

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 2039/2014

Order Reserved on: 26.02.2016

Order Pronounced on: 09.03.2016

Hon'ble Mr. A. K. Bhardwaj, Member (J)

Hon'ble Mr. V.N. Gaur, Member (A)

1. Ms. Kanika Patwal,
Aged about 25 years,
D/o Sh. Kundan Singh Patwal,
R/o C-735, Delhi Administration Flats,
Timarpur, Delhi-110054
(Working as Inspector in Income Tax Department)
2. Sh. Arun Sheel Anand,
Aged about 34 years,
S/o Sh. Bhagwan Singh,
R/o B-9/171, Bhajan Pura,
Delhi-110053
(Working as Inspector in Income Tax Department)
3. Sh. Gopal Prasad,
Aged about 34 years,
S/o Sh. Shiv Narayan Prasad,
R/o G-2/112, 1st Floor,
Sector-16, Rohini,
Delhi
(Working as Inspector in Income Tax Department)
4. Sh. Chet Ram Meena,
Aged about 31 years,
S/o Sh. L.R. Meena,
R/o L-2/70B, DDA Flats,
Kalkaji, Delhi
(Working as Inspector in Income Tax Department)
5. Sh. Naveen Kumar,
Aged about 34 years,
S/o Sh. Bhikam Lal,
R/o RZ-DII/95, Street No.5,

Mahavir Enclave,
New Delhi
(Working as Inspector in Income Tax Department)

6. Sh. Shashi Shekhar Prasad,
Aged about 37 years,
S/o Sh. Hari Prasad,
R/o 92E, Pocket A-2,
MayurVihar, Delhi
(Working as Inspector in Income Tax Department)
7. Sh. Ritesh Kumar,
Aged about 34 years,
S/o Sh. Raj Kumar,
R/o C-301, Exotica Easter Court,
Crossing Republic, Ghaziabad, U.P.
(Working as Inspector in Income Tax Department)
8. Sh. Chandra Prakash Meena,
Aged about 31 years,
S/o Sh. D.S. Meena,
R/o J-24, Mohan Garden,
Uttam Nagar, Delhi-110059
(Working as Inspector in Income Tax Department)
9. Sh. Kanuj Sehra,
Aged about 30 years,
S/o Sh. Mahendra Kumal Meena,
R/o C-2/73B, DDA Flats,
Kalkaji, New Delhi
(Working as Inspector in Income Tax Department)
10. Sh. Kamal Kumar Meena,
Aged about 31 years,
S/o Sh. RamphoolMeena,
R/o H-83A, Laxmi Nagar,
New Delhi
(Working as Inspector in Income Tax Department)
11. Sh. Gaurav Bhushan,
Aged about 36 years,
S/o Late Rajendra Prasad,
R/o 365, Sector-13A,
Rosewood Apartment,
Dwarka, Delhi
(Working as Inspector in Income Tax Department)

12. Sh. Amit,
Aged about 34 years,
S/o Sh. N.L. Sharma,
R/o H.No.202, 2nd Floor,
Sector-6, Vaishali, Ghaziabad
(Working as Inspector in Income Tax Department)
13. Ms. Sandhya Bhagat,
Aged about 31 years,
D/o Sh. JagdishChander,
R/o H.No.99, Sector-12, Pkt-III,
Indraprastha Apartments,
Dwarka, New Delhi
(Working as Inspector in Income Tax Department)
14. Sh. Bhambhoo Ram Meena,
Aged about 36 years,
S/o Sh. Narsi Ram Meena,
R/o L-2/98B, DDA Flats,
Kalkaji, New Delhi-110019
(Working as Inspector in Income Tax Department)
15. Sh. Devender Singh,
Aged about 46 years,
S/o Sh. Mange Ram,
R/o 78, Exten No.2,
Nangloi, New Delhi-41
(Working as Inspector in Income Tax Department)
16. Sh. Magan Lal Meena,
Aged about 32 years,
S/o Sh. Ram Pal Meena,
R/o 111B, L-II, DDA Flats,
Kalkaji,
New Delhi
(Working as Inspector in Income Tax Department)
17. Ms. PrernaKumari,
Aged about 33 years,
D/o Sh. Suresh Prasad Srivastava,
R/o Quarter No.416, Income Tax Colony,
Pitampura,
New Delhi
(Working as Inspector in Income Tax Department)
18. Ms. BhavanaKumari,
Aged about 34 years,
D/o Sh. S.K. Chauhan,

R/o BH-230 (East), Shalimar Bagh,
New Delhi
(Working as Inspector in Income Tax Department)

