

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.NO.060/00852/2017 Orders pronounced on:14.09.2018
(Orders reserved on: 04.09.2018)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

1. Ravi Kumar, Income Tax Inspector, aged 45 years, S/o Sh. Madan Lal, Income Tax Office, 162-P, G.T. Road, Ferozepur Cantt (Group 'C').
2. Sushil Kumar, Income Tax Inspector, aged 48 years S/o Late Sh. Rameshwar Das, Quarter No. 65, Type-3, NH-IV, NIT Faridabad, (Group 'C').
3. Pawan Kumar, Income Tax Inspector, aged 45 years, S/o Sh. Om Parkash, R/o 1906A, Sector 43B, Chandigarh (Group 'C').
4. Kulbir Mahay, Income Tax Inspector, aged 48 years, S/o Sh. Gurdev Ram Mahay, O/o Pr. Commissioner of Income-Tax-I, Jalandhar, Aayakar Bhawan, Jalandhar, (Group 'C')

Applicants

**(BY: MR. GAURAV RANA, ADVOCATE FOR
MR. D.S.PATWALIA, ADVOCATE)**

Versus

1. Union of India through Secretary to Govt. of India, Ministry of Finance, Department of Revenue, New Delhi (South Block).
2. Staff Selection Commission, through its Chairman, Block No. 12, CGO Complex, Lodhi Road, New Delhi-110003.
3. Central Board of Direct Taxes, through its Chairperson, North Block, New Delhi.
4. Director General of Income Tax (HRD), 2nd Floor, ICDAR Building, Plot No.-6, Vasant Kunj Institutional Area, Phase-II, New Delhi-110070.
5. Principal Chief Commissioner of Income Tax, North West Region, Aayakar Bhawan, Sector-E, Chandigarh.

(BY : MR. K.K. THAKUR, SR. PANEL COUNSEL)

6. Sh. Deva Singh Negi, aged 49 years, Income Tax Officer, Mandi Income Tax Office, Mandi, Himachal Pradesh.
7. Sh. Kishan Lal, Income Tax Officer, aged 50 years Dharamshala, Income Tax Office, Dharamshala, Himachal Pradesh.

8. Sh. Ashok Kumar, aged 5 years, Income Tax Officer, O/o Pr. Commissioner of Income Tax-II, Jalandhar, Aayakar Bhawan, Jalandhar.
9. Sh. Rajnish Kumar Gupta, aged 49 years, Income Tax Inspector, working in the O/o The Addl. Commissioner of Income Tax, Srinagar, Camp office at Aayakar Bhawan, Rail Head Complex, Panama Chowk, Jammu-180012.
10. Sh. Parvesh Khajuria, Income Tax Inspector, aged 48 years, working in the O/o Dy. Director of Income-tax (Investigation), Aayakar Bhawan, Rail Head Complex, Panama Chowk, Jammu-80012.
11. Sh. Rajesh Kaul, Income Tax Inspector, aged 49 years, working in the O/o ITO, Ward-1(1), Jammu, Aayakar Bhawan, Rail Head Complex, Panama Chowk, Jammu-180012.
12. Sh. Vinod Kumar, Income Tax Inspector, aged 50 years, working in the O/o Pr. Commissioner of Income-tax, Jammu, Aayakar Bhawan, Rail Head Complex, Panama Chowk, Jammu-180012.
13. Sh. Ajay Kumar Gupta, Income Tax Inspector, aged 48 years, resident of House No. 55, Lower Lakshmi Nagar, Sarwal, Jammu. 2nd Address : O/O ITO, Ward - 3(1), Aayakar Bhawan, Near IGNOU, Rajbagh, Srinagar.
14. Sh. Satish Kumar Kaul, Income Tax Officer, aged 50 years, working as Income Tax Officer, Income Tax Office, Faili Road, Pathankot, Punjab.
15. Sh. Sat Partap, Income Tax Inspector, aged 49 years, working in the Pr. Commissioner of Income Tax-1, Aayakar Bhawan, Maqbool Road, Amritsar-143001.
16. Sh. Vikas Kumar Sharma, Income Tax Inspector, aged 48 years, working in the O/o Dy. / Asstt. Commissioner of Income-Tax, Circle-2, Jammu, Aayakar Bhawan, Rail Head Complex, Panama Chowk, Jammu-180012.

