

**ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/021/260/2021

Reserved on: 26.04.2021

Pronounced on: 30.04.2021



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

1. M. Venkata Krishna,
S/o. Subba Rao (Gr.B. Non Gazetted),
Aged about 51 years,
Occ: Inspector of Central Tax,
O/o. Chief Commissioners Office, Customs & GST,
Hyderabad Zone.
2. Marupaka Suresh, S/o. Late Kistaiah,
Aged about 56 years,
Occ: Inspector of Customs.
O/o. Deputy Commissioner of Customs,
RGIA, Shashabad, Hyderabad.
3. K.V.V. Ravi Kumar,
S/o. Late K.V. Rama Chandra Rao,
Aged about 55 years,
Occ: Inspector of Central Tax,
O/o. The Commissioners of Central Tax, Circle 6IV,
Audit 6 II Commissionerate, Hyderabad.
4. Sree Muruva Kausalya Devi,
D/o. S.M. Venu Gopal,
Aged about 43 years,
Occ: Intelligence Officer,
O/o. DGGI, Visakhapatnam Zonal Unit,
Suryabagh, Visakhapatnam.
5. Jami Anil Kumar,
S/o. Late J. Kumaraswamy,
Aged about 45 years,
Occ: Enforcement Officer,
O/o. The Deputy Director, Directorate of Enforcement,
Visakhapatnam Sub Zonal Office,
Madhavadhara, Visakhapatnam 6 530 018.
6. Gopisetty Neelakanteswara Rao,
S/o. Late G. Chinna Rao,
Aged about 36 years,

Occ: Intelligence Officer,
O/o. DGGI, Visakhapatnam Zonal Unit,
Suryabagh, Visakhapatnam.

7. Devaguptapu Srinivasa Rao, S/o. D.V. Subba Rao
Aged about 55 years, Occ: Inspector,
O/o. Guntur CGST Audit Commissionerate,
Port Area, Visakhapatnam 530 035.
8. Patchigolla Satya Sri Lakshmi,
D/o. Kotha Venkata Ratnam,
Aged about 50 years,
Occ: Inspector of Central Tax,
O/o. Kancharapalem Range, CGST Central Division,
Suryabagh, Visakhapatnam 530 020.
9. Baswa Sudhakara Rao,
S/o. Late B. Sudharsana Rao,
Aged about 50 years,
Occ: Inspector of Central Tax,
O/o. CGST Central Division, Suryabagh,
Visakhapatnam 530 020.
10. R.P.P. Kumar, S/o. R. Viswanadham (Late),
Aged about 50 years,
Occ: Inspector of Customs,
O/o. Commissioner of Customs (Preventive),
Vijayawada.
11. B. Laxmana Rao, S/o. B. Rama Rao (Late),
Aged about 48 years,
Occ: Inspector of Customs,
O/o. Commissionerate of Customs (Preventive),
Vijayawada.
12. T. Rama Krishna, S/o. T. Anjaneyulu (Late),
Aged about 51 years,
Occ: Inspector of Customs,
O/o. Commissionerate of Customs (Preventive),
Vijayawada.

...Applicants

(By Advocate : Sri N. Vijay)

Vs.

1. The Union of India, Ministry of Finance,
Department of Revenue, North Block,
New Delhi rep. by its Secretary.





2. Central Board of Customs and Central Excise/
Central Board of Indirect Taxes and Customs,
North Block New Delhi rep. by its
Chairman.
3. The Chief Commissioner,
Customs, Central Tax,
Central Excise & Service Tax,
Basheerbagh, Hyderabad.
4. The Principal Commissioner, Central Tax,
Hyderabad GST Commissionerate (Cadre Controlling Authority),
GST Bhavan, Hyderabad.

... Respondents

(By Advocate: Smt K. Rajitha, Sr. CGSC
Sri M.V. Krishna Mohan, for private respondents)

ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Admn. Member)



2. The O.A. is filed against the action of the respondents in proposing to conduct DPC for promotion to the cadre of Superintendent in regular vacancies on the basis of draft seniority list of Inspectors of Hyderabad and Vizag Zones as on 01.01.2014, prepared on the basis of judgement in N.R. Parmar case in spite of the judgement of the Hon'ble Supreme Court in Meghachandra Singh case [2020(5) SCC 689] r/w Ganga Vishan Gujarathi vs State of Rajasthan [2019(16) SCC 28] as illegal, arbitrary and in violation of Articles 14 & 16 of the Constitution of India and consequently direct the respondents to effect promotion to the cadre of Superintendent on the basis of Meghachandra Singh case.