19. Ms. Gurpreet Kaur Saini,
Aged about 36 years,
D/o Sh. Balvinder Singh Saini,
R/o Flat No.92, SBI Colony,
G Block, East of Kailash,
New Delhi-110065
(Working as Inspector in Income Tax Department)
20. Ms. Disha Sharma,
Aged about 29 years,
D/o Sh. Anil Kumar Sharma,
R/o 510, Vivekanand Nagar,
Ghaziabad-201001 (UP)
(Working as Inspector in Income Tax Department)
21. Sh. Sharad Yadav,
Aged about 34 years,
S/o Sh. B.S. Yadav,
R/o 267, NaharPur,
Sector-7, Rohini, Delhi
(Working as Inspector in Income Tax Department)
22. Ms. Sheetal,
Aged about 42 years,
D/o Sh. Risal Singh Inoora,
R/o RZ-35, Raj Nagar,
Palam Colony,
New Delhi
(Working as Inspector in Income Tax Department)
23. Sh. Ved Prakash,
Aged about 37 years,
S/o Sh. Torhi Singh,
R/o RZ B-43, Subhash Park,
Uttam Nagar, New Delhi
(Working as Inspector in Income Tax Department)
24. Sh. Pawan Kumar,
Aged about 36 years,
S/o Sh. Upendra Pal Mandal,
R/o 566, IT Colony, Pitampura,
New Delhi
(Working as Inspector in Income Tax Department)

25. Sh. Amit Kumar Sain,
Aged about 29 years,
S/o Late Satya Prakash,
R/o 85, NavVikas Apartment,
Sector-25, Rohini, New Delhi
(Working as Inspector in Income Tax Department)
- Applicants
(By Advocate: Sh. S.K.Gupta)

Vs.

Union of India through

1. Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi
2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi
3. Principal Chief Commissioner of Income Tax (CCA),
Department of Revenue,
C.R. Building, I.P. Estate,
New Delhi
- 3A Sh Gautam Kumar Tiwari
- 3B Sh Sandeep Sharma
- 3C Sh Arun Kumar
- 3D. Sh. Saurabh Singh
- 3E. Ms. Anita Butola
4. Sh. Dev Prakash Raghav,
5. Sh. Jai Shankar Srivastava
6. Sh. Om Prakash Bhatia

7. Ms. Geeta Adya
8. Ms. Manish Vatsa
9. Sh. Nitin Ganga Ram Kekker
10. Sh. Anoop Rawat
11. Sh. Amit Kumar Jain
12. Sh. Ajay Sharma
13. Sh. Arvind Kumar Jha
14. Sh. T.N. Ravi Shankar
15. Sh. Pankaj Kumar Sharma
16. Sh. Rajeev Ranjan Kumar
17. Sh. Laxman Singh
18. Sh. Devinder Singh Negi
19. Sh. Prabal Gupta
20. Ms. Dolly Mehra
21. Sh. Ravindra Singh Waldia
22. Sh. Shambhu Nath Choudhary
23. Ms. Renu Bajaj
24. Sh. L. Shanta Kumar Singh
25. Sh. Vikram
26. Ms. Deepa Arora
27. Sh. Navinendu Shekhar
28. Sh. Sarvesh Srivastava
29. Sh. Navin Kumar Kurna
30. Ms. Kiran Naithani
31. Sh. Pankaj Kumar Bhatnagar
32. Sh. Veer Bahadur Singh Bist
33. Sh. Naresh Kumar Sharma

34. Ms. Santoshi Kumari
35. Ms. Deepa Hooda
36. Sh. Sunil Sharma
37. Ms. Lata Arun Padmanabhan
38. Sh. Sumit Bhandari
39. Sh. Gurcharan Singh
40. Ms. Jyoti Nair
41. Sh. AtulDabas
42. Sh. Chander Mohan
43. Sh. Naresh Kaushik
44. Mohd. Sulaiman Akhter
45. Sh. Naveen Anand
46. Sh. Atul Krishan Goswami
47. Sh. Nishant Kumar
48. Ms. SunitaKanthiwal
49. Sh. Vikas Bhatia
50. Ms. Anita Rawat
51. Sh. Pramod Kumar Dobhal
52. Sh. Jitendra Kumar Sharma
53. Ms. Kalpana Mohanty
54. Ms. Deepa Golani
55. Sh. Mahavir Singh
56. Ms. Nisha Wadhera
57. Sh. Satender Singh Madnavat
58. Sh. Parveen Kumar
59. Sh. Vivekanand
60. Sh. Sujeet Kumar