(By : **MR. R.K. SHARMA, ADVOCATE FOR
RESPONDENTS No.8,10,12,15 & 16-REST EX-PARTE).**

Respondents

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicants have invoked the jurisdiction of this Tribunal under section 19 of the Administrative Tribunals Act, 1985, by preferring instant Original Application, seeking quashing of impugned revised seniority list of Upper Division Clerks (UDCs) dated 12.2.2015 (Annexure A-8), impugned seniority list of Senior Tax Assistant (STAs) dated 8.5.2015 (Annexure A-13), impugned seniority list of Income Tax Inspectors (ITIs) dated 21.8.2015 (Annexure A-18) and for issuance of direction to the respondents to revise those seniority lists by placing the applicants at their due places. Prayer has also been made to quash the panel dated 31.3.2017 (Annexure A-24) for the recruitment year 2017-18, for promotion to the post of Income Tax Officers and setting aside orders dated 7.12.2016, 2.5.2017, 2.6.2017 and 30.6.2017 (Annexure A-25 Coolly), where by Respondents No. 6,7,8 and 14 have been promoted as Income Tax Officers ignoring seniority of the applicants.

2. The facts of the case, which led to filing of the instant Original Application, are that in the month of November, 1991, an advertisement was issued by Staff Selection Commission (SSC) for appointment to the posts of Divisional Accountants / Auditors / UDCs in regard to 25 zones including Chandigarh, Punjab and Haryana (one Zone), Himachal Pradesh and Jammu & Kashmir (separate zones). A candidate was eligible to be recommended for appointment to a vacancy only in offices located in the particular zone in which the Centre selected by a candidate for taking the examination was located. The SSC reserved right to nominate a candidate to a zone, other than to which normal allotment would

have been made. Letter dated 16.3.1992 (Annexure A-1) was issued by SSC calling for requisition of vacancies which was received in the office of CIT, Patiala, on 30.3.1992 for vacancies to be filled from 1.3.1992 to 28.2.1993 (for recruitment / vacancy year 1992-93) for the posts of UDC. It was forwarded to office of CCIT, NWR, Patiala, vide letter dated 10.4.1992. It was mentioned that any backlog of vacancies for the period prior to 1.3.1992, was also to be added to the vacancies, arising during 1992-93. The respondent Income Tax Department sent letter dated 7.5.1992 (Annexure A-2) for 22 posts, including backlog vacancies. After receipt of requisition, SSC conducted the Examination in which applicants were declared successful. The SSC forwarded nominations, along with dossiers of 22 candidates vide letter dated 25.5.1993 for appointment in Punjab/Chandigarh/Haryana Zone (for short PCH zone). 3 candidates were nominated vide letter dated 29.6.1993 for H.P. Zone and 16 names, vide letter dated 16.7.1993, were sent for J&K zone. So, the applicants were appointed in PCH Zone, whereas private respondents were appointed in J&K/HP Zones. A note was also given that the candidates were nominated for appointment in concerned zones only.

