

## CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH, GUWAHATI

Original Application No.31 , 32 &amp; 33 of 2015

Date of Decision: This the 21<sup>st</sup> Day of July 2016.**HON'BLE MRS MANJULA DAS, JUDICIAL MEMBER****HON'BLE MOHD HALEEM KHAN,ADMINISTRATIVE MEMBER****O.A.No.31 of 2015**

1. Sri Thanghlun Hmar,  
Assistant Director of Income Tax,(inv)  
Unit-2 (1) Shillong  
O/O the Director of Income Tax (Inv)  
NER, 4<sup>th</sup> Floor, Aayakar Bhawan,  
G.S.Road, Guwahati Applicant

By Advocate Mr.M.Chanda

-AND-

1. The Union of India  
Through the Secretary  
to the Government of India  
Revenue Department  
Ministry of Finance,  
New Delhi-110001.
2. Central Board of Direct Taxes,  
Represented by it's Secretary,  
Ministry of Finance, New Delhi-110001.
3. The Principal Chief Commissioner  
of Income Tax, NER,  
1<sup>st</sup> Floor, Aayakar Bhawan  
Christian Basti, G.S.Road,  
Guwahati-781005
4. The Additional Commissioner of  
Income Tax (Vig)  
Aayakar Bhawan  
Christian Basti, G.S.Road,  
Guwahati-781005 Respondents

By Advocate Mr.R.Hazarika, Addl.C.G.S.C.

**O.A.32 of 2015**

1. Sri S.John K.Gangte  
Income Tax Officer, Ward-3(4)  
Office of the Joint Commissioner of income Tax  
Range-3, Christian Basti,  
G.S.Road, Guwahati-781005
2. Shri Dilsing Tisso,  
Income Tax Officer(Technical)  
Office of the Commissioner of Income Tax-1  
Christian Basti, G.S.Road, Guwahati-781005      Applicants

By Advocate Mr.M.Chanda

-AND-

1. The Union of India  
Through the Secretary to the  
Government of India  
Revenue Department  
Ministry of Finance,  
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1<sup>st</sup> Floor, Aayakar Bhawan  
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Guwahati-781005
4. The Additional Commissioner of  
Income Tax (Vig)  
Aayakar Bhawan  
Christian Basti, G.S.Road,  
Guwahati-781005      Respondents

By Advocate Ms.M.Bhattacharjee, Addl.C.G.S.C.

**O.A.No.33 of 2015**

1. Sri Daniel Clement Sielhnam  
Income Tax Officer,(inv.)Unit -1  
Office of the Director of Income Tax(inv)  
4<sup>th</sup> Floor, Aayakar Bhawan, Christian Basti  
G.S.Road, Guwahati-781005

Applicant

By Advocate Mr.M.Chanda

-AND-

1. The Union of India  
Through the Secretary to the  
Government of India  
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Guwahati-781005
4. The Additional Commissioner of  
Income Tax (Vig)  
Aayakar Bhawan  
Christian Basti, G.S.Road,  
Guwahati-781005

Respondents

By Advocate Mr.S.K.Ghosh, Addl.C.G.S.C.

**ORDER (ORAL)**

**Per Mrs. Manjula Das, Judicial Member:**

In all the above three cases, the respective applicants prayed for setting aside the order dated 13.1.2015 under No. 05/15 issued by the Respondent No.3, i.e the Principal Chief Commissioner of Income Tax, NER, by which revised the inter-se seniority in the cadre of Inspector of Income Tax in consonance with the Hon'ble Supreme Court's decision in the case of **Union of India, Vs. N.R.Parmar and Ors.**

2. In O.A.No.31 of 2015 the applicant further prays for direction to the respondents to restore the date of promotion of the applicant to the grade of Income Tax Officer w.e.f. 19.6.2001.

3. Similarly, in O.A.No.32 of 2015 and O.A.No.33 of 2015 the respective applicants prayed for direction to the respondents to restore the date of promotion of the applicants w.e.f 11.12.2003 and 20.11.2006 respectively, to the grade of Income Tax Officer Gr. 'B'.