61. Sh. Jai Kumar Thakur
62. Sh. Dhananjay Kumar
63. Sh. Sanjay Kumar
64. Sh. Santosh Kumar Malviya
65. Sh. Dinesh Kumar
66. Ms. Sita Rani
67. Sh. Sanjay Kumar Mishra
68. Sh. Prashant Kumar Mamgain
69. Ms. Sushma Madan
70. Sh. Vipin
71. Sh. Pramod Kumar Yadav
72. Ms. ManjulaNawani
73. Ms. JyotiSwaroop Pandey
74. Sh. Kala NathJha
75. Sh. Neeraj Sharma
76. Sh. Sachin Goyal
77. Sh. Sachin Rastogi
78. Pawan Kumar Sahu
79. Ms. Seema (OH)
80. Sh. Narender Kumar Pareek (XS)
81. Sh. Nitesh Kumar (PH)
82. Sh. KeishamKheron Singh
83. Sh. Manish Kumar
84. Ms. Anjali Joshi
85. Sh. Ram Pravesh
86. Sh. Dheeraj Kumar
87. Sh. Ranjeet Kumar Singh

88. Sh. Vikas Kumar
89. Sh. Manish Kumar
90. Sh. Suman Kumar
91. Sh. Atar Singh Chaudhary
92. Sh. Hari Mohan Meena
93. Sh. Mukesh Kumar
94. Sh. Jitender Pal (XS)
95. Sh. Kailash Meena
96. Sh. Gaya Singh Bhadauria
97. Sh. Sunil Kumar Meena
98. Sh. Sandeep Kumar Singh
99. Sh. Trilok Chand Meena
100. Sh. Orichand
101. Sh. Lokesh Kumar Meena
102. Sh. Mahesh
103. Sh. Subhash Chand
104. Sh. Jitender Nath
105. Sh. Vipin Kumar Singh
106. Sh. Mukesh Kumar
107. Sh. Pradeep
108. Sh. Nanak Chand
109. Sh. Narinder Kumar Nath
110. Sh. Vikas Singh
111. Sh. Kailash Chand Meena
112. Sh. Mohan Singh
113. Ms. Jaya Jaitley
114. Sh. Pravin Rani Chhatwal

115. Sh. Amit
116. Ms. Yogeeta Sharma
117. Sh. Yogesh Kumar
118. Sh. AyushGoel
119. Sh. Ashok Kumar Sharma
120. Sh. Sujeet Roy
121. Sh. Rajat Sen
122. Sh. Rakesh Rawat
123. Sh. Binod Kumar Jha
124. Sh. Rahul Garg
125. Ms. Kanchan Bala
126. Ms. Neeru
127. Sh. Sachin Main
128. Sh. Dhiraj Negi
129. Sh. Narender
130. Ms. Lakshmi Vishwanath
131. Sh. Vinod Kumar Saini
132. Ms. Seema Choudhary
133. Sh. Harish Kumar
134. Sh. Sanjay Sharma
135. Sh. Vipin Kumar
136. Ms. Meena Bhardwaj
137. Sh. Ram Girish
138. Sh. Pradeep Dhankhar
139. Ms. Rekha
140. Sh. Pravender Kumar
141. Sh. Manish Joshi

142. Sh. Sunil Kumar Gaur
143. Sh. P.M.K. Kasturi
144. Mohd. Shoaib Khan
145. Sh. Vijay Kumar Mishra
146. Sh. Jatinder Sharma
147. Sh. Deepak Kumar
148. Sh. Santosh Mohan Dass
149. Sh. VipinBist
150. Sh. Vinod Kumar
151. Sh. P. Vasundhara
152. Ms. Reena Pahwa
153. Ms. Amita
154. Sh. Mukesh Kumar Verma
155. Sh. Daya Chand Khawal
156. Sh. Piyush
157. Sh. Pawan Kumar Sharma
158. Sh. Sanjeev Kumar Sharma
159. Sh. Mukesh Kumar Karela
160. Sh. Anil Kumar Nair
161. Sh. Kamlesh Kumar
162. Sh. Amit Kumar
163. Sh. Govind Singh Adhikari
164. Sh. Rajesh Kumar Aggarwal
165. Sh. Ankit Singh
166. Ms. Moly Madan
167. Ms. Mom Paul
168. Sh Surender Pal (OH)

