

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00541/2016

Reserved on : 07.01.2020

Pronounced on: 09.01.2020

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER



1. Sumit, Son of Late Dharnidhar Prasad, Qr. No. B-237 (T), HEC Colony, Dhurwa, Ranchi- 834004.
2. Santosh Krishna Panini, Son of Shri R.K. Mishra, Qr. No Type-III/7, Central Excise Colony, Bistupur, Jamshedpur, Pin Code- 831005.
3. Subodh Kumar Mishra, Son of Shri Badri Nath Mishra, Qr. No. Type-III/36, Swarnjyoti, Central Excise & Service Tax Residential Complex, New Rani Kuder, Kadma, Jamshedpur.
4. Sanjay Kumar Singh, Son of Shri Kamleshwar Prasad Singh, Nalanda Colony, Sangita Kunj, Khajpura, Patna.
5. Suryamani Kumar, Son of Sri Ramratan Prasad Singh, Q. No. Type-III/11, Customs Colony, Imlichatti, Muzaffarpur Pin Code- 842001.
6. Niraj Kumar, Son of Shri Ghyanshyam Sharma, Vill+ Post- Mokar, P.S. + Distt. Jahanabad- 804454.
7. Vijay Kumar, Don of Sri Ashok Jha, 501/17, Sector- I, Khelgaon, NGHC, Ranchi- 835217.
8. Diwakar Kumar Mohan, Son of Late Damodar Prasad, Ashok Nagar, Road No.-17, Kankarbagh, Patna.
9. Abhishek Kumar, Son of Shri Binod Kumar Singh, Q. No.- 1B/38, Post Office-Sawang, Colliery, Dist- Bokaro- 829128.
10. Navneet Kumar, Son of Stri Hari Kishore Asthana, Inspector, Customs Colony, Forbesganj.
11. Amresh Kumar, Son of Sri R.K.P. Singh, Q. No. Type-III/51, C R Colony, Salimpurdumra, Aasiyana Digha, Patna.
12. Shahid Ashrafi, Son of Late Shah Nawaz, Q. No. Type-III/177, C R Colony, Salimpurdumra, Aasiyana Digha Road, Patna.
13. Akash Kumar, Son of Sri Umesh Prasad, Gausala Road, Veena Bhawan, Mojama, Patna- 803302.
14. Pankaj Kumar, Son of Shri Mahendra Prasad, Type-III/9, Central Excise Colony, Sector-V/B, Bokaro Steel City- 827006.
15. Dinesh Kumar, Son of Shri Gaya Prasad, H/O – Late Sachidanand Jha, At- Azad Colony Road No. 3, Near Maripur Petrol Pump, Maripur, Muzaffarpur- 842001.
16. Ranbir Kumar, Son of Late Bhuvneshwar Prasad, Qr. No. Type-III/09, Swarnjyoti, Central Excise & Service Tax Residential Complex, New Rani Kuder, Kadma, Jamshedpur.
17. Rishi Raj, Son of Shri Sunil Malakar, Q. No.- 303, Block No. 17, National Games Housing Complex, Khelgaon, Ranchi- 835217.



18. Manohar Kumar Modi, Son of Shri Basudeo Modi, 6/2, Sangam Tower, Alope Vihar, Telcom, Jamshedpur-4.
19. Chandra Bhushan Prasad, Son of Shri Ramji Prasad, Type-III/01, Central Excise Colony, Sector-V/B, Bokaro Steel City.
20. Akhileshwar Kumar, Son of Shri Rambilash Yadav, Q. No. Tyoe-III/19, C R Colony, Salimpurdumra, Aasiyana Digha Road, Patna.
21. Ravi Kant, son of Shri Raj Bansh Singh, Sarvodaya Nagar, Post- Anaith, Ara, Bhojpur-802301.
22. Rajeev Kumar Verma, Son of Shri Ramesh Kumar Verma, Hardyal Road, Near Dr. Rahul Chakraborty, Katihar.
23. Shashi Bhushan, Son of Shri Suresh Prasad, Q. No. Type-III/138, C R Colony, Salimpurdumra, Aasiyana Digha Road, Patna.
24. Rakesh Kumar Ravi, Son of Shri Bhagwat Yadav, Central Excise Colony, New Rani Kuder, Bistupur, Jamshedpur.
25. Shashi Bhushan, Son of Shri Lakshman Prasad, Road No. 7, Kurji, Patna.
26. Ajay Kumar, Son of Shri Ram Yatan Safi, Q. No. B/5, Tyupe-III, Income Tax Colony, Darbhanga.
27. Subhash Paswan, Son of Shri Sudama Paswan, Vikash Nagar, PO + PS-Barh, Distt.- Patna- 803213.
28. Rudal Paswan, Son of Late Jagdev Paswan, C/o Diwakar Kr Mohan, Ashok Nagar, Road No.-17, Kankarbagh, Patna.
29. Anand Prakash, Son of Shri Bandhu Prasad, HIG Flats, 6/6, Sector 7-HF, Badharpur Housing Colony, Kankarbagh.
30. Manoranjan Manni, Son of Shri Indradeo Ram, Type III/06, Customs Colony, Imlichatti, Muzaffarpur.
31. Narendra Kumar, Son of Shri Bindeshwar Rajak, Q. No. Type-III/92, C R Colony, Salimpurdumra, Aasiyana Digha Road, Patna.
32. Pradeep Kumar, Son of Late Kamla Kant Seth, Q. No.- Type-III/22, Income Tax Colony, Lalpur, Ranchi- 834001.
33. Anand Keshav, Son of Shri Vijay Choudhary, Laldarwaja, Gita Babu Road, District- Munger- 811201.
34. Shankar Soren, Son of Shri Ishwari Prasad Soren, C/o Shri Diwakar Kumar Mohan, Ashok Nagar, Road No. 17, Kankarbagh-Patna.

