

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00143 of 2019

Friday, this the 10th day of January, 2020

CORAM

Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

1. James Joseph,
Aged 28 years,
S/o Joseph James,
Income-Tax Inspector,
Office of the Deputy Director of Income-Tax/
Investigation, Public Library Building,
Shastri Road, Kottayam-686 001,
Residing at: Varanathu House,
Manarcadu P.O.,
Kottayam – 686 019.
2. Himanshu S. Prasad,
Aged 29 years,
S/o N.S.Prasad,
Income-Tax Inspector,
Office of the Director General of Income-Tax/
Investigation, 4th Floor, Aryabhangi Pinnacle,
S.A.Road, Elamkulam, Kochi-682 020.
Residing at: Flat 4-C, J.M.Towers,
Opposite: Chinmaya Vidyalaya,
Pallikavu Temple Road,
Vaduthala, Kochi – 682 023.
3. Gopal Amal Babu,
Aged 35 years,
S/o Babu Gopalan,
Income-Tax Inspector,
Office of the Assistant Director of Income-Tax/
Investigation-2, 3rd Floor, Aryabhangi Pinnacle,
S.A. Road, Elamkulam, Kochi – 682 020.
Permanent Address: Kulathanil Anand Bhavan,

.2.

Uthimoodu Post, Pathanamthitta District,
PIN: 689 672.

4. Arnold Renjith V.J.,
Aged 28 years,
S/o T.Vijayadas,
Income-Tax Inspector,
Office of the Joint Director of Income-Tax/
Investigation, Ayakar Bhavan, Trivandrum,
Residing at: Virajath Vihar, TC 14/1262(1) OHRA A4,
Palayam, Vikas Bhavan P.O.,
Trivandrum – 695 033.

5. Anish R.,
Aged 38 years,
S/o N.Raveendran Pillai,
Income-Tax Inspector,
Office of the Deputy Director of Income-Tax/
Investigation, Aayakar Bhavan, Kowdiar,
Trivandrum – 695 003,
Permanent Address: Muringappattil Veedu,
Maloor P.O., Pathanapuram,
Kollam-689 695

.....Applicants

(By Advocate, Mr.T.C.Govindaswamy for Applicants)

Versus

1. Union of India,
represented by the Secretary to the Government
of India, Ministry of Finance,
Department of Revenue,
New Delhi – 110 001.
2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Central Board of Direct Taxes,
Department of Revenue,
New Delhi – 110 001.
3. The Director of Income Tax
(Human Resource Development),
Central Board of Direct Taxes,
Government of India,

.3.

- Ministry of Finance,
Directorate of Income Tax,
ICADR Building, Plot No.6,
Vasant Kunj Institutional Area,
Phase-II, New Delhi – 110 070.
4. The Principal Chief Commissioner of
Income Tax Kerala,
C.R.Building, I S Press Road,
Kochi – 682 018.
 5. Shri K.A.Joshi,
Income-tax Officer,
Office of the Principal Chief Commissioner
of Income-Tax,
Aayakar Bhavan, ST Nagar,
Thrissur – 680 001.
 6. Shri V.V.Mani,
Income-Tax Officer,
Income-Tax Office,
City Plaza 2nd Floor,
Muthuvattor – Guruvayur road,
West Nada, Guruvayur-680 101.
 7. Shri A.K.Anil Kumar,
Income-Tax Officer,
Office of the Principal Commissioner of Income-Tax,
Central Revenue Building,
IS Press Road,
Kochi – 682 001.
 8. Shri C.V.Samkutty,
Income-Tax Officer,
Office of the Additional Commissioner of Income-Tax,
Thiruvalla Range, Vaishnavam Arcade,
T.K.Road, Thiruvalla – 689 101.
 9. Shri A.G.Narayana Hari,
Income-Tax Officer,
Office of the Principal Chief Commissioner of Income-Tax,
Kerala, CR Building, IS Press Road,
Kochi – 682 018.
- Respondents
(By Advocate Mr. Anilkumar, Sr.CGSC for Respondents-1 to 4 and Mr.C.S.G
Nair for R 7 to 8)

.4.

