cases shall not be re-opened. However, cases which are not settled and finalized before the effective date of this Office Memorandum shall be governed by the provisions of this Office Memorandum, not by the Office memorandum referred at sub-para (i) above.

For recruitment being initiated as well as future recruitment, the inter se seniority of direct recruits and promotees shall be determined in the following manner:-

- i) The rotation of quota, based on the percentage of vacancies allocated to direct recruitment and promotion including limited departmental examination in the notified recruitment rules/ service rules, shall continue to operate for determining vacancies to be filled by the respective quotas in a recruitment year.
- ii) Determination of inter-se-seniority between direct recruits and promotees, who are appointed against the vacancies of respective quota, would, however, be reckoned with reference to the year in which they are appointed i.e. the year in which they are borne in the cadre or formal appointment order is issued.
- iii) The term 'recruitment' and 'appointment' have to be read harmoniously and the determination of seniority for direct recruits would depend on their actual appointment as per their position prepared by the relevant Recruiting Agency or Departmental Promotion Committee and not the initiation of recruitment process itself nor the vacancy year. Hence, seniority of direct recruits and promotees stands delinked from the vacancy year/ year of vacancy.
- iv) Where in case of promotees or direct recruits, the year of appointment is the next year or any year subsequent to the recruitment year, the seniority of such promotees and direct recruits would be determined with reference to the year of their actual joining/appointment to the post, since they were not able to join in the said recruitment year in which the vacancy arose. Thus, they would get seniority of the year in which they actually join the post/grade 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).
- v) In terms of OM dated 11.12.2019, rotation between promotees and direct recruits for the purpose of determination of inter-se seniority, would be undertaken only to the extent of available direct recruits and promotees in a particular year. The term 'available direct recruits or promotees' appearing in this O.M, for the purpose of rotation of quota in fixation of inter-se seniority, shall mean the actual number of direct recruits and promotees appointed during the year after declaration of results/selection and completion of pre-appointment formalities as prescribed.
- vi) As per para (iv) above, if adequate number of direct recruits or promotees do not become available in a particular year, the 'rotation of quotas' for the purpose of determining inter se seniority, would stop after the available direct recruits and promotees are assigned their slots on their appointment/joining in that year.



- vii) If no direct recruit is available in a particular year, available promotees would be bunched together in accordance with their position in the panel recommended for promotion. Similarly, if no promotee is available in that year, available direct recruits would be bunched together, as per their position obtained in the selection process.
- viii) In case, where direct recruits or promotees, as the case may be, belonging to two more selections recommended for promotion, join in the same year, then those who have been appointed/joined as a result of earlier selection would be placed senior in the seniority list to those been appointed/joined as a result of a subsequent selection.
- ix) Therefore, fixation of relative seniority between direct recruits and promotees contained in sub-para (1) to (10) of para 5 of 'Guidelines for fixation of seniority and matters connected thereto' issued vide O.M No. A.32020/1/2019-P&AR dated 13.12.2019 stands modified to the extent.

5. If any question arises relating to the interpretation of these instructions, it shall be decided by the Government.

6. All Administrative Heads of Departments and Head of Departments are requested to bring the contents of this Office Memorandum to the attention of all their respective subordinates concerned.

Sd/- R. Lalramnghaka
Secretary to the Govt. of Mizoram

Memo No. A.23020/1/2019-P&AR (GSW)

Aizawl, the 28th March, 2023

Copy to:

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2. Commissioner & Secretary to Chief Minister.
3. P.S. to Deputy Chief Minister.
4. P.S. to Speaker/Ministers/Deputy Speaker/Ministers of State.
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6. All Administrative Departments.
7. PS to all Principal Secretaries/Commissioners/Secretaries/Special Secretaries.
8. Secretary, MPSC/MIC/SEC/AMC/Lok Ayukta.
9. All Heads of Departments.
10. All Deputy Commissioners, Mizoram.
11. Secretary cum Controller of Examination, MSSSB
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(H. Lalrinpuia) 28/3/23

Deputy Secretary to the Govt. of Mizoram