169. Sh. Pawan Kumar Gola
170. Sh. Ashok Sohan Lal Dhakolia
171. Sh. Shishir Kumar Meena
172. Sh. Budh Prakash Singh
173. Sh. Sanjay Kumar Kataria
174. Sh. Sunil Dutt
175. Sh. Suresh Chandra
176. Sh. Sanjeev Kumar
177. Sh. Rajesh Kumar
178. Sh. Vinod Kumar Siroya
179. Sh. Narottam Kumar
180. Sh. Anil Kumar Thakur
181. Sh. Gulab Singh Rawat
182. Sh. RajatMiglani
183. Sh. Sanjay Kumar
184. Sh. Vinod Pant
185. Sh. AnirudhSelat
186. Sh. Raj Kumar
187. Sh. Surender Kumar
188. Sh. Anil Kumar Khokhar
189. Sh. Rupesh Kumar Verma
190. Sh. Ravinder Kumar
191. Sh. KawalJeet
192. Sh. Munesh Khari
193. Ms. Neema Gupta
194. Sh. Citradeep Malik
195. Sh. NedunuriRadha Krishna

196. Sh. Rajesh Joshi
197. Sh. Amit Kumar
198. Sh. Sanjay Rawat
199. Sh. Ramesh Dutt Sharma
200. Sh. Rahul Giri
201. Sh. Puneet Kumar
202. Sh. Sarvjeet Kaur
203. Sh. Amit Srivastava
204. Ms. Shanti
205. Ms. Sangeeta Bisht
206. Sh. Mohit Sharma
207. Sh. Ajay Kumar
208. Sh. Pankaj Kumar Roy
209. Sh. Anurag Kumar Singh
210. Sh. Diwan Singh
211. Sh. Neeraj Malik
212. Sh. Amit Kumar
213. Ms. SapnaNarinderChoughary
214. Sh. Sunil Gupta
215. Sh. Prashant Kumar
216. Sh. Sanjeev Rawat
217. Ms. Nanduri Sharda
218. Sh. Nitin Yadav
219. Sh. Satbir Singh
220. Ms. LataSinghal
221. Sh. Jagveer Singh
222. Sh. DeenDayalRathore

- 223. Sh. Raj Pal
- 224. Sh. Nitin Verma
- 225. Sh. Naveen Kumar
- 226. Sh. Sab Singh Rawat
- 227. Sh. Ram Ratan Kumar
- 228. Sh. Vijay
- 229. Sh. Surinder Singh Bhandari
- 230. Sh. LokeshBhati
- 231. Sh. Sanjeev Kumar Chauhan
- 232. Sh. Shri Pal Singh
- 233. Sh. Amarnath Kumar
- 234. Sh. Deepak Kumar
- 235. Ms. Meenakshi S. Balani
- 236. Sh. Vikram Singh (OH)
- 237. Sh. Sanjeev Rastogi
- 238. Sh. Neeraj Tandon
- 239. Sh. Pankaj Singathiya
- 240. Sh. Ashok Kumar
- 241. Sh. Praveen Thapar
- 242. Sh. Vijay Singh Gurjar
- 243. Sh. Davinder Dahiya
- 244. Sh. Devender Kumar
- 245. Sh. Anil Kumar
- 246. Sh. Sher Singh
- 247. Ms. Jolly Anand
- 248. Sh. Kush Kumar Verma
- 249. Sh. Narayan Singh

- 250. Sh. Yash Pal
- 251. Sh. Raghubansh Kumar
- 252. Sh. Bharat Singh
- 253. Ms. Sonika Singh
- 254. Sh. Dinesh Yadav
- 255. Sh. Shivaji Ram
- 256. Sh. Sabha Chand
- 257. Sh. Vineet Sharma
- 258. Sh. Amit Chauhan
- 259. Sh. Ravi Kant Nagar
- 260. Sh. Nitin Nagar
- 261. Sh. Thangkhanlian
- 262. Sh. L. Thang Sian Mung
- 263. Sh. Anil Choudhary (XS)
- 264. Sh. Mahesh Kumar Meena
- 265. Ms. Sunita Yonzone
- 266. Sh. Pankaj Kumar (XS)
- 267. Sh. Swatantra Mohan
- 268. Sh. Murli Ram Meena
- 269. Sh. Deepak Meena
- 270. Kh Jameson Vaiphei
- 271. Sh. Ram Singh Parte
- 272 Sh. Nagraj Rai (XS)
- 273. Sh. T.P. GensiamlalVaiphei
- 274. Sh. D. Lienlalzom Gangte
- 275. Sh. Hemkholun Kipgen
- 276. M.C. Benjamin Kham