4. In O.A.No.31 the applicant was appointed as Inspector of Income Tax on 16.10.1989 and thereafter promoted to the post of Income Tax Officer on 19.06.2001 as selected through Staff Selection Commission.

5. The applicant O.A.No.32 of 2015 the applicants were initially appointed as Inspector of Income Tax on 20.12.1990 and 23.03.1993 respectively as selected through Staff Selection Commission. They were thereafter, promoted to the post of Income Tax Officer Group 'B' on 11.12.2003.

Similarly, in O.A.No.33 of 2015 the applicant was initially appointed as Income Tax Inspector and joined on 12.4.1996 as selected through Staff Selection Commission. Thereafter, he was promoted to the post of Income Tax Officer and joined on 5.4.2006 on adhoc basis. However, thereafter the applicant was promoted on regular basis to the post of Income Tax Officer vide order dated 20.11.2006 along with 6 others.

6. Mr.M.Chanda, learned counsel appearing on behalf of the applicants in all three cases, at the outset of his argument submitted that the impugned order dated 13.01.2015 under No.5 of 2015 issued by the respondent No.3, is not sustainable under the law, mainly; on the ground that,

- (1) After 13/14 years the department changed the seniority of the applicants in the post of Income Tax Officer without following the principles of natural justice.

(2) It is settled principle of law that after a long period the seniority and promotion of the employees cannot be disturbed.

(3) The referred case i.e **N.R.Parmar** . decided by the Hon'ble Apex Court is not at all applicable in the present case.

(4) The D.O.P.T's O.M. No.2011/1/2012-Estt(B) dated 4.3.2014 contained that the case of N.R.Parmar & Ors., Vs. Union of India & Ors. would be effected from the date of pronouncement of the Judgment i.e 27.11.2014 by the Hon'ble Apex Court.

7. Mr.M.Chanda, vehemently argued that the respondent's revised inter-se seniority in the cadre of Inspector of Income Tax by holding Review DPC meeting on 19.12.2014 to review the select panels drawn in the DPCs held for recruitment years 1992-93 to 2013-14 in the cadre of income Tax Officers. On the basis of the said review DPC meeting held on 19.12.2014, the respondent No.3 has issued the impugned order No.05 of 2015 dated 13.01.2015, whereby the date of promotion of the present applicants in the grade of Income Tax Officer the seniorities have been changed from 19.6.2001 to 3.2.2003; 11.12.2003 to 01.2.2006 and 20.11.2006 to 7.5.2010 respectively, as deemed date of joining as Income Tax Officer without serving any show cause notice before changing the date of actual joining of the applicant in the cadre of Income Tax Officer.

8. Mr.M.Chanda, further submitted that undisputedly the applicant in O.A.No. 31 of 2015 actually joined to the grade of ITO on 19.06.2001 and since then he had discharged his duties and responsibilities as ITO till he was promoted to the next higher grade i.e Assistant Commissioner of Income Tax on 28.03.2012.

It was submitted that vide letter dated 16.12.2014 the Department invited objection if any, with regard to seniority position in the Grade of revised seniority of Inspector pursuant to the decision rendered by the Hon'ble Supreme Court in the case of **Union of India, Vs N.R.Parmar (2012) 13,SCC 340** the applicant has made a specific averments that he had not submitted any objection/retrospective... pursuant to the letter dated 16.12.2014. Since date of entry in the grade of Inspector of Income Tax was correctly shown as 16.10.1989.

9. Mr.Chanda further forcefully argued that as a result of such change on date of actual joining of the applicants also lead to a serious civil consequences as because apparent from adversely affecting the seniority of the applicants in the seniority of the ITO's which would cause serious prejudice to the service prospects of the applicants but cannot be altered without following procedure established by law.

To substantiate his arguments the learned counsel relied the decision of Hon'ble Apex Court in the case of **Ram Ujarey, Vs. Union of India in Civil Appeal No.5714/1998** decided on 13.11.1998 reported in (1999) 1 SCC 685.