.... Applicant.

By Advocate(s): - Mr. G. Bose with Mr. Vikash Jha

-Versus-

1. The Union of India through the Secretary to the Government of India, Department of Revenue, Ministry of Finance, Government of India North Block, New Delhi-110001.
2. The Central Board of Excise & Customs, through the Chairman, CBEC, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi-110001.
3. The Chief Commissioner, Central Excise, Customs & Service Tax, Ranchi Zone, Patna (Cadre Controlling Authority), Department of Central Excise, Customs & Service Tax, Bir Chand Patel Path, Patna.

4. The Secretary to the Government of India, Department of Personnel & Training (DOP&T), Ministry of Personnel, Pensions & Public Grievance, Government of India, North Block, New Delhi-110001.

..... Respondents 1st Set

5. Jitendra Kumar Singh, presently posted at Customs Hqrs. Preventive, Patna (Customs Patna Commissionerate), Bir Chand Patel Path, Patna.
6. Pradeep Lakra, presently posted at Adityapur, S. Tax Range, Jamshedpur Commissionerate.
7. Prabhat Kant Kumar, presently posted at Custom (P) (Land Custom Station), Raxaul.
8. Binod Paswan, presently posted at Central Excise Division, Imlichatti, Muzaffarpur.
9. Amar Nath Verma, presently posted at Central Excise Office, Ara, Bihar.
10. Sanjay Kumar Rajak, presently posted at Mango Service Tax Range, Jamshedpur.
11. Shyam Kumar Yadav, presently posted at C.C.O. Central Excise Service Tax, Patna.

.... Respondents 2nd Set

12. Satyendra Prasad, presently posted at Director General of Central Excise Intelligence, Jamshedpur Unit, Jamshedpur.
13. Sanjay Kumar Sinha, presently posted at Audit Circle, Central Excise & Service Tax, Ranchi Audit Commissionerate.
14. Rabindra Kumar Verma, presently posted at Central Excise Headquarters, Jamshedpur.
15. Umesh Kumar Lal, presently posted at Adityapur-7, Central Excise Range, Jamshedpur.
16. Raman Prakash, presently posted at Land Customs Station, Raxaul.
17. Hira Lal Sahu, presently posted at Audit Circle, Jamshedpur, Central Excise & Service Tax, Audit Commissionerate.
18. Umesh Kumar, presently posted at Kishanganj (Preventive) Circle, Customs Circle, Kishanganj.

.... Respondents 3rd Set

By Advocate(s): - Mr. H.P. Singh, Sr. SC with Mr. Radhika Raman.

ORDER

Per Dinesh Sharma, A.M:- In the instant OA, the applicants have filed this OA seeking the following reliefs:-



“ (i) The seniority list in the cadre of Inspector in Group ‘B’ Non-Gazetted Officer to Inspector cadre working in the Central Excise & Service Tax & Customs, Ranchi Zone, Patna of the Central Excise/Custom/Audit Commissionerate, Patna/Ranchi-I. Ranchi-II (Bokaro)/Dhanbad as on 01.01.2015 corrected up to 01.04.2015 dated 29.04.2015 as well as seniority list dated 01.04.2016 issued by the Joint Commissioner be quashed and modified, the same by putting the applicants above the private respondents and similarly situated.

(ii) After modifying the correcting seniority list/quashing the same, the official respondents be directed to issue fresh seniority list as per law laid down by the Hon’ble Apex Court in the case of Union of India & Ors.- Vs- N.R. Parmar and Others.

(iii) Any other relief or reliefs as your Lordships may deem just and proper in the facts and circumstances of the case may also be passed in favour of the applicants.

(iv) The cost of litigation may be awarded in favour of the applicants.”



