

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
Original Application No.500/2018
Dated this the 09th day of August 2021**

**Reserved on :24.02.2021
Pronounced on :09.08.2021**

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr. A K Dubey, Member(A)

Sudarshan Singh,
S/o Ramshringar Singh,
Male, aged about 44 years
Presently working as
Inspector, CGST, Central Excise & Customs,
Residing at: C-204, Nirmal Signature,
New C.G.Road, Chandkheda,
Ahmedabad – 382 424. ... Applicant

By Advocate Shri Jay A Mehta

v/s

- 1 Union of India,
Notice shall be served through
The Revenue Secretary, Government of India,
Ministry of Finance, Department of Revenue,
North Block, New Delhi – 110 001.
- 2 The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi – 110 001.
- 3 The Chief Commissioner,
CGST, Central Excise & Customs,
Vadodara Zone, Vadodara,
2nd Floor, Central Excise Building,
Race Course Circle, Vadodara – 390 007.
- 4 The Secretary (Personnel), Ministry of Personnel,
Department of Personnel and Training,
North Block, New Delhi – 110 001. ... Respondents
(By Advocate Ms R R Patel)

ORDER**Per: Jayesh V.Bhairavia, Member (J)**

- 1** Aggrieved by non-consideration for promotion to the post of Superintendent, the applicant has filed the present OA under Section 19 of the AT Act, seeking following reliefs:-

- “A Your Lordships kindly may be pleased to admit and allow this Original Application.*
- B Yours Lordships kindly may be pleased to direct the Respondents to promote the Applicant herein to the rank of Superintendent of CGST, Excise & Customs w.e.f. the date their juniors were promoted as per seniority list of inspectors as on 01.01.2014 with all notional consequential benefits like Seniority, Pay Fixation and Arrears at par with effect from 2017 and revise the promotion orders accordingly.*
- C Your Lordship to declare the action of respondents in not considering the applicant for promotion to the post of Superintendent Central Excise, as illegal and unjustified and issue appropriate directions for promoting the applicants to the said post of Superintendent, Central Excise with all consequential benefits including arrears of pay.*
- D Your Lordship be pleased to allow the OA with costs.*
- E Yours Lordships kindly may be pleased to pass any other and or further order, as deemed fit, in the interest of justice.”*

- 2** At the outset, it is required to mention that during the pendency of this OA, the applicant has been promoted to the post of Superintendent on 07.06.2019. However, the applicant submits that the respondents ought to have granted him promotion w.e.f. the date from which his juniors were promoted i.e. 27.06.2017. It is submitted that the other direct recruit Inspectors i.e. the applicants of CP No.20/2018 in OA 232/2017 have already been promoted w.e.f. 27.06.2017 vide order dated 07.12.2020.
- 3** The Inspectors promoted vide order dated 07.12.2020 are original direct recruits Inspectors and are junior to applicant, not only that the applicant has been erroneously treated junior to other direct recruits and for said reason, counsel for the applicant submits that the applicant be treated equally with other direct recruit Inspectors by assigning the correct seniority position and consequential promotion w.e.f. 27.06.2017.
- 4** Heard the learned counsel for parties and perused the material on record.
- 5** On perusal of records it reveals that the respondents herein admitted in their reply (para 5 referred) that

“applicant appeared in the Staff Selection Commission Competitive Examination, conducted in pursuance of Public Employment Notice dated 14th/20th October 2006 (hereinafter referred to as “2006 Batch”) as an OBC candidate for the post of Inspector of Central Excise (Group B Non Gazetted). At that time applicant was holding permanent post in India Coast Guard Services as Pradhan Navik (ME). He sought age relaxation as available to Central Government Civilian Employees for appearing in the said exam. He successfully cleared the examination but was not given appointment on the ground that the age relaxation sought by him as same was not available to him as he was posted in Indian Coast Guard which is similar to various Central Government Military Forces. Being aggrieved, the applicant filed an OA before the CAT, Ernakulam Bench, contending that the Indian Coast Guard is similar to Central Para Military Forces (CPMF) and since the employees of CPMF are enjoying the benefit of age relaxation given to the Central Government Civilian Employees, he is also eligible for the same. During the pendency of said OA, the DoP&T considered the request of the applicant and decided that the said benefit of age relaxation applicable to employees of Indian Coast Guard working as CPMF. Accordingly, the Staff Selection Commission revoked their action and allowed the applicant to join the post of Inspector of Central Excise under the respondents. He joined the service on 20th October 2011.

The respondents further admitted in the said para of the reply that on the basis of decision of Hon’ble Supreme Court dated 27.11.2012, in the case of N R Parmar, the applicant herein was given seniority from the year 2006 (i.e. year in which vacancy was created), alongwith promote inspectors of 2006 Batch based on 2 : 1 quota as envisaged in the recruitment rules for the cadre of Inspector of Central Excise.