10. Thus Mr. M.Chanda submitted that in view of the decision rendered by the Hon'ble Apex Court in the case of **Ram Ujarey (Supra)** on score alone the impugned order dated 13.1.2015 which was issued in total violation of principle of natural justice after a long lapse of 14 years is liable to be set aside and quashed. Learned counsel relied the decision of **Shib Sankar Mohapatra Vs.State of Orissa (2010) 12 SCC 471** as much as the order of promotion of the applicants in the grade of ITI which were neither recalled nor cancelled but the date of actual joining has been changed on the plea of judgment rendered by the Hon'ble Supreme Court in the case of **Union of India, Vs.N.R.Parmar. Hon'ble Apex Court in Civil Appeal No. 7414-7515 of 2005 in the case of Union of India, Vs.N.R.Parmar & Ors.** Whereas the present issue of change of date of actual joining in the cadre of ITO of the applicants is no relevancy with the decision of judgment and order dated 27.11.2012 rendered by the **Hon'ble Apex Court in Civil Appeal No. 7414-7515 of 2005 in the case of Union of India, Vs.N.R.Parmar & Ors..**



11. It is further submitted that the decision rendered by the Hon'ble Apex Court in the case of **Union of India & Ors Vs.N.R.Parmar (supra)** would be effected from the date of pronouncement of the judgment i.e w.e.f. 27.11.2012. As such, the impugned order dated 13.1.2015 is not sustainable under the law.

12. The Respondents have filed written statement. By referring the written statement, the learned counsel for the Respondents submitted that consequent upon the revised inter-se- seniority in the grade of Inspector of Income Tax, the Review DPC has become necessary to rectify certain unintentional mistake for example:-

- (a) Where eligible persons were omitted to be considered : or
- (b) Where ineligible persons were considered by mistake; or
- (c) Where the seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the DPC; or
- (d) where some procedural irregularity was committed by a DPC; or
- (e) where adverse remarks in the CRs were turned down or expunged after the DPC had considered the case of the officer.

13. It was submitted that the post based roster came into effect replacing the vacancy based roster w.e.f.02.07.1997. The promotion up to the Recruitment year 2006-07 was conducted on the basis of Seniority-cum-Fitness. Subsequently one clarification was issued by DOPT through its O.M.No.36028/17/2001-Estt.(Res.) dated 11.07.2002 by which it is mentioned that the Department has received references from various ministries regarding adjustment of SC/ST candidates promoted on their own merit in the reservation rosters introduced vide DOP & T's O.M.No.36012/2/96-Estt.(Res.) dated 02.07.1997. It is clear from the said O.M. dated 02.07.1997 that the SC/ST/OBC candidates appointed by direct recruitment on their own merit and not owing to reservation will be adjusted against unreserved points of the reversion roster,.

14. It was submitted by the learned counsel that in consequence to the decision of the Hon'ble Supreme Court in the case of NR Parmar, the CBDT has issued an instruction on 29.09.2014 to complete the exercise of conducting Review DPC to set right the mistake that took place in the earlier DPCs.

15. According to the learned counsel for the Respondents due to various clarifications & directions received by the O/O the Pr.CCIT,

NER, Guwahati in respect of “own merit” and also due to revision of seniority list in the cadre of IIT, present review DPC meeting has taken place which is here under:-

“In the DPC held in 2003, the applicants were erroneously considered against the UR vacancies in the recruitment year 2003-04. Now in view of subsequent O.M. & clarification the applicants were considered correctly by the Review DPC against reserved vacancy of the R.Y.2006-07 as adequate vacancy for ST candidates was available to consider the applicant in that year.

The Pr. CCIT, NER, Guwahati has accepted the recommendation of Review DPC & issued the order revising the seniority of ITO. It may also be mentioned here that as per extant rule there exist no such provision to show cause or notice for holding Review DPC is necessary. More importantly, the applicants without exhausting normal channel approached before the Hon’ble CAT.....”

16. Learned counsel further submitted that the applicants were promoted erroneously earlier, which has been set right by the Review DPC. There is no procedure either to give any prior information or to show cause to any persons who shall be considered in any DPC. A person, who was erroneously promoted, cannot claim to have been deprived of his right under any Article of the Constitution.