- 277. Ms. PronamikaBaruah
- 278. Sh. Manoj Kumar
- 279. Ms. Pooja Rani
- 280. Ms. Kiran Tiwari
- 281. Ms. KavitaKumari
- 282. Sh. Jagseer Singh
- 283. Sh. Mahesh Chandra
- 284. Sh. DharaDuttKathoiya
- 285. Mohd. Yasin
- 286. Sh. Simender Kumar
- 287. Sh. Dharmender Prasad
- 288. Sh. Satish Kumar
- 289. Sh. Ranbir Singh Bhati
- 290. Ms. Pratibha Srivastava
- 291. Sh. Chandar Prakash Tokas
- 292. Sh. Salvin Singh
- 293. Sat Pal Singh
- 294. Sh. Ravi Upadhyay
- 295. Sh. RadheShyam
- 296. Sh. Sudipto Dutta
- 297. Sh. Tej Pal Chauhan
- 298. Sh. Vinay Kumar
- 299. Sh. Gulab Singh
- 300. Sh. Devender Sharma
- 301. Ms. GeetaMadhawan
- 302. Sh. Vikash Mishra
- 303. Sh. Sreelakshmy G.V.

- 304. Sh. Ashok Lamba
- 305. Sh. Mahender Singh Bhandari
- 306. Sh. Sachin Arora
- 307. Sh. Anand Singh Rawat
- 308. Ms. Jasmine Lojy
- 309. Sh. Naresh Kumar
- 310. Sh. Sanjeev Kumar
- 311. Sh. UdaiNandDhyani
- 312. Sh. Sanjay Kumar

- Respondents

(By Advocate: Sh. Rajesh Katyal and
Sh. Rudra Pratap)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

The applicants, 25 in number, who are working as Inspectors in Income Tax Department, have challenged the Office Memorandum dated 25.05.2014 rejecting their representation against the draft seniority list allegedly wrongly fixing their seniority issued on 21.05.2014 and the final seniority list dated 25.05.2014 issued by respondent no.3. The prayer made in the OA reads as follows:

- “(i) quash and set aside the impugned office memorandum dated 25.05.2014 (Annexure A-1) by which, the representations of the applicants have been rejected;
- (ii) further, quash and set aside the final seniority list dated 25.05.2014 (Annexure A-2) to the extent, the private respondents have been placed over and above the applicants;

- (iii) declare the action of official respondents in considering and promoting the private respondents to the post of Income Tax Officer ignoring the preferential claim of the applicants is illegal and arbitrary;
- (iv) direct the official respondents to redraw the seniority list of the cadre of Inspectors and place the present applicants over and above the private respondents and thereupon, consider the case of the applicants and others for promotion to the post of Income Tax Officer, Group B Gazetted and in case, the applicants are found fit, they may be awarded all consequential benefits;
- (v) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

2. The applicants who are direct recruit Inspectors recruited through Combined Graduate Level Examination, initially joined in different Regions/Charges under Chief Commissioners of Income Tax, and later applied for Inter Charge Transfer (ICT) to Delhi in terms of the conditions stipulated in the circular dated 14.05.1990. After the acceptance of the request for ICT they joined the office of respondent no.3. Subsequent to their joining at Delhi Charge, some Direct Recruit (DR) Inspectors of the batch of that year also joined Delhi Charge. However, in the draft seniority list, which is issued by the respondents region-wise, these DRs were shown senior to the applicants who came to the Delhi Charge on ICT. The contention of the applicants is that the seniority of the applicants as shown in the impugned seniority list dated 25.05.2014 is in contravention of the clarification given by the respondent no.2 vide memo dated 16.04.2013 as well as the condition given in the undertaking signed by the applicants at the time of joining Delhi Charge on transfer.

3. The learned counsel for the applicants submitted that the respondents have taken a plea that the impugned seniority list has been fixed in accordance with the Hon'ble Supreme Court judgement in **Union of India vs. N.R.Parmar**, SLP (Civil) No.9181-9185/05. According to the learned counsel the application of **N.R.Parmar** (supra) vis-a-vis the applicant was wrong as that judgment could be applied between the groups of appointees from two different modes of recruitment. In this connection, he relied on orders of this Tribunal in **Ajay Gautam vs. Union of India**, OA No.2942/2012 decided on 10.01.2014 and **Arun Kumar Srivastava vs. Union of India**, OA No.2456/2008 decided on 13.12.2013. In the present case the applicants as well as the respondents are DRs and the only difference is that the applicants have come to Delhi Charge on transfer from other Charges. In such a situation as has been held by the Hon'ble High Court of Allahabad in **Rajeev Mohan vs. Union of India and others**, Writ No.56072/2010, the applicants have to be treated as DR in the particular year when he joins after transfer and shall be treated to be an addition to the DRs available in the particular year. Once that principle is applied, the applicants would be enbloc senior to the private respondents. He also referred to a clarification given by respondent no.2 on 16.04.2013 which has amplified on the provision of clause 2 (f) of

CBDT instructions dated 14.05.1990 stating that the Inter Charge (IC) Transferee

“shall be placed at the bottom of the list of concerned cadre in the new Charge and that their seniority shall count from the date they join the new Charge. This means that such transferees, on transfer to the new Charge, shall be placed at the bottom of the concerned cadre (ITI in this case) including the DRs as well as the promotee officers who are already in position on the date the transferee officer joins the new Charge.”

