

**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA**



No. O.A. 350/00508/2018

Date of order: 29.01.2021

**Present :** Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Shyam Sundar Sethi,  
Son of Late Abhimanyu Sethi,  
Aged about 55 years,  
By Occupation – Inspector of Central Excise (CGST & CX),  
Residing at C/o. Sambhunath Gochhait,  
18B, PNB House, Brabourne Road,  
Kolkata – 700 001.

.... Applicant

- V E R S U S -

1. Union of India,  
Service through the Secretary to the  
Government of India,  
Ministry of Finance,  
Department of Revenue,  
North Block,  
New Delhi – 110 001.
2. The Director,  
Department of Personnel and Training (DOP&T),  
Ministry of Personnel, Pension & Public Grievance,  
North Block,  
New Delhi – 110 001.
3. The Chairman,  
Central Board of Excise & Customs (CBEC),  
North Block,  
New Delhi – 110 001.
4. The Principal Chief Commissioner,  
CGST & CX,  
Kolkata,  
180, Shantipally,  
Kolkata – 700 107.
5. The Commissioner of Central Excise,  
Kolkata North  
CGST & CX Commissionerate,  
180, Shantipally,  
Kolkata – 700 107.

6. Bishwadeb Rakshit,  
Office of the Central Tax Audit Commissionerate,  
Durgapur,  
Satyajit Ray Sarani,  
City Centre,  
Durgapur – 713216.

7. Chandan Mondal,  
Appeal – II Commissionerate,  
169, AJC Bose Road,  
Kolkata – 700 014.

... Respondents

For the Applicant : Mr. A.K. Manna, Counsel

For the Respondents : Ms. D. Nag, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "(a) An order holding that N.R. principles in determination of inter se seniority of DR vis-à-vis promotes are not applicable prior of dates 27.11.2012, as stated in para 5(h) and para 5(i) of DOP & T's O.M. dated 4.3.2014.
- (b) An order holding that re-fixation of inter se seniority of DRS vis-à-vis Respondent No. 6, Respondent No. 7 and many other junior DRs in between, in particular as made in the impugned seniority list dated 21.3.2018 by unsettling the settled seniority as made in the seniority list of LDC as on 1.4.2002 prepared following 1986 O.M., in violation of DOP&T's O.M. dated 4.3.2014 and Board's letter dated 8.9.2014, 2.12.2016 and 23.02.2018 is erroneous, and for that matter, the impugned seniority list, dated 21.3.2018 is liable to be quashed.
- (c) An order holding that revision of seniority list of LDC (pre-restructured) a non-existent cadre, going bound the scope of Board's letter dated 14.10.2016 is without jurisdiction and hence, liable to be quashed.
- (d) An order holding aht placing junior DRs of 1998 in the vacancy year of 1996 as made in the impugned seniority list with reference to SSCCGE, 1996 is erroneous, and hence such refixation is not sustainable.



(e) An order issuing direction upon the respondent authorities to withdraw and/or cancel and/or rescind the impugned seniority list dated 21.3.2018 which is erroneous and which is not maintainable."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The admitted facts in this O.A. are that the applicant was appointed as a Gr. 'D' staff in the post of Sepoy on 1.5.1984, and, based on his pre-revised seniority position, was promoted to the post of LDC in 1996. The private respondents No. 6 and 7 had entered into the department as direct recruits in the year 1998. The applicant would aver that in the seniority list of LDCs (as on 1.4.2002) prepared in pursuance to following DOPT's O.M. dated 3.7.1986, the applicant was positioned as senior to the private respondents, and, further when the private respondents were promoted to the grade of Tax Assistant, Sr. Tax Assistant and finally to the grade of Inspectors, in all such grades, the applicant's seniority position was above that of the private respondents.

The applicant is aggrieved that the respondent authorities have arbitrarily and illegally unsettled his seniority position by placing the direct recruit LDCs above him in the seniority list which is in violation of the ratio as laid down in **Civil Appeal No. 7514-7515/2005** in the case of **N.R. Parmar vs. Union of India & ors.**

4. The respondents would argue that the applicant is trying to create an erroneous impression that in **N.R. Parmar (supra)** the Hon'ble Apex Court had directed that all matters settled by the respondents about determination of seniority position in the grade of LDC (and further promoted posts) before the date of disposal of the said **N.R. Parmar** (in the matter of fixation of seniority position among the promotees and direct recruit LDCs) would be allowed to continue as usual. The respondents would also, by way of instructions, refer to a communication on another subjudiced matter, as received on 4.8.2020, exchanged between the Ministry of Finance, Department of Revenue, CBDT with



the Office of respondent Nos. 4 / 5 in which the following has been directed as extracted below:-