17. It was submitted that the judgment of the Hon'ble Supreme Court in the case of **Shib Sankar Mohapatra Vs. State of Orissa** does not apply in the applicants case. The same is here under:-

“ 8 That in regard to the statements made in para 4.12. of the O.A., the deponent stats that the quoted para of the judgment of the Supreme Court in the case of Shib Sankar Mohapatra Vs.State of Orissa does not apply in the applicants case. The very reading of the quoted para suggests that even Hon'ble Supreme Court did not want to make an air tight opinion as it adds”.....he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation” which clearly indicates that the Supreme Cout is also of the opinion that there may be occasion where even after lapse of substantial period of time it may be necessary to do the exercise of fixation of seniority. Further, it may not be out of placeto state that the above case was about fixation of seniority, but in the instant case it is for the promotion-the very concept of having provision of Review DPC itself is the clear indicator that department is of the view that any grant of erroneous promotion need to be set right as and when it comes to the knowledge.”

18. Learned counsel submitted that the order dated 13.1.2015 is no way can be said to be unjust. No right of the applicants have been deprived. Therefore, the stay granted in the case of applicant may be withdrawn. Therefore, the claim of the applicants for restoring their

date of promotion to the erroneously promoting date is unjust, unlawful and shall deprive rightful claim of promotion of other person.

We have heard learned counsel for the parties, perused the pleadings and materials placed before us.

19. Mr.M.Chanda, however, in his reply by filing the rejoinder submitted that the applicant in O.A.No.31 of 2015 belong to ST category. He qualified the paper “Office Procedure” in the year 1996 under relaxed condition. During the year 1997-98 there was no concession for SC or ST for the purpose of qualifying the examination. As such the applicant although belongs to ST category but he passed the departmental examination without any concession and in normal standard. Applicant passed the departmental examination for promotion to the post of Income Tax Officer, Group ‘B’ and his name appears at Sl.No.12 in the list published on 13.01.1998.

20. The applicants in O.A.No. 32 of 2015 as well as 33 of 2015 belongs to ST category. In the year 1998 the respondent department introduced “Rules for the Departmental Examination for Income Tax Officers, 1998. In terms of the Rule VI of the Rules, 1998, a candidate will be declared to have completely passed the Departmental examination in the year 2000,2001 and 2002 -2003 respectively. Sri

S.J.K.Gangte (O.A.No.32 of 2015) secured 50% marks in each paper and have passed departmental Examination under Rule VI. Similarly, Shri Dilsing Tisso, ST (Applicant No.2 in O.A.32 of 2015) secured not less than 50% marks in each paper in aggregate 60.5% marks. Accordingly, both the applicants were declared passed under Rule VI.

21. Shri Daniel Clemeat Sielhnam, ST (O.A.No.33 of 2015) has secured less than 50% in each paper and the applicant has qualified two papers i.e IT Law-1 & II and passed departmental examination for promotion to the cadre of ITO and he declared passed under Rule VI of Rules 1998.

22. It was further submitted by the learned counsel that the applicant after being qualified in the departmental examination he is entitled to be promoted against the unreserved vacancy. Since selection was made on the basis of "Seniority cum fitness." The Review DPC held on 19.12.2014 committed illegality in holding that the applicant was ineligible person wrongly promoted against unreserved vacancy of ITO. The Review DPC failed to assess the Departmental Examination as per Rule VI, 1998 and the selection was made on the basis of "Seniority-cum-Fitness". The review DPC meeting held on 19.12.2014 after long lapse of about 14 years committed gross illegality

in respect of the present applicants and arbitrarily held that the applicants were wrongly promoted against unreserved vacancy whereas the applicants were shown as ST candidates vide order dated 20.11.2006.

23. It has been clarified by the Govt. of India, D.O.P&T's O.M. dated 11.7.2002 that in the case of promotion by non-selection, promotions are made on the basis of seniority –cum-fitness and the concept of merit is not involved in such promotions. The O.M. dated 11.7.2002 has been wrongly applied in respect of the present applicants as because the applicants were not promoted against the general category.

The change of date of promotion of the applicants to the grade of Income Tax Officer has been arbitrarily changed from 19.6.2001 to 03.02.2003; 11.12.2003 to 01.06.2006 and from 20.11.2006 to 07.05.2010 respectively, without any show cause or notice .