4. The undertaking given by the applicants at the time of ICT also clearly states that:

“My seniority in Delhi region will start from the date of my reporting for the duty in the region and my name will be placed below all the “Inspector (both permanent and temporary) in Delhi region on the date of my joining duty.”

5. According to the learned counsel, the respondents have totally ignored the undertaking given by the applicants and by wrongly applying **N.R. Parmar** (supra) and the circular dated 14.05.1990 have placed the private respondents above the IC transferees.

6. Learned counsel for the respondents submitted that the applicants had applied for ICT in terms of the Circular dated 14.05.1990 and their request was approved by the respondents on the terms and conditions laid down in that circular. Para 2 (f) of the circular provides that the IC Transferees will be placed at the bottom of the list of employees of the concerned cadre in the

new charge. The seniority of transferred person will start from the day he reports for duty in that charge. However, another important condition is that such person will not rank senior to any official whose inter-se-seniority is not regulated by the date of joining. The private respondents belonged to the category whose seniority is not dependent on the date of joining and therefore the applicants can not rank senior to them. Learned Counsel further submitted that it was wrong to say that **N.R. Parmar** (supra) was applied to fix the inter-se-seniority between the applicants and the DRs of that Charge. The seniority of the IC Transferees was determined by applying para 2 (f) of the circular dated 14.05.1990. He further submitted that the seniority of the DRs of a particular year is not regulated by the date of joining but by the date on which the requisition was sent to the recruiting agency, and therefore, the DRs of Delhi Charge of that year will be governed Clause 2 (f) of the circular dated 14.05.1990. Referring to **Rajeev Mohan** (supra) learned counsel submitted that Hon'ble High Court of Allahabad in the judgment dated 13.04.2012, after discussing the rule position and the case law, had noted the principles that emerged for determination of seniority between the direct recruits and IC Transferees under direct recruit quota. In the order it was specially noted that "the seniority in the cadre of ICT shall start from the date the person reports for duty in that charge. However, he will not rank senior to any official to a batch

selected on merit, whose inter-se-seniority is not regulated by the date of joining.”Referring to the clarification dated 16.04.2013, learned counsel submitted that that clarification has to be seen in the context in which it was issued and it cannot override the provisions contained in the circular. With regard to other judgments cited by the learned counsel for the applicants, learned counsel stated that in the light of his submission that **N.R. Parmar** (supra) had not been applied while arriving at inter-se-seniority between the IC Transferees and DRs, these judgments would not be relevant in the present case.

7. We have heard the learned counsel for the parties and perused the record. To appreciate the context of the controversy involved in the present OA the facts pertaining to applicant no.1 have been referred to. The applicant no.1 is a DR Income Tax Inspector recruited through Combined Graduate Level Examination 2008 conducted by SSC who joined the Kochi charge on 29.03.2011. Soon thereafter the applicant no.1 applied for ICT to Delhi Charge on 02.05.2011 which was considered and approved by the respondents by order dated 26.12.2011 placing the applicant in Delhi Charge. It was mentioned in the order that she was being posted in the office of CCIT, Delhi against the vacancy to be filled in by DR quota. The transfer was also subject to an undertaking from the applicant that her seniority in Delhi

Charge will start from the date of her reporting for duty in Delhi Charge and her name will be placed below all the Inspectors, both permanent and temporary, in Delhi Charge on the date of her joined duty. The applicant no.1 joined Delhi Charge on 05.01.2012 after furnishing an undertaking on 04.01.2012 to abide by aforementioned condition. The respondents issued a draft seniority list on 21.05.2014 in which her name was shown at Sl. No.2607 and joining year 2011-12. On the other hand, a DR of Delhi Charge, Sandeep Sharma, who joined on 18.03.2011 against joining year 2010-11, his name was placed at seniority no.2319. It is the case of the applicant that the seniority between an IC Transferee, who also has to be treated as a DR per **Rajeev Mohan** (supra), and a DR of that Charge has to be determined with reference to the date of joining and not by application of **N.R. Parmar** (supra).