3. The case of the applicants, further proceeds, that vide letter dated 16.7.2004 (Annexure A-4) sent to SSC, CIT, has admitted that nomination form dated 25.5.1993, was sent for 22 candidates only, against the examination held in 1991. The plea, in short, is that once applicants were appointed against these 22 posts, then persons, if appointed, over and above these vacancies, cannot be placed over the applicants. Attention has

also been drawn to Department of Personnel & Training Instructions dated 11.11.2010 (Annexure A-5), which provides that relative seniority of all direct recruits is determined by order of merit in which they are selected. The chronology of recommendation letter should be followed for fixing seniority. Where date of recommendation letter is same, chronology of interview board reports and where both are also same, then chronology of requisition made by respective Ministries / departments should be followed. The applicants claim that since they were recommended vide nomination letter dated 25.5.1993 and joined prior to private respondents, so they are senior. The private respondents were nominated vide letters dated 29.6.1993 and 6.7.1993 i.e. subsequent to the applicants, and as such they have to rank junior to the applicants.

4. The applicants submit that all applicants, except Ravi, joined the department in the year 1993 as direct recruit UDCs and all 22 vacancies were consumed and no vacancy existed for 1992-93. Still, the private respondents joined the Department in the year 1994 as UDCs. The applicants were promoted as STA in the year 2001 w.e.f. 12.5.2008 and then as Inspectors in the year 2012. They also issued UDCs seniority list on 1.9.1995, 1.9.2000, 1.9.2002, 1.9.2010 and 25.10.2013 (Annexure A-6 Coolly) in which the applicants were shown as senior to private respondents.

5. The respondents, however, issued a tentative seniority list of Direct recruit UDCs from SSC Examinations of 1986 onwards to 1992 and UDCs promoted in the DPCs held from 15.12.1986 to 30.10.1992, in terms of the letter dated 7.11.2014 issued by the CBDT for uniform implementation of the decision of the Hon'ble

Supreme Court in the case of **UNION OF INDIA & ORS. VS. N.R. PARMAR & ORS.**

(2012) 13 SCC 340 (decided on 27.11.2012), in which the applicants were placed at Sr. No. 388, 386, 387 and 393, whereas private respondents have been placed much above i.e. Sr. No. 328 onwards. The applicants filed objections against the same on 23.1.2015 (Annexure A-7). Again similar list was issued on 12.2.2015 (Annexure A-8) to which objections were filed on 19.2.2.105 (Annexure A-9). The same were rejected vide letter dated 27.4.2015 (Annexure A-10). They filed further representations (Annexure A-11) followed by RTI applications as well. The revised seniority of STAs dated 8.5.2015 (Annexure A-13) was also circulated to which objections were filed. Tentative seniority lists of Inspectors dated 30.6.2015 and then final list dated 21.8.2015 (Annexure A-18) was issued in which applicants were shown junior to the private respondents. They issued eligibility list of Inspectors on 25.8.2015, for promotion as ITO which was challenged in O.A.No.060/01015/2015 and 060/00059/2016 which were decided on 24.1.2017, with direction to the respondents to consider the matter afresh. Further, an O.A. No. 060/00120/2016 was filed, which was dismissed as withdrawn on 13.7.2017 with liberty to file fresh O.A. on same cause of action (Annexure A-23). During pendency of that O.A. department conducted the DPC and panel of candidates was prepared for promotion to the post of ITOs and private respondents No. 6,7,8 and 14 have been promoted vide impugned orders. Hence, this Original Application.

6. The official respondents No.1,3 & 4 have filed a reply. They submit that as per records, the requisition was sent vide letter dated 25.2.1992, as referred to in the covering letter of the dossiers (Annexure R-1). As per dossiers of UDCs received from SSC, two requisitions were sent to SSC vide letters dated 25.2.1992 and 7.5.1992. However, it is seen that the Dossiers pertaining to requisition letter dated 25.2.1992 were dispatched by SSC vide letter dated 6.7.1993 whereas dossiers pertaining to requisition letter dated 7.5.1992 were dispatched vide letter dated 25.5.1993. Thus, plea of applicants that all dossiers were received against requisition letter dated 7.5.1992 only is incorrect. The seniority lists and eligibility lists were prepared in accordance with Circular letter dated 7.11.2014 (Annexure R-2) for implementation of the decision of Hon'ble Apex Court in N.R. Parmar's case. As per policy decision taken, seniority of direct recruit officials would arise from the year in which the requisition has been sent to SSC. The Hon'ble Apex Court has held in aforesaid case, that the year of examination or the year of appointment / joining is of no relevance for the purpose of determining the seniority. Thus, earlier seniority of applicants, over and above private respondents, lost its relevance. The seniority has been determined after following principles of natural justice. Objections were invited and after considering the same, the final seniority lists have been issued and as such impugned orders are liable to be upheld. The private respondents, represented through Mr. R.K. Sharma, Advocate, have also filed reply on similar lines.