24. Learned counsel further submitted that the respondents has admitted that the promotion was conducted on the basis of seniority- cum- fitness.

To substantiate his case, learned counsel relied the decision of

- (1) **Hon'ble Apex Court in the case of Union of India Vs. S.K.Goel (2007) 14 SCC 641**
- (2) **H.S. Vanki & Ors.Vs.State of Gujarat and others (2010) 4 SCC 301.**

Learned counsel accordingly, forcefully submitted that the respondents are not legally permitted to change the date of promotion consequently the seniority of the applicants in the cadre of ITO after long i.e 11/14 years.

We have heard the learned counsel, perused the pleadings and materials placed before us and the decision relied upon.

25. The main plunk of the arguments advanced by Mr.M.Chanda, learned counsel for the applicants is that

- (1) the respondents revised the inter-se seniority in the cadre of Inspector of Income Tax and held that the Review DPC Meeting on 19.12.2014 to review select list panel drawn in the DPC's held on recruitment year 1992-93,



2013-14. In the cadre of Income Tax Officer and on the basis of Review DPC meeting held on 19.12.2014 the respondent No.3 has issued the impugned order No.05/2015 dated 13.01.2015 whereby the date of promotion of the applicant to the grade of Income Tax Officer has been changed from 19.6.2001 to 03.02.2003; 11.12.2003 to 01.06.2006 and from 20.11.2006 to 07.05.2010 without serving any show cause or notice and is total violation of principle of natural justice before changing the date of actual joining of the applicants in the cadre of Income Tax.

(2) The O.M. dated 11.07.2002 referred by the Respondents on their written statement inter-alia clarified that when no post is reserved, SC/ST candidates falling in the consideration zone should be considered for promotion

along with other candidates treating them, as if they belong to general category. In the instant cases the result of the departmental examination published and they declared passed. As such the department are not entitled to take shelter under the subsequent clarificatory letter dated 01.8.2007 of the department when the applicant have been declared passed in the departmental examination on 13.1.1998, 07.07.2003 and 30.8.2004 respectively. Therefore, the respondents are not entitled to alter the date of actual joining of the cadre of ITO. (3) The impugned order dated 13.1.2015 was passed by the respondents to change the date of actual joining of the applicants in the cadre of ITO going to adversely affected. The seniority in the said cadre after long lapse of 14 years without providing any show cause or notice

towards the applicants. As such the impugned order dated 13.1.2015 is not sustainable in the eye of law.

(4) The DOPT's circular dated 04.3.2014 contained that the decision rendered by the Hon'ble Supreme Court in the case of **Union of India Vs. N.R.Parmar** would not be effected from the date of pronouncement of the judgment i.e dated 27.11.2012. As such the impugned order dated 13.1.2015 is not sustainable inasmuch as the decision was taken by the Review DPC held on 19.12.2014 whereby the revised of inter se seniority in the light of the decision of the Hon'ble Supreme Court in the case of N.R.Parmar (supra).

26. The main plunk of the arguments of the respondent's counsel are that

(1) no notice is required for changing of the seniority which was shown erroneously.

(2) Respondents has not changed the seniority as per decision of Hon'ble Apex Court in the case of N.R.Parman(Supra)

(3) The applicants were passed the qualifying examination in the relaxed standard, not on merit.

(4) In view of the opening remarks in the relaxed standard they are liable to be considered against the vacancy of reserved quota, i.e. not in unreserved quota which was erroneously considered by the DPC. As such the date of joining in the cadre of ITO from 19.6.2001 to 03.02.2003; 11.12.2003 instead of 01.02.2006 and 20.11.2006 instead of 07.05.2010 has been rightly carried out by the Review DPC and there is no infirmity in the impugned order dated 13.1.2015.

(5) The DOPT's clarification dated 01.8.2007 where in it was clarified that the general candidate is to be considered who qualified in the Departmental Examination if he obtains at least 60% marks. The SC/ST candidates who obtained at least 55% marks are treated to have qualified in the examination.

All the present applicants are initially appointed and joined as direct recruitment as Inspector of Income Tax on 12.4.1996, 20.12.1990, 23.3.1993 and 16.10.1989 respectively in the Income Tax Department. It is noted that some of the applicants are subsequently promoted to the post of Assistant Commissioner/Director under the Respondents department.

