

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00787 OF 2015
Cuttack, this the 16th day of November, 2017

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. M. SARANGI, MEMBER (A)

.....

Shreekant Barnwal,
S/o-Sri Satyanarayan Barnwal,
Aged about 35 years,
R/o:- Qtr. No. Type-IV/1,
Income Tax Colony, Udit Nagar,
Rourkela-769012.
Currently working as Inspector of Income Tax,
At O/o-ITO (TDS), Rourkela under CIT(TDS),
Bhubaneswar.

...Applicant

(By the Advocate-M/s. A. K. Behera, B. P. Mohanty)

-VERSUS-

Union of India Represented through

1. Secretary, Ministry of Finance, Department of Revenue, Govt. of India, North Block, New Delhi-110001.
2. Central Board of Direct Taxes through its Chairman, Ministry of Finance, Department of Revenue, Govt. of India, North Block, New Delhi-110001.
3. Principal Chief Commissioner of Income Tax, Orissa, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007.
4. P. C. Praharaj (Placed at Sr. No. 1 in the RY 2005-06 in the impugned Seniority List dated 01.09.2015).
5. Ajay Ku Das (Placed in the RY 2006-07 at Sr. No. 5 in the impugned Seniority List dated 01.09.2015)
6. J.G. Singh (Placed at Sr. No. 7 in the RY 2006-07 in the impugned Seniority List dated 01.09.2015)
7. S. K. Hembram (Placed at Sr. No. 2 in the RY 2007-08 in the impugned Seniority List dated 01.09.2015)

8. B. K. Senapati (Placed at Sr. No. 7 in the RY 2008-09 in the impugned Seniority List dated 01.09.2015)

9. M. Mathew (Placed at Sr. No. 9 in the RY 2008-09 in the impugned Seniority List dated 01.09.2015)

10. R. K. Mahali (Placed at Sr. No. 12 in the RY 2008-09 in the impugned Seniority List dated 01.09.2015)

(Sl. No. 4 to 10 are to be served through Principal Chief Commissioner of Income Tax, Orissa, Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar.)

...Respondents

(By the Advocate- Mr.S. B. Mohanty)

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O R D E R

S.K.PATTNAIK, MEMBER (JUDL.):

The applicant in this O.A. has prayed that his seniority may be interspaced against the promotions of the recruitment year/vacancy year 2006-2007 as mentioned in Paragraph-8 (f) (OR). Originally, the applicant had filed this O.A. with the following reliefs as mentioned in Paragraph-8 of the O.A.

“8. a. Call for the records of the case.

b. Quash and set aside the impugned seniority list dated 01.09.2015 as contrary to the law laid down by the Hon’ble Supreme Court in the case of Union of India & Ors. Vs. N.R.Parmar & Ors. and also quash and set aside the order dated 01.09.2015 rejecting the representation of the applicant.

c. Quash and set aside the advisory of the CBDT dated 16.01.2015 to the extent it advises various Principal Chief Commissioner of Income Tax including that of Odisha to the seniority of Income Tax Inspectors appointed on the basis of Combined Graduate Level Examination 2005 against the Recruitment year/Vacancy Year 2006-07 as being contrary to the judgment of the Hon’ble Supreme Court in the case of UOI Vs. NR Parmar.

d. Declare that the applicants and all others who have been appointed on the basis of Combined Graduate Level Examination 2005 for which the Advertisement was issued in the Employment News dated 23.07.2005-29.07.2005 are entitled to be interspaced with promotes of recruitment Year/Vacancy Year 2005-06.

e. Quash and set aside the promotion order to the grade of ITO dated 14.09.2015 based on the impugned seniority list of Income Tax Inspectors dated 01.09.2015.

f. Direct the respondents to recast the seniority list of Income Tax Inspector of Odisha region by interspacing the applicants against the promotees of the Recruitment Year/Vacancy year 2005-06 in a time bound manner and to give all consequential benefits to the applicants on the said basis including promotion from the due date to the grade of ITO.