7. We have heard the learned counsel for the parties at length and with their able assistance, also examined the pleadings minutely.

8. The learned counsel for the applicants attacked the impugned seniority lists / orders on two counts. Firstly, that the respondents could not have possibly altered the settled seniority list, after a period of more than 17 years, as it is well settled law that settled things cannot be unsettled, after a long time. Secondly, he argues that respondents have wrongly placed reliance on the case of N.R. Parmar (*supra*), to unsettle the settled seniority lists of the applicants, as in that case the issue was qua determination of seniority intra direct recruits and promotees, whereas in the guise of that case, the seniority settled between direct recruits has also been unsettled, which is illegal and as such action of respondents is liable to be set aside.

9. Per contra, Mr. K.K. Thakur, learned counsel for the respondents has vehemently opposed the pleas taken by learned counsel for the applicants. He submits that the Hon'ble Apex Court, in the case of N.R. Parmar (*supra*) had laid down a principle of law, which was to be applicable to all the cadres across board and as such it was applied in totality after an advisory was issued by the CBDT in 2014 for applying the principles settled in all cadres and in that process, the seniority was re-examined and fixed accordingly. Therefore, he submits that there is no illegality in the impugned seniority lists / promotion orders.

10. Joining him, Mr. R.K. Sharma, learned counsel for private respondents, argued that in terms of settled principles in the

instructions read with the decision of the Hon'ble Apex Court in N.R. Parmar's case, the chronological order of requisition is one of the determining factor for fixation of seniority. He submits that even if the applicants had joined prior in time than the private respondents, that would not make any difference as the date of requisition for private respondents is prior in time than the applicants. To substantiate the plea, he referred to letter dated 6.7.1993 (Annexure R-1) sent by the SSC to Income Tax Department which is in reference to requisitions dated 25.2.1992 and 24.2.1992 for the vacancies for the year 1991-92, letter dated 29.6.1993 in reference to letter dated 25.2.1992 for 1991-92 vacancies against which private respondents were appointed and letter dated 25.5.1993 written by SSC sponsoring candidates against letter dated 7.5.1992 for the vacancy year 1992-93 against which the applicants were appointed. He thus, argues that persons (private respondents) appointed against vacancy year 1991-92 have to rank over and above persons (applicants) who were appointed against the year 1992-93 and as such he supported the impugned orders. He has also referred to the result published, which shows the names of the applicants against PCH zone and that of private respondents against J&K and H.P. zones respectively. He thus, argues, that no interference is called for in the impugned seniority lists and promotion orders and the O.A may be dismissed accordingly.

11. On a careful consideration of the arguments of learned counsel for the parties and pleadings on record, we find that the claim of the applicants deserves to be dismissed for the following reasons.

12. It is not in dispute that after decision of the Hon'ble Apex Court in the case of N.R. Parmar (supra), a policy decision was taken for implementation of the same vide letter dated 7.11.2014 (Annexure R-2), in the form of FAQ, for uniform implementation of the revision of seniority lists in all Regions in the country. The same being relevant is reproduced as under :-