3. The brief facts of the case are that the applicants have been appointed as LDC in the respondent's organization. Thereafter, they were promoted as Inspectors from the years 2011 to 2014. A draft seniority list was issued on 1.1.2014 based on **N.R. Parmar** judgement. Direct recruits, who joined later to the applicants in 2013 & 2014 were shown as senior to them. The respondents based on the said seniority list, are now considering promotions to the post of Superintendents and aggrieved over the same, the O.A. is filed.

4. The contentions of the applicants are that N.R. Parmar judgement has been overruled by the Hon'ble Supreme Court in Meghachandra Singh case on 19.11.2019. The final seniority list has not been published and the respondents are going ahead with the



draft seniority list. The DOPT OM dated 4.3.2014 prescribed the method of determining inter se seniority between direct recruits and promotees and the norms laid therein have not been followed. The Hon'ble Supreme Court in **2019 (16) SCC 28** has held that retrospective promotion is violative of Article 14 of the Constitution. Therefore, the respondents cannot grant retrospective promotion to the direct recruits. The Hon'ble High Court of Delhi in ***Veena Kothwal vs UOI*** in W.P.(C) 3087/2016 dated 22.1.2018 has observed that settled seniority should not be unsettled. The applicants submitted representations but of no avail. If the promotions are granted based on draft seniority list, applicants have to work under juniors in the years to come. Some of the Commissionerates of the respondents organization, have revised the seniority lists based on the latest rules and law.

5. The respondents in their reply statement have stated that the draft seniority list as on 1.1.2014 was published on 23.9.2014 based on DOPT Memo dated 4.3.2014. While issuing the draft seniority list, a note was appended wherein it was mentioned that since the direct recruits of 2012 have not joined the respondents organization, seniority of promotees of 2011-12, 2012-13 & that of officers who have joined Andhra Pradesh zone on Inter-Commissionerate transfer basis will be fixed later. Accordingly, promotions were granted based on the draft seniority list of 2015. A dispute arose between the Data Entry Operators and Ministerial Cadre employees in regard to the promotion to the Inspector cadre and the dispute was carried over

to the Tribunal in OA No.1099/2018 & MA No.82/2019, OA No.1088/2018 & MA No.81/2020. The Tribunal has directed on 22.2.2019 to grant promotion on ad hoc basis based on the draft seniority list subject to finalization of the final seniority list. Based on the orders of the Tribunal, promotions have been granted, using the draft seniority list of 2015. The Board of the respondents organization vide letter dated 31.7.2020 directed the subordinate formations to keep the seniority issues pending till clarifications are received from DOPT and Department of Legal Affairs in regard to clause(v) (h) of DOPT OM dt. 4.3.2014. The respondents also state that the seniority list could not be finalized because the O.A. No.1225/2016 in regard to seniority in Inspector grade is still pending adjudication. Further, no direction has been received from DOPT in regard to fixation of seniority based on judgement of the Hon'ble Supreme Court in Meghachandra Singh. Veena Kothwal judgement cited by the applicants is in regard to the date from which NR Parmar's judgement has to be applied. The DPCs have been conducted on 31.12.2019, 20.01.2020 & 21.7.2020 and promotions have been effected to the cadre of Superintendent. Therefore, APARs have been called vide letter dated 22.2.2021 to fill up vacancies in Superintendent cadre for the year 2021. Further, the Tribunal in OA No.1088/2018 & 1099/2018 has clearly stated that promotions can be effected based on draft seniority list. It is important to note that the applicants have not contested the draft seniority list as on 1.1.2014. The Megha Chandra Singh judgement is prospective in nature and it cannot be operated retrospectively.



The work of the department cannot be stopped for lack of promotions and, therefore, it is essential to promote the eligible officers as Superintendents.

6. Heard Sri N. Vijay, learned counsel for the applicants and Smt. K. Rajitha, learned Senior Standing Counsel appearing for the respondents and perused the pleadings on record.



7. I. The dispute is about the seniority of the applicants and their promotion to the cadre of Superintendent. The applicants have been promoted as Inspectors in the years 2011 to 2014 and draft seniority list was issued on 1.1.2014 based on NR Parmar's judgement. The direct recruits, who joined later to the applicants in the year 2013 & 2014 were shown as senior to the applicants. The grievance of the applicants is that the judgement in N R Parmar's case has been over ruled by the judgement in Megha Chandra Singh's case and also their seniority has not been fixed, as indicated in the note appended to the draft seniority list issued on 23.9.2014. Therefore, when the seniority has not been fixed, the question of applying the N R Parmar judgement would not arise. As on date, it is the judgement in Megha Chandra Singh's case which prevails and, therefore, their seniority has to be fixed as per the judgement in Megha Chandra Singh's case.