F. No. A.32022/56/2019-Ad.IIIA  
 Government of India  
 Ministry of Revenue  
 Department of Revenue  
 Central Board of Indirect Taxes and Customs

5<sup>th</sup> Floor Judco Vishala Buidling,  
 Bhikaji Cama Place, R.K. Puram,  
 New Delhi, 4<sup>th</sup> Aug, 2020

To

The Joint Commissioner  
 O/o Principal Commissioner  
 Central GST & CX, Kolkata North Commissionerate,  
 Kendriya Utpad Shulk bhawan, 2<sup>nd</sup> Floor, 180, Shantipally,  
 Rajdanga Main Road, R.B. Connector, Kolkata – 700 107.

Subject : RA No. 350/00017/2019 arising out of O.A. No. 350/706/2019 in the matter of  
 Shri Baladitya Barik vs. UOI & ors. – reg.

Sir,

Xxxxxxx

3. Further, it may be noted that as on date, DoPT's O.M. dated 4.3.2014 is in vogue, para 5(h) of which provides for implementation of N.R. Parmar judgment w.e.f. 27.11.2012. Board also vide its letter dated 5.5.2020 read with earlier letters dated 23.02.2018, 31.08.2018 and 26.10.2018, instructed to follow DoP&T's O.M. dated 04.03.2014. It is pertinent to mention here that after advise of DoP&T, Board has issued letter dated 05.05.2020 to all CCAs wherein it was categorically mentioned that the benefits of the P. Bharathan judgment was restricted to the respondents (i.e. respondent in SLP filed by the department) in P. Bharathan case. It is stated that clarifications are being sought from DoPT regarding their para 5(h) of their O.M. dated 04.03.2014 as DoP&T is the competent authority in this regard. The amendment/withdrawal of the O.M. lies in jurisdiction of DoP&T and Board cannot provide any clarification on its own in this regard. Till the clarifications are received from DoP&T regarding their O.M. dated 04.03.2014, the seniority may be kept in abeyance and court may be intimated accordingly.

Yours faithfully,

(Nirbhai Singh)  
 Under Secretary to the Government of India  
 Ph. 011-26161187"

5. Ld. Counsel for the respondents would argue that the respondent authorities are waiting clarification from DOP&T on the interpretation of para 5(h) of the DOP&Ts O.M. dated 4.3.2014 (Annexure A-2 to the O.A.) on the subject matter of interse seniority of promotees/direct recruits which was issued in compliance to the judgment of the Hon'ble Apex Court in *N.R. Parmar (supra)*.



Para 5(h) of the said O.M. which has been referred to by the respondent authorities is reproduced below in the context of the instant application:-

"(h) The above principles for determination of inter se seniority of direct recruits and promotees 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."

In addition, contents of Para 5(i) are also noted below as under:-

"(i) The cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in DoPT O.M. dated 7.2.86/3.7.86 may not be reopened."

6. We have carefully gone through the relief sought for by the applicant and also the grounds advanced in support. It is clear that all that the applicant is praying for is the implementation of the DOPT's O.M. dated 4.3.2014 (Annexure A-2 to the O.A.) in its true letter and spirit, and, in particular, Para 5(h) and Para 5(i) of the same.

We have also gone through the said paras 5(h) and 5(i) and we infer therefrom that the DOPT had unambiguously stated that the principles for determination of interse seniority of direct recruits and promotees would be effective from 27.11.2012, which is the date of the judgment in **N.R. Parmar (supra)** and also that the cases of seniority already settled with reference to the applicable interpretation of the term availability as contained in DOPT's O.M. dated 7.2.1986 and 3.7.1986 may not be reopened.

7. We are of the considered opinion that the contents of Para 5(h) are clear, unambiguous and specific and the scope of obtaining further interpretation and clarification thereof does not arise at least in the context of the present applicant.

Ld. Counsel for the respondents have not been able to show us any further ruling of the Hon'ble Apex Court or any O.M. of DOPT which had overridden the contents of Para 5(h) and Para 5(i) of O.M. dated 4.3.2014 of DOP&T.

8. Accordingly, we deem it fit to direct the respondent authorities to decide on the claim of the applicant strictly in terms of O.M. of DOPT dated 4.3.2014 at



Annexure A-2 to the O.A. and in particular Para 5(h) and 5(i) thereof within a period of 12 weeks from the date of receipt of a copy of this order. Consequent benefits, if any, should be made available to the applicant within a period of 10 weeks thereafter.

9. With these directions the O.A. is disposed of. There will be no orders on costs.

**(Dr. Nandita Chatterjee)**  
Administrative Member

**(Bidisha Banerjee)**  
Judicial Member

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