8. From the perusal of the documents placed on record by the applicants it is not clear as to how the applicant has arrived at a conclusion that her seniority has been fixed by applying **N.R. Parmar** (supra). The seniority of DR and promotee of Delhi Charge would undoubtedly be subject to the rota quota system and while doing so the applicants may get affected indirectly by **N.R. Parmar** (supra). For example, even if the applicants are placed above the DRs of the region who joined after the applicants

came on transfer, the seniority of the local DRs will be determined by applying the rota quota system which may place them over some promotees, but as the IC transferees have to be placed below all employees in the cadre serving on that day in the region, the local DRs will become senior to such IC transferees. It may be noted here that the applicant has not claimed seniority over any promotee. We do not find any evidence that would support the claim of the applicant that the **N. R. Parmar** (supra) has been applied for fixing the seniority of the applicant against other DRs of Delhi Charge. We, therefore, do not find the orders of this Tribunal in **Ajay Gautam** (supra) and **Arun Kumar Srivastava** (supra) to be relevant in the present context.

9. Before we proceed further it would be useful to peruse the para 2 (f) of the Circular dated 14.05.1990 titled "Transfer of non-gazetted staff from one charge to another charge under Central Board of Direct Taxes – Delegation of Powers to Heads of Departments", that regulates the seniority of the IC transferees.

The para 2 (f) of that circular reads as follows:

"(f) The service rendered in the old charge will not be counted in the new charge for the purpose of a seniority. He/She will be placed at the bottom of the list of the employees of the concerned cadre in the new charge. Seniority in the cadre in the charge to which, person is transferred will start from the day that person reports for duty in that charge. However, he will not rank senior to any official who belongs to a batch selected on merits whose inter-se seniority is not regulated by date of joining."

10. The case of the applicant primarily hinges on the following grounds:

- (i) The judgment of Hon'ble High Court of Allahabad in **Rajeev Mohan** (supra) which has been upheld by Hon'ble Supreme Court.
- (ii) The clarification dated 16.04.2013 issued by respondents, that does not mention the part of Para 2 (f) of Circular dated 14.05.1990 that deals with seniority of inter charge transferees over those who belong to a batch selected on merits and whose inter-se-seniority is not regulated by date of joining.
- (iii) In the undertakings given by the applicants also there was no mention of the part of Para 2 (f) referred to in (ii) above.
- (iv) It was wrong on the part of the respondents to apply **N.R.Parmar** (supra) while fixing inter-se-seniority of the applicants and the DRs of Delhi Charge of that year.

11. It is not disputed that the inter-se-seniority of the DRs of a Charge is determined by the batch and not by the date of joining of the candidates. Para 2 (f) clearly says that an IC Transferee will not rank senior to any official who belongs to a batch selected on merits where date of seniority is not dependent on the date of joining. It follows that the IC transferees like the applicants will

not rank senior to such DRs of that particular year even if their date of joining is later to the date of joining of inter charge transferee, which is the case in the present OA.

12. The learned counsel for the applicants has heavily relied on **Rajeev Mohan** (supra) which has been upheld by the Hon'ble Supreme Court. The SLP no.29393-29394 of 2013 challenging that judgment was dismissed by Hon'ble Supreme Court by the following order:

“There is an inordinate delay of 162 days in filing the instant petitions for review of this Court's order dated 11.3.2014 dismissing the aforementioned special leave petitions. We do not find any justification to condone the aforesaid delay.

That apart, we have carefully perused the petitions for review and the papers annexed in support thereof. We do not find any ground therein warranting review of the order impugned.

The review petitions are, accordingly, dismissed on the ground of delay as well as on merits.”

13. In **Rajeev Mohan** (supra) one of the issues examined by the Hon'ble High Court is that *“the petitioner was entitled to be placed above all the Inspectors who were not working in the Department at the time of his joining i.e. 10/1/1992. Suffice it to say, that the said stipulation was clearly mentioned in the transfer order dated 10/12/1991 as quoted above. As per the Board's order dated 14/5/1990, issued by Government of India quoted above also the person transferred to another charge is to be placed at the bottom of the seniority list.”* We are faced with the same issue in this case also.

14. After dealing with the various provisions contained in the memoranda issued by Government of India and judicial pronouncements, including **N.R. Parmar** (supra), the Hon'ble High Court summarised the principles that would govern the seniority between the DRs and ICTs under DR quota in the following words:

- “(1) The seniority of direct recruits can neither be reckoned from the date of sending requisition to the recruiting body nor the seniority can be reckoned from the date of selection.
- (2) The seniority of direct recruits can be reckoned from the date when they are available for appointment in any particular year in their quota as per the rotation of quota.
- (3) The inter charge transferee belonging to direct recruit quota shall be treated to be direct recruit in the particular year when he joins after transfer and shall be treated to be an addition in the direct recruits available in the particular year.
- (4) The seniority in the cadre of inter charge transferee shall start from the date the person reports for duty in that charge. However, he will not rank senior to any official to a batch selected on merit, whose inter-se-seniority is not regulated by the date of joining.”