II In sharp contrast, the respondents state that based on the orders of this Tribunal in OA No.1088/2018 & 1099/2018, the draft seniority list was the basis to promote Inspectors to the grade of

Superintendents. Promotions have been effected by conducting DPC on 31.12.2019, 20.01.2020 & 21.7.2020. The applicants, without contesting the draft seniority list issued on 1.1.2014, have come over to the Tribunal stating that their seniority has to be fixed basing on the judgement in Megha Chandra Singh's case instead of N R Parmar.



III However, this Tribunal in OA No.1088/2018 & 1099/2018 held that promotions have to be granted based on the draft seniority list till the final seniority list is issued. The relevant portion is extracted hereunder:

"E. Therefore the second question about seniority of applicants who are direct recruits is also comprehensively answered by the verdict in N.R.Parmar case. A conjoint reading of the Hon'ble Supreme Court observation in regard to seniority of the direct recruits and the amended recruitment rule, 1986 tilts the scales in favour of the applicants. To get promoted as Superintendent, the amended recruitment rule provides the requisite length of service of 8 years and the N.R. Parmar judgment propels them to the plane of being considered as seniors over those juniors who are figuring in the eligibility list for promotion annexed to the letter dt 27.9.2018.

*F. Before we put the issue to rest, we cannot refrain from declaring that in OA 841/2018 dealing with an identical issue, respondents have taken the stance that the applicant in the cited OA cannot be promoted to Superintendent cadre as he does not possess 8 years of service on the theory that the length of service is relevant and not seniority. Taking a diagonally opposite stance in the present OAs, by profusely lining their reply with the claim that seniority is the crux of the matter is indeed perplexing. Moreso, when the respondents have admitted that the recruitment rule has been amended and in the context of the Hon'ble Supreme Court judgment in regard to the seniority of direct recruits. It would be proper for the respondents to take a consistent stand and not change the same at the drop of a hat in different OAs, because they are the State in themselves. "Consistency is a virtue (State of Karnataka vs Umadevi (2006) 4 SCC , para 20". The respondents need also bear in mind that they are a model employer and the observations of the Apex Court in **Dev Dutt v. Union of India, (2008) 8 SCC 725** are apt and relevant for the respondents to follow, namely "The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible."*

G. Thus based on the merits of the case, rules in vogue, observations of the Hon'ble Supreme Court cited in paras supra, the case of Garima Singh v U.O.I and ors in OA 3278/2010 dt 9.5.2011 and the Hon'ble Principal Bench verdict in OA 3405/2014, the applicants have made out a

cast iron case which fully succeeds. The observations of this Tribunal in OA 841/2018 fortify the case in favour of the applicants. Evaluated against the aforesaid observations, action of the respondents is against rules, arbitrary and illegal. Consequently, the respondents are directed as under:

- i) To consider promoting the applicants on an adhoc basis to the post of Superintendent, on the basis of the draft seniority list with consequential benefits making the same, if desired, subject to final seniority.
- ii) As the legal point on the matter has first been crystallized and the same telescoped upon the facts of the case which resulted in the above decision, the legal position stands in the nature of a judgment in rem, whereby, persons similarly situated should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court. Hence, the respondents are directed to apply the axiom at (i) to not only those who have approached this Tribunal but to all those who did not, provided they are similarly placed in all respects, to avoid unnecessary and avoidable litigation, valuable time and precious man hours of the stakeholders involved. In short, judgment rendered be treated in rem.
- iii) Time calendared for compliance of this order from the date of receipt of copy of this order is 3 months so far as the case of the applicants are concerned, and within a reasonable time so far as (ii) above is concerned.
- iv) The OAs are allowed as above. Consequently, MA Nos. 81/2019 & 82/2019 stand disposed. There shall be no order to costs.

IV Learned counsel for the applicants has vociferously argued that without fixing their seniority, even though the seniority list is issued on 23.9.2014, respondents cannot now say that their seniority shall be fixed based on the judgement in N R Parmar's case. As on date, it is the judgement in Megha Chandra Singh's case, which prevails and, therefore, applying the principle of the said judgement, they shall rank senior to the direct recruits. The applicants have also cited the judgement of the Hon'ble High Court of Delhi in Writ Petition (C) No.3087/2016 and that of the Hon'ble Supreme Court in **2019 (16) SCC 28**.

V In the issue on hand, the seniority of the Inspectors has not been finalized till date. The Tribunal has observed in OA No.1088/2018 & 1099/2018 that promotions can be effected based on the draft seniority list. The respondents have complied with the orders of the Tribunal and



are effecting only ad hoc promotions. The Inspectors have not been granted regular promotions as Superintends. The respondents have made it clear that the regular promotions would be granted after the final seniority list is issued. The Board of the respondents organization has issued a letter on 31.7.2020 / 9.9.2020 stating that the seniority issues of Inspectors shall be kept pending till a clarification is received from DOPT and Department of Legal Affairs in regard to clause(v) (h) of DOPT OM dt 4.3.2014. Until the seniority issues of Inspector grade is settled, the respondents are granting ad hoc promotions. If the respondents do not resort to this measure, then the entire organization comes to a standstill. Therefore, in the context of the seniority of Inspectors not being finalized, the judgements cited by the applicants may not be relevant at this juncture of time.