This OA having been heard on 8th January, 2020, the Tribunal on 10th January, 2020 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.143/2019 is filed by five directly recruited Income-tax Officers, who are aggrieved by the alleged faulty assignment of seniority vis-a-vis promotee Inspectors contrary to the binding declaration of law rendered by the Apex Court in **N.R.Parmar**. The relief sought in the OA are as follows:

- (i) Call for the records leading to the issue of Annexure-A1 series and quash the same;
- (ii) Call for the records leading to Annexure-A2 and quash the same to the extent it assigns the applicant's seniority, as if the applicants' recruitment year is 2014-15 instead of 2013-14;
- (iii) Direct the respondents to assign the applicants' seniority in A2, duly reckoning their recruitment year as 2013-14 and direct duly reckoning their recruitment year as 2013-14 and direct further to grant all the consequential benefits arising there from;
- (iv) Call for the records leading to the issue of Annexure A3 and quash the same to the extent it relates to respondents 5 to 9 herein and direct the respondents to consider and promote the applicants as Income-tax Officers with effect from the date of promotion of the respondents 5 to 9 in terms of A3, with all consequential arrears of pay and allowances, arising there from;
- (v) Award costs of and incidental to this Application;
- (vi) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case;

2. The applicants had responded to the notification published by the Staff Selection Commission on 19.01.2013 announcing a Combined Graduate

.5.

Level Examination (CGLE), 2013 (Annexure A4). The applicants qualified in the examination, which was conducted in two stages on 20.07.2014 and 21.09.2014. They were placed in the rank list and allotted Kerala Region for appointment as Inspectors of Income-tax and were issued appointment orders on various dates in November/December, 2015.

3. The contention raised by the applicants is that their seniority should be calculated from 2013 onwards, when steps were initiated for their recruitment. This is in line with the decision of Hon'ble Supreme Court in **N.R.Parmar**. However, the respondents have neglected to do so despite several representations and while this inactivity continued on the part of the respondents, they were at the same time rushing ahead with convening DPC for promotion of Inspector of Income-tax to the next grade on the basis of a draft seniority list (Annexure A2), which has been formulated without adhering to the principle laid down in **N.R.Parmar**.

4. Applicants submit that in Commissionerates other than Kerala, the year of recruitment to those who were recruited along with the applicants through CGLE, 2013 has been assigned 2013-14, but the authorities in Kerala have not followed a similar path. In view of the attitude of the respondents, promotees have been stealing a march over the direct recruits, such as the applicants and are being fast tracked for promotion.

.6.

5. A preliminary reply statement was filed in March, 2019, wherein it was stated that the list at Annexure A2 was only a draft list and would be finalised on the basis of further data/details, which have to be collected. Due consideration would also be extended to various objections which have been received from stakeholders about the draft list.

6. Through a further reply statement filed on 10.06.2019 on behalf of Respondent-4, it was similarly averred that a revised seniority list would be finalised after examining all representations received. Reference was also made to the advisories issued by the Directorate of Income-tax, CBDT, New Delhi regarding the same. It was affirmed that the direction contained in **N.R.Parmar**, would be carefully followed.

7. The prayer for interim relief requested in the OA was considered and based on the preliminary undertaking given by the concerned Counsel representing respondents that the process would be completed within 6 weeks, a direction was issued on 27.03.2019 as follows:

“Heard both sides for some time.

The applicants have sought an interim relief in the form of a direction restraining the official respondents from issuing any further promotion orders to the post of Income Tax Officers before finalising Annexure A2 provisional seniority list. In Annexure A16 which is a communication from the Central Board of Direct Taxes, the following is stated:

“In this connection, I am directed to state that the vacancies for recruitment of Income Tax Inspectors through Combined Graduate Level Examination-2013 were reported to Staff Selection Commission vide this

.7.

Directorate's letter dated 17.12.2013. Therefore, all the candidates selected to the post of Income Tax Inspectors through Combined Graduate Level Examination-2013 are to be given the seniority of RY 2013-14."

In the preliminary objection filed by the respondents, the respondents have described the volume of work involved as "collating and examining the various documents which have to be taken from the record room". They have also requested this Tribunal to give them 6 weeks' time to furnish a detailed reply statement so that the department is able to "revisit the revised data/details collected". We allow the time as requested. At the same time, it is necessary to ensure that no further promotion orders to the post of Income Tax Officers are issued before finalising Annexure A2 seniority list. We direct the respondents accordingly."