Sr. No.	Issues	Draft response
1.	Will the seniority of the Direct Recruit reckon from the year of vacancy or the year in which the intimation has been sent to SSC or the year in which the exam was conducted or the year of selection.	The SC judgment is clear that the seniority of the DR would arise from the year in which the requisition has been sent to SSC. However, in the case before the Supreme Court, both the year of requisition and the vacancy year were the same. The Apex Court is silent on the situation that would arise if the years were different. In case requisition has been made in advance (i.e. before of the year in which the vacancy arises), then the vacancy year shall be adopted as the year of vacancy. In case requisition has been made after the vacancy arises, then it is the year of such requisition that is material. Such an interpretation would not run contrary to the decision of the Supreme Court, as clearly, wherever the letter of requisition preceded the vacancy year, the vacancy itself did not exist in the year of requisition. Thus the year of vacancy and year of requisition must be read together. Of course, the SC has explicated held that the year of examination or the year of appointment / joining is of no relevance for this purpose., Similarly, the date of advertisement by SSC would have no relevance. Further, the year of requisition will be the year in which the requisition has been sent to the SC. The year in which requisition has been made by the CCsIT (CCA) to the CBDT is not relevant.
2.	From which date would the implementation of the Supreme Court decision be made applicable?	The SC decision relies on the 1986 circulars of DoPT, which are, in turn, prospective in application. DoPT has also advised that the seniority has to be decided under the DoPT OMs dt. 7.2.1986/3.7.1986 till 27.11.2012. Thus review DPCs for all DPCs conducted till 27.11.2012 would be held as per DoPT OMs dt. 7.2.1986/3.7.1986. After 27.11.2012, the DoPT OM dt. 04.03.2014 would be applicable.
3.	Is the NR Parmar decision applicable only to the post of Inspectors?	No. The SC decision applies to the Direct Recruit Upper Division Clerks and Tax Assistants also.
4.	The dates of requisition letters informed by the Board to the SSC year-wise are not known to the CCIT (CCA)s.	Xxx FOR UDC grade The post of UDC was abolished in the year 2001-02. Till its abolition, requisition for Direct Recruit UDCs was sent directly by the CCIT (CCA)s to SSC. The dates of requisition letters vacancy year-wise, as intimated by CCIT (CCA) to SSC, should be available from their records.

13. It is, thus, apparent that as per indicated judgment, seniority of the direct recruits would arise from the year in which the requisition has been sent to SSC. The instructions make it

further clear that **the year of vacancy and year of requisition must be read together**. It is not in dispute that in pursuance of this decision, the seniority lists have been revised but surprisingly, the applicants have not even cared to challenge these instructions and as such they cannot be allowed to challenge only the seniority lists, which are offshoot of these instructions.

14. There is no dispute, at all, with regard to factual accuracy of the facts pleaded by the learned counsel for the parties, that the SSC had issued an advertisement dated 23-29.11.1991 (Annexure R-7/1), for recruitment to the posts of UDCs for different zones i.e. PCH, J&K and H.P. The applicants and private respondents had participated in the selection and were declared successful in the result dated 23-29.1.1993 (Annexure R-7/2). It was issued zone-wise and names of applicants and private respondents were duly shown in respective zones. However, Private respondent Parvesh Khajuria, UR Roll No. 1130364 was appointed out of J&K Zone as per letter dated 20.9.1993, as there was no vacancy to adjust him in that zone. This could be done and even zone could be changed by the authorities, in terms of caveat put by them in the advertisement itself.

15. It is not in dispute that the determination of seniority was to be done in accordance with the instructions issued by the CBDT and the law laid down by Hon'ble Apex Court in the case of N.R. Parmar (supra), in which it is clearly mentioned that the year of vacancy / requisition is to be read together and there is no reference to date of joining of an individual or date of sponsoring names by the SSC in that relevant connection. The official respondents have given a tabulated form of events qua date of

requisition, year of vacancies and date of nomination by SSC, which is reproduced as under :-

Year of Exam	Year of vacancies	Date of requisition	Date of nomination roll by SSC	Remarks
SSC Exam, 1991	1991-92	25.02.1992	29.06.1993 & 06.07.1993	Private respondents were appointed
-do-	1992-93	07.05.1992	25.05.1993	Applicants were appointed