However, we would like to observe that the fact remains that the applicants were appointed in the years from 2011 to 2014. This is not alterable. Therefore, for these years, the law prevailing in regard to fixation of inter-se seniority between direct recruits and promotees is ***N R Parmar***. Hence, the respondents have to fix the seniority, following the law prescribed in N R Parmar's case. In ***Megha Chandra Singh*** judgment of 2019, the Hon'ble Apex Court has made it clear that it would have prospective effect and the applicants are, therefore, not covered by the said judgment in view of the fact that they were recruited by 2014. The applicants have cited the judgment of the Hon'ble Supreme Court in ***2019 (16) SCC 28*** to drive home the point that retrospective promotions are not to be granted. The issue on hand is about fixing the inter-se seniority



between direct recruits and promotees and thereupon, promotions based on the general principles of seniority. Though technically, the name of the applicants did not figure in the draft seniority list, it is an undeniable fact that they were recruited in the years from 2011 to 2014 and applying the prevailing law, they would stand junior to the direct recruits. Just because their names were not indicated it would not mean that the law has to be changed for their sake. It is settled law that a bonafide mistake can always be corrected. The argument that since the seniority of the applicants was not shown and that the law has changed with the advent of Meghchandra Singh does not hold water because their year of recruitment and the relevant law applicable to them is unalterable. It is also not explained as to why the draft seniority list of 1.1.2014 which is the core of the dispute was not challenged. Promotions were effected to the post of Superintendent based on the draft seniority list by holding DPCs on 31.12.2019, 20.01.2020 & 21.7.2020 and in this regard to the same, applicants have maintained stoic silence over the years. Thus raising the issue after many promotions were granted to the grade of Superintendent at this distant date is an unrealistic preposition. Therefore, the facts and the circumstances of the instant case being different to that of the judgment of the Hon'ble Supreme Court relied upon by the applicant as at supra, would not therefore be any assistance to the cause of the applicant. The Hon'ble Delhi High Court judgment in Veena Kothwal case has made it clear that settled seniority should not be unsettled and the Hon'ble Supreme Court has held in a cornucopia of cases that settled seniority should not be disturbed. The draft seniority list was issued in 2014 and the applicants questioning it in 2021 is not tenable in the eyes of law. Further, though the



Ld. Counsel has harped on the applicants name not figuring in the draft seniority list but yet he did not expound as to what prevented the applicants to represent to the authorities over the years in regard to the seniority. It is settled law, that Law would not come to the assistance of those who are not alert to assert their rights in time. Therefore, the judgment of the Hon'ble Delhi High Court relied upon by the applicants is more in favour of the respondents.



Other contention made by the applicants that in other Commissionarates, the seniority was revised based on the latest law was rebutted by the respondents by enclosing the letter of Mumbai Commissionarate. We have gone through the other contentions submitted by the applicants and found them to be not relevant enough to deal with.

VI However, we also need to observe that the respondents have to take immediate action to fix the seniority of the applicants as per rules and law applicable to their case. Without doing so taking a stand is not in the realm of reason. After fixing the seniority, the issue of their promotion needs to be examined. Thereafter, they need to communicate to the applicants about their status in the draft seniority list as well as their promotion to the Superintendent cadre by a reasoned and speaking order. This would crystallize the issue which may satisfy the applicants or pursue appropriate legal remedies if they so desire.

The respondent's organization is a vital wing of the Govt. of India in garnering the revenue for the Government. Hence, it may not be appropriate to stall the promotions being issued by the respondents on ad

hoc basis till they finalize the seniority issue. Ld. Respondents counsel has submitted that the seniority issue is under litigation in different legal for a and hence it is taking time to settle the issue. The Ld. Counsel for the applicants made submissions in regard to the dispute on the date subsequent to the date of reserving the judgment in the absence of the respondents counsel and he was informed that the judgment was dictated and done with it and therefore there is no scope to entertain any further submissions/ documents.

VII In view of the above, we direct the respondents to first fix the seniority of the applicants and, thereafter decide their promotions as per relevant rules and law. The decision taken to be communicated to the applicants as directed supra.

With the above direction, the O.A. is disposed of. MA/21/409/2021 (Implead Petition) shall stand closed. No order as to costs.

(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/pv/