OR

In the alternative, if the corrigendum advisory of CBDT dated 16.01.2015 is held to be valid by this Hon'ble Tribunal, then direct the respondents to recast the seniority list of Income Tax Inspector of Odisha region by interspacing the applicant against the promotes of the Recruitment Year/Vacancy Year 2006-07 in a time bound manner and to give all consequential benefits to the applicant on the said basis including promotion from the due date to the grade of ITO.

g. Direct the respondents to give all consequential benefits to the applicants.

h. Any other order or direction, which this Hon'ble tribunal deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.

i. Cost of the present case may be awarded in favour of the applicants.”

Since the pleading of the whole O.A. is wayward and deviating from the core issues, the applicant, who was arguing this case in person, was given an option to concentrate on a single prayer because, as per the CAT Rules, multiplicity of prayer is not admissible. However,

the applicant agreed that his prayer may be confined to the relief prayed for in Paragraph 8(f) (OR).

2. Shorn of unnecessary details, misleading and irrelevant facts, the case of the applicant, in short, runs as follows:

Pursuant to advertisement published in Employment News dated 23-29 July, 2005 (Annexure-A/5) the applicant applied for the post of Income Tax Inspector in OBC category. Having secured rank of 465 in All India Merit List, he was allocated to Bhubaneswar/Odisha region on 20.08.2008 (Annexure-A/6) and he joined the said post on 13.01.2009 as Direct Recruit. Seniority List of Inspectors of Odisha region was issued on 01.12.2010 (Annexure-A/7) in which applicant's name finds place at Sl. No. 102 against the Recruitment/Vacancy year 2008-09 as per the O.M. dated 03.03.2008 of DOP&T by taking the date of joining.

While the matter stood thus, the Hon'ble Supreme Court of India in the case of Union of India & Ors. Vs. N.R.Parmar & Ors. in Civil Appeal Nos. 7514-7515 of 2005 and other connected matters (Annexure-A/8) vide order dated 27.11.2012 held that the "***the direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year***". Consequently, the Seniority List dated 01.04.2013 (Annexure-A/9) was issued in which the applicant was placed as Sl. No. 68 with the promotees of Recruitment/Vacancy year 2008-09, which being contrary to the aforesaid direction of the Hon'ble Apex Court, the applicant preferred representation, which was rejected. It has been averred that on 07.11.2014 the CBDT issued an advisory for

implementation of N.R.Parmar judgment in various Regions & Charges but subsequently a corrigendum dated 16.01.2015 (Annexure-A/3) was issued by giving revised annexure of dates of the requisition letter in respect of the various vacancy years along with the Recruitment Year of the Direct Recruits, which also is not in accordance with the judgment of the Hon'ble Supreme Court. On 24.07.2015 the draft seniority list of Income Tax Inspectors of Orissa Region from the Recruitment year 1997-98 to 2007-08 (Annexure-A/12) was issued in which his name was not reflected although he was entitled to be interspaced with the promotees of the Recruitment Year 2005-06 and instead his name was reflected in the seniority list of Income Tax Inspectors from the Recruitment/Vacancy year 2008-09 to 2014-15 published on 14.08.2015 (Annexure-A/13) for the Recruitment year 2008-09. The applicant preferred representation and having received no response approached this Tribunal in O.A. No. 551/2015, which was disposed of with a direction to the Respondents to consider the applicant's representation. It was further directed not to act on the basis of the impugned seniority lists till then. On 01.09.2015, the Respondents rejected the representation of the applicant (Annexure-A/2) and, by holding a review DPC, finalized the seniority list of Income Tax Inspectors and issued the same on 01.09.2015 (Annexure-A/1). On 14.09.2015 (Annexure-A/4) orders of promotion to the grade of ITOs and other grades based on the impugned seniority lists dated 01.09.2015 has been issued. Being aggrieved, the

applicant has moved this Tribunal in this present O.A. assailing the seniority list dated 01.09.2015 (Annexure-A/1).