15. Learned counsel for the applicants has referred to sub-para (3) quoted above to emphasise that IC transferees shall be treated to be an addition to DRs in the particular year, and inter se seniority between them and local DRs joining after them shall be determined with reference to the date of joining. This principle will, however, lead to several anomalies as the seniority of DR IC Transferees in their own batches of respective Charges would also have been fixed on the basis of the same principle of batch wise seniority. Further, as pointed out earlier, rota quota cannot be

applied to them by treating them to be a normal DR as they have to be kept below all the DRs and Promotees working in the Region on the day of their joining, as already accepted by them in the undertakings regarding bottom seniority. As pointed out by the learned counsel for the respondents, the sub-para 4 of the judgment in Rajeev Mohan extracted above, which flows from para 2 (f) of Circular of 1990, directly deals with the issue. The IC transferees will not rank senior to the DRs who have joined after them since the seniority of the latter is not dependent on their date of joining. We, therefore, conclude that the respondents have correctly applied the provision of the circular of 14.05.1990, which is the primary document regulating ICT as well as the conditions applicable to such transfer, including inter-se-seniority.

16. Learned counsel for the applicant has also relied on the CBDT clarification issued vide communication no. HRD/CM/104/08/201-13/186 dated 16.04.2013 which as reproduced in para 5 (b) of the OA, reads as follows:

“Clause 2(f) of CBDT instruction dated 14.05.1990) provides that such transferee shall be placed at the bottom of the list of the concerned cadre in the new charge and that their seniority shall count from the date they join the new charge. This means that such transferee on transfer to the new charge, shall be placed at the bottom of the concerned cadre including DRs as well as the promotee officers who are already in the position on the date of the transferee officer joins the new charge.”

17. It can be seen that this clarification is nothing but paraphrasing of first three of the four sentences in para 2 (f) of the circular dated 14.05.1990. Curiously enough a copy of this communication, which is the mainstay of the ground for challenge of the impugned orders, has not been placed on record by the applicant. While interpreting the above para it is necessary to see the context in which the clarification has been issued because a clarification would address the question that has been raised and will not comprehensively reiterate all the conditions that would apply to the subject. In this case also we do not know the question that was raised to the respondents in response to which this clarification was issued. It is also a settled position in law that a clarification cannot replace the substantive provisions of a rule or order. It is intended to cover only the space that has not been addressed to by the provisions in the main communication or to remove any ambiguity. It cannot override or modify the provision contained in the impugned memorandum because for that a fresh communication has to be issued superseding the earlier order. It has not been contended by the applicant that the clarification in question is in supersession of the para 2(f) of the circular of 1990. We are, therefore, unable to agree with the interpretation of the learned counsel for the applicant that the clarification issued by the CBDT in 2013 would become the

substantive provision to regulate the seniority replacing para 2 (f) of the circular of 1990 effectively omitting the last sentence. The same argument would apply to the undertaking given by the applicants at the time of the transfer which did not specifically mention the last sentence of para 2 (f) of circular of 1990. Since the applicants had applied for transfer under the provisions of circular of 1990, they ought to be aware of its provisions and even if their 'undertaking' is at variance with the provision of that circular, it cannot have the effect of modifying the conditions of ICT contained therein.

18. We have perused the order of the Patna Bench of this Tribunal in **Manoj Kumar Pandit** (supra). In that order while allowing the OA the Bench had noted the undertaking given by the applicants and the fact that the same was confirmed by the CBDT's communication dated 16.04.2013. The judgment in **Rajeev Mohan** (supra) which has been upheld by the Apex Court, has enumerated the principles for determination of seniority between the DRs and ICTs, as reproduced earlier in this order, and have noted in sub para (4) therein the condition laid down in the fourth sentence of para 2 (f) of the circular of 1990, which is the crux of the present controversy. It follows that Rajeev Mohan acknowledges the continued validity of the Para 2(f) in totality contrary to the learned counsel for applicant's emphasis on the clarification of CBDT dated 16.04.2013. It is not the contention of

the applicant that aforesaid CBDT clarification being of a later date has made Rajeev Mohan (supra) partly infructuous. In the wake of such finding of Hon'ble High Court and upheld by the Hon'ble Supreme Court, we are bound to follow the same.

19. Considering the entire conspectus of the case and judgments cited and the provisions contained in the CBDT circular of 14.05.1990, we find that the present OA is devoid of merit and the same is dismissed. No costs.

(V.N. Gaur)
Member (A)

(A.K.Bhardwaj)
Member (J)

March 09, 2016

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