8. While matters stood thus, the respondents again approached this Tribunal by filing MA No.1239/2019 for vacation of stay order stating that the interim order was standing in the way of issuing further promotion orders to the post of Income-tax Officers. The MA was heard in detail. This Tribunal decried the official respondents' unwillingness to finalise the Annexure A2 draft seniority list as they had promised and their move to convene DPC for the purpose of effecting promotion as per the draft seniority list. This Tribunal felt with reference to the 93 representations received against the draft list, that promotion should not be resorted to without due consideration being extended to them. The Tribunal dismissed the MA and refused to interfere with the interim order that had already been granted.

9. When the matter was finally heard, all documents including additional document filed on behalf of the Respondent-4 was also duly considered. In the said document, the respondents have tried to explain the delay in

finalisation of the seniority list. They have reported that a Task Force is on the job and all details required are being analysed. We have considered all pleadings made before us as well as the documents submitted.

10. The ratio of the Hon'ble Supreme Court decision in **N.R.Parmar** is widely known. It essentially directed that the seniority of an appointee will be reassigned to the year when the process of recruitment had started. All through the proceedings, respondents have reached up to the stage of finalisation of the draft list but had been wary in finalising the same. Initially they had asked for 6 weeks time to complete the process, which was duly allowed, but later on have detailed various steps taken which unfortunately have not achieved in the desirable goal. What does not appear anywhere in the documents submitted by either side is the important fact that the decision of Hon'ble Supreme Court in **N.R.Parmar** has been over turned by the Apex Court in **Civil Appeal No.8833-8835 of 2019 (Arising out of SLP(C) Nos.19565-19567 of 2019 – K.Meghachandra Singh & Ors. vs. Ningam Siro & Ors.** recently. It would be useful to quote the relevant part of the said judgment.

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 India, where it was held even upon empanelment, an appointee does not acquire any right.

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. 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. 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.

11. With the above judgment, the rules of engagement have changed with duty reposed on the official respondents to finalise the seniority list with due consideration to the decision in **Meghachandra Singh**. We direct the Respondent-2 to urgently analyse the ratio contained in the judgment in **Megachandra Singh** and issue a directive to its field formations including Respondent-4, unambiguously indicating the ground rules under which the seniority question is to be settled as per law laid down by the Apex Court. This shall be done within 60 days of receipt of a copy of this order. After receipt of the same, Respondent-4 will finalise the seniority

.10.

list, the draft of which is available at Annexure A2. Thereupon action will be initiated for convening DPC in order to effect promotion to the higher category. OA stands disposed of. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

.11.

1. Annexure A1 - True copy of Letters bearing F.No.11/ESTT/CC-CHN/2018-19 dated 07.12.2018, issued from the office of the 4th respondent in respect of applicants 1 to 5 respectively.
2. Annexure A2 - A true copy of Seniority List communicated under letter bearing F.No.16/Estt.1/CC-CHN/2018-19 dated 07.12.2018, issued from the office of the 4th respondent.
3. Annexure A3 - A true copy of Order bearing No.83/2018 dated 12th December, 2018, issued from the office of the 4th respondent.
4. Annexure A4 - A true copy of Notification published in the "Employment News" dated 18.01.2013 by the Staff Selection Commission (SSC for brevity) for a Combined Graduate Level Examination (CGLE), 2013.
5. Annexure A5 - A true copy of Appointment Order bearing F.No.13/Estt.1/1/CC CHN/2015-16 dated 05.11.2015, issued in favour of the 5th applicant from the office of the 4th respondent.
6. Annexure A6 - A true copy of proceedings of the Principal Commissioner of Income-tax, Kochi-I communicated under letter bearing F.No.CIT-I/CHN/DE/RESULTS/ITI/2016-17 dated 15.12.2016.
7. Annexure A7 - A true copy of proceedings of the 4th respondent bearing F.No.Pr.CIT.1/CHN/DE/Results-2017/ITO dated 24.05.2018.
8. Annexure A8 - A true copy of revised seniority position of officials in implementation of the decision of the Hon'ble Apex court in N.R.Parmar's case.
9. Annexure A9 - True copy of representations dated 15.10.2018, addressed to the 4th respondent, submitted by the applicants.
10. Anneuxe A10 - True copy of detailed representations dated 18th December 2018 addressed to the 4th respondent submitted by the applicants.
11. Annexure A11 - A true copy of letter bearing F.No.HRD/CM/220/14/2013-14/6672 dated 07.11.2014, issued from the office of the 3rd respondent.
12. Annexure A12 - A true copy of letter bearing F. No. HRD/CM/220/14/2013-14/7912 dated 16.01.2015, issued from the office of the 3rd respondent.