3. Shorn of unnecessary details, the Respondents' case as relevant to the present dispute reflected in the counter may be summarized as follows:

Respondents have disputed the contention of the applicant for interspacing his seniority with the promotees of the vacancy year 2005-06 as per the Hon'ble Supreme Court judgment in the case of N.R.Parmar (CA No. 7514-7515 and others). Respondents have contended that for implementation of the aforesaid decision, the DIT (HRD), CBDT issued advisory vide letter dt. 07.11.2014 in which the following observations (as quoted by the Respondents in their counter) were made.

"The Supreme Court 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 the year in which the vacancy arises), then the vacancy year shall be adopted as the year of seniority. 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 Supreme Court of India has explicitly 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 SSC.

The year in which requisition has been made by the CCsIT (CCA) to the CBDT is not relevant.”

Respondents have submitted that since Direct Recruitment vacancies to be filled up in the grade of IIT had neither been determined firmly nor been reported to the SSC before the date of Combined Graduate Level Examination-2005, the action had not been initiated by the Department in the Recruitment Year 2005-06 as contended by the applicant. CBDT vide its letter dated 20.08.2008 allocated a list of 16 candidates, including the applicant, recommended by the SSC on the basis of the Combined Graduate Level Examination-2005 and the applicant joined the Odisha Region as Inspector of Income Tax on 01.01.2009.

4. Pursuant to the filing of present O.A. as well as similar O.As., the CBDT communicated the following comments of the Pr.DGIT (HRD) vide its letter dtd. 15.02.2016:

*“2. In this connection, I am directed to state that the matter in the above mentioned OAs was referred to Pr. DGIT (HRD). The Pr. DGIT(HRD) in their comments has stated that the advisory dated 16.01.2015 is based on the Apex court decision in the case of N.R.Parmar, which stated that the seniority of DRs is to be decided on the basis of initiation of recruitment process. **Initiation of Recruitment process against a vacancy year would be reckoned as the date of sending requisition for filling up of vacancies to the recruiting agency.** They have further stated that as per Board’s advisory dated 16.01.2015, in the cadre of ITI for the year 2005 Examination, the date of sending requisition letter falls in the year 2006-07, hence the seniority of the applicants falls in 2006-07 whereas the seniority list prepared by Odisha*

region, the applicants have been assigned the seniority of 2008-09.

2.1 I am directed to request you to consider the above facts while filing reply in the above mentioned three O.A. before Hon'ble CAT.”

5. In the corrigendum dated 16.01.2015 to the Advisory dated 07.11.2014 vide Annexure-1(Revised) the Vacancy Year, Date of requisition letter, Examination years and the Recruitment year of Direct Recruits were clearly indicated. As per this, the seniority of Direct Recruits appointed against the requisition letter dtd. 20.02.2007 (Recruitment Year 2006-07) is of 2006-07 and the seniority of Direct Recruits appointed against the requisition letter dtd. 01.02.2008 (Recruitment Year 2006-07) is of 2007-08. This was referred to the Board for clarification but no reply was received till filing of this counter reply. The relevant portion of the said Annexure-1(Revised) is produced herein below:

S. No.	Vacancy year	Date of requisition letter	Examination year	File no.	Recruitment year of direct Recruits	Remarks
16.	2002-03 to 2005-06	20.02.2007	2005	A-12021/3/2004-Ad.VII	Seniority of DRs is of 2006-07	-
17.	2006-07 to 2007-08	01.02.2008	2006	A-12021/27/2007-Ad.VII	Seniority of DRs is of 2007-08	-

6. For reviewing the promotions as well as inter-se seniority between the Direct Recruits and Promotees for the R.Y. 2006-07 Review DPC was held on 25.08.2015. As per the first DPC, the total reported vacancies available for the year 2006-07 for PR and DR quota was 11 and 12 respectively and as per the second DPC the total reported