16. A perusal of the aforesaid statement makes the position on record much more clear and in fact clinches the issue that the requisitions in case of the private respondents were sent much prior in time and for vacancies for the years 1991-92 and requisition for applicants was sent subsequently but the nomination by SSC was done in reverse form inasmuch as the names of applicants was sponsored on 25.5.1993 itself whereas in case of private respondents, the nomination took place in June/July, 1993. In that process, the applicants were able to join prior in time than the private respondents. But this joining is not the basis or relevant for determination of seniority. As discussed above, the year of vacancy / requisition is to be seen that in that regard including the year of vacancies which could be clubbed as per admitted position and, indeed, the requisitions qua private respondents were sent prior in time and for vacancies for the years 1991-92, as against the applicants, whose names were recommended qua the vacancies for the year 1992-93. Considering these things, and the law laid down by the Hon'ble Apex Court in the case of N.R. Parmar (supra) that seniority is to be determined as per the vacancy years / dates of requisitions, thus, one cannot find fault with the action of the respondents in

re-determining the seniority lists and making further promotion on that basis, by declaring private respondents senior to the applicants. It is not in dispute that after decision of Hon'ble Apex Court, a policy decision was taken to determine the seniority list of all cadres starting from UDC. Tentative seniority lists were issued to which objections were also invited from all concerned. After consideration of those objections, final seniority lists have been issued. In that eventuality, one cannot find any fault with the action of the respondents, which is in accordance with the instructions on the issue as well as principles settled by Hon'ble Apex Court in the indicated judgment.

17. Learned counsel for the applicant vehemently argued that the nominations could not be made over and above 22 vacancies, which were to be filled and as such it can be inferred that the candidates appointed over and above those vacancies are not even genuine and as such action of respondents stands vitiated. For this reference is made to letter dated 16.7.2004 written by SSC to the Income Tax Department regarding genuineness of nomination forms of various examination in which 25 candidates were appointed on the basis of SSC examinations held during the year 1990, 1991 and 1992 and it was intimated that on verification, none of the 25 names sent by Income Tax Department, find a place in the results of the examinations. However, qua examination for the year 1991 it is mentioned that only 22 names were forwarded to the Income Tax Department. It is also mentioned that vide letter dated 30.4.1992, 8 names were sent for appointment as Clerk based on Clerk Grade Examination, 1990. The plea taken by him does not appeal to reasons, as from

the nomination letters sent by the SSC it is apparent that they have made reference to the letters sent by the Income Tax Department qua year of vacancies and then candidates were sponsored against the same and as such it cannot be said from any angle that the appointments were made only against 25 vacancies. It is not in dispute that in the result declared by SSC, the names of applicants are mentioned at Sr. No., 8, 6, 7 and 14 whereas those of private respondents No. 8, 10, 12 and 16 are Sr. No. 1, 6, 14 and 13 respectively. The result is attached at pages 289-299 of the paper book. The names of the applicants and private respondents do find mentioned in the nomination rolls sent by the SSC. Thus, one cannot doubt the genuineness of the documents placed on record by the authorities considering the peculiar facts and circumstances of the case. The sole plea taken by learned counsel for the applicants that since they had joined prior to joining of the service by private respondents, so they are senior to latter, has to be and is hereby rejected, being contrary to the advisory which has remained unchallenged.

18. In the wake of the aforesaid discussion, we are of the firm view that this O.A. lacks any merit and is dismissed accordingly, leaving the parties to bear their own respective costs.

Needless to mention that interim order dated 31.7.2017 shall stand vacated.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(P. GOPINATH)
MEMBER (A)**

Place: Chandigarh.
Dated: 14.09.2018

HC*

*(O.A.No. 060/00852/2017-
Ravi Kumar etc. Vs. UOI etc.)*