2. As is clear from above claimed reliefs, the case of the applicants is based on the judgment of the Hon’ble Apex Court in the case of **Union of India & Ors. Vs. N.R. Parmar**. Briefly speaking, this judgment passed in the year 2012 decided that the inter-se seniority between direct recruits and the promotees should be based while considering the year of direct recruits as the one in which the vacancy of quota of direct recruitment arose, irrespective of the year in which those direct recruits were actually recruited. The applicants in this case have stated that they are direct recruits appointed in the Inspector cadre against the vacancy of quota of direct recruitment issued as on 05.04.2008 by the Staff Selection Commission. They had applied for their recruitment through Combined Graduate Level (Pre) Examination, 2008 for the Inspector cadre notified by the SSC as per their notification



published in the Employment News dated 05.04.2008. The selection process started in the year 2008 and the applicants along with many others appeared in the selection process and were subsequently found qualified, but due to some official procedure they had joined the Department after the requisite formalities on different dates in the year 2011. The private respondents (respondent no. 5 to 18) were promoted subsequent to the selection held in 2008 but since they were already existing employees of the Department they joined earlier to the applicants against promotion quota. The official respondents have issued a seniority list in the year 2012 in which the seniority has been fixed as per the date of joining of the applicants vis-à-vis the private respondents in the cadre. However, with the decision in the Union of India & Ors. Vs. N.R. Parmar by the Hon'ble Apex Court on 27.11.2012 it has been held that if a direct recruit had appeared in the selection which was held earlier to those of promotes, the direct recruits shall stand senior irrespective of the fact when they joined the Department. The Department of Personnel & Training has vide its notification dated 04.04.03.2014 issued an Office Memorandum about how inter-se seniority of direct recruits and promotees should be maintained. This OM accepts the fact that in view of the judgment of the Hon'ble Supreme Court in N.R. Parmar's case their earlier Memorandum dated 03.03.2008 has become non-est. The OA also cites a number of cases decided by the Tribunal where it has been held that following the law

laid down by the Hon'ble Supreme Court, the DoP&T cannot act contrary to it.

3. A written statement has been filed in which the respondents have denied the claim made in the OA. It is also stated in the WS that the DoP&T after examining the matter in the light of the said judgment of the Hon'ble Supreme Court in the case of N.R. Parmar, in consultation with the Department of Legal Affairs, has directed that the said principle of determination of inter-se seniority of direct recruits and promotes would be effective from 27.11.2012 (the date of Supreme Court judgment) and the cases of seniority already settled may not be re-opened.



3. A rejoinder has been filed by the applicants reiterating their case giving various illustrations of promotion quotas and direct recruit quotas and again quoting from the judgment of the Hon'ble Supreme Court in N.R. Parmar's case and the cases decided by the Bombay Bench of this Tribunal in support of their contentions made in the OA.

4. We have gone through the pleadings and heard the arguments. During the course of the arguments, learned counsel for the respondents produced before us a judgment of the Hon'ble Supreme Court in **K. Meghachandra Singh & Ors. Vs. Ningam Siro & Ors.** dated 19.11.2019. This Three Judge Bench judgment, the learned counsel for the respondents argues, has overruled the judgment of the Apex Court in N.R. Parmar's case and therefore, the applicant's claim to get any benefit

of seniority under that judgment cannot be entertained. The learned counsel for the applicant argues that the recent judgment in K. Meghachandra Singh's case specifically states that the judgment will apply prospectively and hence this should not be made applicable on the facts of the current OA.



5. After going through the pleadings and hearing the arguments of the learned counsels for the parties, it is clear the only issue which needs to be decided in this case is whether the claim of the applicants to have their seniority revised on the basis of N.R. Parmar's decision can be entertained now after the decision of the Apex Court in K. Meghchandran Singh's case to overrule N.R. Parmar prospectively. We are reproducing the relevant paragraph of Meghachandra Singh & Ors. case below:-

"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. And Pawan Pratap Singh & Ors. Vs. Reevan Singh & Ors. (supra). These three judgments and several others with like enunciation non 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 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."

6. The above paragraph leaves us in no doubt that the Hon'ble Apex Court has overruled the decision in N.R. Parmar's case and hence, the applicants cannot claim to get benefit of that judgment now. The above paragraph makes it clear that the decision will not affect the inter-se seniority already based on N.R. Parmar and the same is protected. In the present case before us, the inter-se seniority has not been based on N.R. Parmar's case and the respondents have in fact denied the applicability of N.R. Parmar's case on the facts of the current case.



7. The learned counsel for the applicants also argued that they had filed this OA in the year 2016 which is much earlier to the order passed in K. Meghachandran Singh's case and, therefore, the law prevailing at the time of recruitment of direct recruits in 2008 and 2011 which should have been covered under N.R. Parmar's case should have been applied. However, in the light of the clear dictum of the Hon'ble Apex Court and the undisputed nature of the facts in this case that the seniority has not been determined following N.R. Parmar's case, we have no option but to follow the last dictum of the Hon'ble Apex Court and deny the claim made by the applicants to apply the principles of N.R. Parmar's case to fix their inter-se seniority now. The OA is, therefore, dismissed. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member