It is further stated therein that as per the extant rules i.e. Superintendent of Central Excise Recruitment Rules, 1986 the promotion to the grade of Superintendent of Central Excise requires atleast 8 years of regular service in the grade of Inspectors. Since the applicant had not completed 8 years of regular service as on 17.01.2018, his name was not included in the said tentative list. Subsequently, the applicant made his representation dated 07.02.2018 through proper channel for considering his name for promotion in the DPC for the year 2018 requesting relaxation of two years in qualifying service on the basis of DoP&T OM dated 25.03.1996 as the name of his juniors had been listed in the tentative list dated 17.01.2018. The matter was referred to the Board vide office letter dated 12.07.2018 for further direction.”

- 6 Further the respondents also contended that the request of applicant for relaxation of eligibility criteria of 8 years at par with other direct recruit inspectors of 2006 Batch including juniors was referred to competent authority alongwith identical request received from similarly placed officers vide letter dated 12.07.2018 (Ann R/1). The respondents have also contended that since 8 years of regular service in the feeder cadre of Inspector is required as per the recruitment rules for the post of Superintendent, the case of

applicant was not considered as he had not completed 8 years of regular service. As against the aforesaid stand of the respondents, counsel for the applicant submitted that similarly placed direct recruit inspectors and juniors to him have been granted benefit of OM dated 25.03.1996 as also the benefit of directions issued by Principal Bench of this Tribunal in Pankaj Nayan case and they were promoted by giving benefit of relaxation in eligibility service. The counsel for the applicant further submits that respondents had implemented the directions issued in Pankaj Nayan case and said order has attained finality in itself, it is not open to the respondents to deviate from the same and to take a different stand that senior junior clause was not part of the recruitment rules. It is submitted that after filing of this OA though the applicant has been promoted to the post of Superintendent on 07.06.2019, but more than 70 juniors to him have been promoted to the post of Superintendent w.e.f. 27.06.2017 by granting relaxation in eligibility as per the OM dated 25.03.1996 and Pankaj Nayan case. Therefore, the Union of India cannot be allowed to adopt different stand in different petitions/OAs involving the same issue. It is stated that this Tribunal in OA 404/2017 and other connected OAs including the CPs therein directed the respondents to consider the case of applicants therein in light of judgment passed in Pankaj Nayan case and in compliance to it the respondents have issued revised promotion order dated 07.12.2020 by granting promotion w.e.f. 27.06.2017 wherein 77 juniors to applicant have been given the benefit of seniority and eligibility from 2017 but the applicant herein has not been considered in absence of any judicial order in his favour.

- 7 From the aforesaid submission and factual matrix, it can be seen that admittedly the respondents have extended the benefit of OM dated 25.03.1996 for relaxation in eligibility service to direct recruit inspectors for the purpose of consideration for the post of Superintendent. The said officers were granted the benefit of N R Parmar and their seniority has been assigned as per the vacancy year including the applicant herein by considering him as 2006 Batch direct recruit Inspector. Recently, Hon'ble Apex Court in the case of K. Megha Chandra Singh vs Ningam Siro reported in (2020) 5 SCC 689 : (2020) 2 SCC (L&S) 204 the issue of legality and validity of ratio laid down

in the case of N. R. Parmar has been considered and the Hon'ble Apex Court in para 39 held as under:-

“The judgment in N R Parmar (2012) 13 SCC 340 relating to the Central Government Employees cannot in our opinion, automatically apply to the Manipur State Police Officer, governed by the MPS Rules, 1965. We also feel that N R Parmar had incorrectly distinguished the long standing seniority determination principles propounded in, inter-alia, Jagdish Ch. Patnik v/s State of Orissa (1998) 4 SCC 456, Suraj Prakash Gupta v/s State of Jammu & Kashmir (2000) 7 SCC 561 and Pawan Pratap Singh v/s Reevan Singh (2011) 3 SCC 267. These 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 born in the cadre. In our considered opinion, the law on the issue is correctly declared in Jagdish Ch. Patnik and consequently we disapprove the norms on assessment of inter-se seniority, suggested in N R Parmar. 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.”

- 8 Thus, the Hon'ble Apex Court while overruling the judgment passed in N R Parmar case **has carved out an exception as it has observed 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”**.

In the present case as noted herein above undisputedly the respondents had assigned seniority to the applicants in terms of N R Parmar case and same has attained finality in light of law laid down by Hon'ble Apex Court in K Megha Chandra's case.

- 9 We find force in the submission of counsel for applicant that respondents cannot deviate from their stand in extending the benefit of relaxation in terms of directions contained in Pankaj Nayan's case as also instructions contained in OM dated 25.02.1996, while considering the claim of direct recruit inspector for promotion to the post of Superintendent such as applicant herein and same cannot be ignored only because he was not party in group of OAs filed by similarly placed direct inspectors.

As such, the respondents have fairly submitted that the claim of applicant has been referred to the Board for extending the benefit of relaxation of eligibility in terms of Pankaj Nayan case as also at par with his juniors, we deem it fit to dispose of this OA by directing the respondents to re-examine the case of applicant in terms of directions contained in Pankaj Nayan case as also taking into consideration the decision of the respondent granting promotion to identically placed direct recruit inspectors vide order 07.12.2020. The respondents are directed to issue revised order after holding Review DPC with in a period of three months from the date of receipt of copy of this order.

- 10 With the above directions the OA stands disposed of. There shall be no orders as to costs.

(A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

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