First Seniority List of Income Tax Officer as on 01.1.2005 (Annexure-3 to the O.A) in O.A.No.31 of 2015 issued on 11.2.2005 where the name of the applicants shown as here under:-

Name	Sl.No.	Date of appont.
(As A-3 to the O.A in the Grade		
1. Thanghlum Hmar	45	19.6.2001
(O.A.No.31 of 2015)		
2. S.John Gangte	83	10.12.2003
Dilsing Tisso	84	10.12.2003
(O.A.No.32 of 2015)		
3. Daniel Clement Sielhnam		20.11.2006
(O.A.No.33 of 2015)		

Shri Daniel Clement Sielhnam (ST) in O.A.No.33 of 2015 who earlier appointed as Income Tax Officer on adhoc basis was regularly appointed on 20.11.2006 as per Annexure-3 of the O.A.No.33 of 2015 the contend as here under:-

“ The inter-se seniority of the above officers in the grade of Incoe Tax Officer in the grade of Income Tax Officer will be placed below Shri Hiranath Handique, ITO.”

The name of the applicant was fixed as Sl.No.1.

27. It is noted that the applicant Shri Thanghlam Hmar subsequently promoted to the post of Assistant

Commissioner of Income Tax on 28.3.2012 under Order No.60/12.

28. The Additional Commissioner of Income Tax (Vig) of all Commissioners/Directors of Income Tax, NER Respondent No.4 , vide its letter dated 16.12.2014 intimated to the Commissioner of Income Tax, Shillong, all other Heads of Officers in NER and the Administrative Officer,Pr.CCIT, NER's office, Guwahati on the subject of Seniority List of Inspectors from RY 1986-87 to RY 2012-13 prepared in the light of Hon'ble Supreme Court's decision in the case of N.R Parmar (C.A No.7514-7515 and others)reg. that

“ consequent upon the directions dated 27.11.2012 of Hon'ble Supreme Court passed in Civil Appeal No.7414-7515 in the case of N.R.Parman & Others Vs. Union of India & Others and in compliance to the Board's letter F.HRD/CM/220/14/2013-14/6672 dt.

07.11.2014, Seniority list in the cadre of Inspector of Income Tax from RY1986-87 to RY 2012-13 has been prepared by the Special Committee constituted by this office.

All In-charge Officers are hereby requested to kindly circulate this enclosed seniority list (Published in ten pages) amongst all the Income Tax Inspectors for their information. Any discrepancy/objection with regard to the seniority as contained in the list may be brought to the notice of this office latest by 19<sup>th</sup> of December, 2014. In case no objections are received within the stipulated period, it will be presumed that the seniority fixed has been accepted as correct. “

The said seniority list of IIT from Ry as here under:-

Year	Sl.No.	Name
1989-90	36	Thanglun Hmar
1990-91	15	S.John K.Gangte
1995-96	18	Daniel Clemeent Sielhnam
1991-92	8	Dilsing Tisso

29. Admitted position as submitted by the learned counsel for the applicant that as the applicants did not have any objection for placing their position in the seniority list as such they did not raise any objection towards the said Seniority list dated 16.12.2014.

30. The grievance arose to the applicants as and when year wise revised Select Panel was drawn by the Review DPC in the grade of Income Tax officer. Consequent upon revised inter-se-seniority in the cadre of Inspector of Income Tax in consonance with the Hon'ble Supreme Court's decision in the case of Union of India **N.R.Parmar**



**Vs.Union** (supra) of India where the respondents issued the impugned order dated 13.1.2015 under Order No.5/2015. From the said impugned list appeared as Annexure-7 to the O.A, the date of joining of the present applicant shown as here under:-

1.	RY	S.No.	Name	Deemed Date of joining
2.	02-03	02	Shri Thanglun Hmar(ST)	03.02.2003
3.	06-07	01	Shri S.Jhon K.Gamgte(ST)	01-02-2006
4.	06-07	02	Shri Dilsing Tisso (ST)	01-02-2006
5.	10-11	01	Shri D.C.Sielhnam	07.05.2010

Admittedly, the settled position of the seniority has been unsettled.