13. Annexure A13 - True copy of Notification No.GSR 2 dated 21 Dec 2004, issued by the Department of Revenue.
14. Annexure A14 - A true copy of draft revised seniority list of Inspectors of Income-tax/AP & TS Regions) as on 01.03.2018.
15. Annexure A15 – A true copy of the clarification sought by 4th respondent from the 2nd respondent, under letter bearing F.No.11/Estt-1/CC-CHN/2018-19 dated 5th November, 2018.
16. Annexure A16 – A true copy of the clarification bearing F.no.HRD/CM/231/04/2018-19/5172 dated 4th December, 2018 issued from the office of the 2nd respondent.
17. Annexure A17 - A true copy of communication bearing F.No.Pr.CC-CHN/PR/RTI/48/2018-19 dated 21.02.2019 received by the 2nd applicant from the Public Information Officer in the office of the 4th respondent.
18. Annexure R1 – True copy of the letter No.11/Estt/CC-CHN/2019-20 dated 27.05.2019 by Principal Chief Commissioner of Income Tax, Kerala along with a copy of the revised inter-se Seniority List of Inspectors of Income Tax for Recruitment Year 2013-14.
19. Annexure R2 – True copy of the letter No.A-35015/26/2018-Ad.VI dated 27.05.2019 by CBDT, Department of Revenue, Ministry of Finance, New Delhi.
20. Annexure R7(1) – True copy of the Communication No.DO,F.No.HRD/CM/102/3/2009-10(Pt)dt.2.7.2013 sent to the field formation by the 3rd respondent.
21. Annexure R7(2) - True copy of the Order F.No.HRD/CM/102/28/2013-14 dt.31.03.2014 issued by the 3rd respondent.
22. Annexure R7(3) - True copy of the Letter F.No.HRD/CM/127/09/2014-15 (Pt.1) dt.11.8.2015 issued by the 3rd respondent.
23. Annexure R7(4) - True copy of the OM No.20011/1/2012 Estt.(D) dt.4.3.2014 issued by the DOPT.
24. Annexure R7(5) - True copy of the Letter No.F.No.Pr.CC-CHN/PR/RTI/03/2019-20 dt. 10.5.2019 issued by 4th respondent.
25. Annexure R7(6) - True copy of the communication F.No.Pr.CC-

CHN/PR/RTI/11/2019-20 dt.3.7.2019 issued by the 4th Respondent

26. Annexure R7(7) – True copy of the Order No.184/13-14 dt.20.12.2013.
27. Annexure R7(8) - True copy of the letter F.No.11/Estt./CC/CHN/2019-20 dt. 27.05.2019 issued by the 4th respondent.
28. Annexure R7(9) - True copy of the representation dt. 31.05.2019 submitted by the 7th respondent.
29. Annexure A18 – True copies of representations submitted by the applicants to the competent authority.
30. Annexure A19 – True copy of letter bearing No.HRD/CM/231/04/2018-19/5172 dated 04.12.2018 issued from the office of the 2nd respondent.
31. Annexure A20 – True copy of letter bearing HRD/CM/231/04/2018-19/824 dated 09.05.19 issued from the office of the 2nd respondent.
32. Annexure A21 - True copy of letter bearing No.11/Estt-1/CC-CHN/2018-19 dated 05.11.2018, issued from the office of the 4th respondent.
33. Annexure A22 - True copy of letter bearing F.No.CCIT-CHN/Estt.I/Misc/2014-15 dated 24.02.2015 issued from the office of the 4th respondent publishing the inter-se seniority of Income-tax Inspectors.
34. Annexure R3 – True copy of letter dated 05.04.2019.
35. Annexure R4 - True copy of letter dated 25.04.2019.
36. Annexure R5 – True copy of letter dated 07.05.2019.
37. Annexure R6 – True copy of letter dated 09.05.2019.
38. Annexure R7 – True copy of letter dated 27.05.2019.
39. Annexure R8 - True copy of report dated 01.11.2019.
40. Annexure R9 – True copy of letter dated 28.11.2019.