31. We further noted that the apropos manner of determination of inter-se-seniority of direct recruits and promotes would be as under:-

- a) DOPT OM No.20011/1/2006 Estt(D) dated 3.3.2008 is treated as non existent/withdrawn abinitio.
- b) The above principles for determination of inter se seniority of direct recruits and promotes 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.
- c) The cases of seniority already settled with reference to the applicable interpretation of the term availability as contained in DOPT OM dated 7.2.86/3.7.86 may not be reopened.

Undisputedly, all the applicant's seniority in the grade of ITO was settled long back 11/14 years.

32. Thus we hold that as in view of the O.M. dated 4.3.2014 the applicability in the case of N.R.Parmar (supra) shall not be effected in the present case.

33. The Hon'ble Supreme Court in the case of **Shib Sankar Mohapata Vs.State of Orissa (2010) 12 SCC 471**, wherein it was held as here under “

“The settled legal proposition that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained.”

The Hon'ble Supreme Court in the case of **K.R.Mudgal & Ors. Vs.R.P.Singh & Ors., AIR 1986 SC 2086** further held that-

“In K.R. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed.”

34. Thus, 3-4 years is reasonable period for changing the seniority and in case someone is agitated the issue of seniority beyond this period he has to explain the delay and laches in approaching the adjudicatory forum by furnishing satisfactory explanation.

35. In the case of **Ram Uzery(Supra)** the Hon'ble Apex Court observed that the appellant has been allowed the benefit of service rendered by him as Coal Khalashi in the Loco Department from 1964 to 1972 and that period was counted towards his seniority and it was on that basis that he was called for Trade Test and who has passed in the Trade Test thereafter promoted to the post of Semi-Skilled Fitter or as Skilled Fitter. If benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and the promotion order was to be cancelled as having been passed on account of mistake, the respondents ought to have first given an opportunity of hearing to the appellant.

36. Admittedly, in the present case, no such opportunity was afforded to the applicant against their changing of joining as Income Tax Officer under the respondents to deem joining from 19.6.2001 to 3.2.2003, 11.12.2001, 20.11.2014, 7.5.2010 respectively as against the principle of natural justice.

37. Next, we hold that once the seniority has been settled, the settled position cannot be unsettled without having any opportunity of hearing.

In the instant case, we noted that the deemed joining of the applicants as ITO shown by the respondents at their own mind

unilaterally. Thus, construed no fair justice given to the applicants. More pertinently, we explore as to the case of **N.R.Parmar Vs.Union of India** where the respondent authority circulated their message the revised seniority list of Inspector from RY 1986-87, Ry 2012-13. However, the said case would be effected only from the date of pronouncement of the judgment i.e on 27.11.2012.

38. Undisputedly, in the present case, the seniority of the ITOs after long back i.e in the year 2011-12, 2013-14.

We are observed that the respondents authority without keeping in mind from applicability the date of effect, issued impugned order dated 13.1.2015 under order No.05/2015.

39. We however, observed that the applicant in O.A.No.31 of 2015 got next higher grade for promotion in the year 2012 vide panel prepared in the year 2010-11. However, the Feeder cadre of Inspector of Income Tax had not changed and cancelled.

40. After taking into entire conspectus of the case, as discussed in the foregoing paragraphs, we come to a findings that the minimum principles of law i.e principle of natural justice is violated, while there is a settled position of any employee, if the same is going to be unsettled, the employee has a right to approach or knocked the legal forum,

which has been done in the present case. More so, the revision of inter-se -seniority by the review DPC on the pretext of **N.R.Parmar's** case is not applicable because of the cut off date i.e on 27.11.2012.

41. Thus, we found that the O.A of the applicants are having the merit or the facts and law. As such, we have no hesitation to set aside the impugned order dated 13.1.2015 under order No.05/2015 is set aside.

42. We ordered accordingly. O.A. stands allowed. No order as to costs.

(MOHD HALEEM KHAN)  
ADMINISTRATIVE MEMBER

(MANJULA DAS)  
JUDICIAL MEMBER

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