vacancies available for the year 2006-07 for PR and DR quota was 23 and 22 respectively. **The requisition was already made to the SSC under DR quota vide letter dated 28.11.2006 for 16 vacancies for the year 2006-07. The DR quota vacancies had been reported to the Board vide the aforesaid letter but it was inadvertently mentioned as reported to the SSC and the Board subsequently reported the vacancies to the SSC.** The CBDT vide its letter dated 02.01.2007 cleared total 6 vacancies upto R.Y. 2005-06 for filling up through SSC and the CBDT in its Advisory letter has also mentioned that against these 6 vacancies the persons appointed through SSC-2005 exam will get seniority in R.Y. 2006-07 and after considering the reservations for various categories six Direct Recruits were given seniority in the R.Y. 2006-07 in which the applicant's name did not find place. Subsequently, the inter se seniority between Promotees and Direct Recruits for the F.Y. 2006-07 was fixed. Committee further recommended that the seniority of the rest six Direct Recruits, including the applicant, selected from Combined Graduate Level Examination-2005 panel should be given in subsequent years. On consideration of the reservation points for various categories, four Direct Recruits, out of the remaining six, were given seniority in the R.Y. 2007-08. Since the applicant, along with one Sri Prabhat Kumar, still remained unadjusted due to want of vacancy, the Committee opined to consider their case in subsequent year. According to the minutes of the Review DPC, the Committee noted that as per the DIT(HRD), CBDT's advisory, vacancies of R.Y. 2008-09 had been

requisitioned on 13.07.2009, i.e. R.Y. 2009-10. Hence seniorities of persons against vacancies of R.Y. 2008-09 should be placed in R.Y. 2009-10. However, as these two persons (Prabhat Kumar & Shreekant Barnwal) are Direct Recruits sponsored by SSC, they may be placed as per their date of joining in this R.Y. i.e. below all the persons selected by this DPC for this R.Y. and these two OBC vacancies may be adjusted from future vacancies. The Review DPC reviewed the earlier promotions made to the Grade of IIT for the R.Y. 2008-09 and drew up a revised panel according to the order of seniority and inter se seniority between Promotees and Direct Recruits for the R.Y. 2008-09 was fixed, in which the applicant got the bottom most seniority.

7. Respondents have specifically denied the contention that the SSC issued the advertisement for CGLE-2005 after receipt of requisition by the CBDT in the year 2005-06 itself. As per Annexure-1 enclosed with the letter dated 16.01.2015 of the DIT (HRD), CBDT requisition for filling up of DR IIT for the vacancy years 2002-03 to 2005-06 had been made by the CBDT vide letter dated 20.02.2007 to the SSC. Since the number of DR vacancies in the Grade of IIT had not been cleared for filling up by the Screening Committee constituted for the purpose before the date of CGLE-2005, the Examination was conducted on the basis of tentative number of vacancies and hence the date of advertisement by SSC would have of no relevance. Respondents have further clarified that as the requisition was sent to the SSC on 20.02.2007, they have rightly

fixed the inter se seniority of the applicant for the R.Y. 2008-09 and, accordingly, they have prayed for dismissal of this O.A.

8. Before delving into the merit of this case, from the counter filed by the Official Respondents, it is abundantly clear that after considering the reservations in various categories, six Direct Recruits, who had passed the SSC Examination 2005, were given seniority in the Recruitment Year 2006-07. The inter se seniority between the Promotees and Direct Recruits in the R.Y. 2006-07 as per the first and second DPC was carved out and who were appointed through SSC-2005 examination got seniority in the Recruitment Year 2006-07. The Committee further recommended that the seniority of the rest six Direct Recruits, out of the total twelve Direct Recruits selected from CGLE-2005 panel, should be given in subsequent years in which the name of the applicant finds place having joined on 13.01.2009, along with other persons who had joined in 2008-09. The counter further reveals that inter se seniority of the Promotees and Direct Recruits for R.Y. 2007-08 was fixed by Review DPC and the Committee opined that the applicant and one Prabhat Kumar, both belonging to the OBC category recruited through SSC Examination-2005 and who could not be adjusted in the R.Y. 2007-08, be given their seniority in the subsequent year and the Review DPC found that no Direct Recruit has been recruited for the year 2008-09 and Prabhat Kumar and Shreekant Barnwal, two persons of OBC category of SSC-2005 Examination who had not been given seniority in R.Y. 2006-07 and 2007-08 due to want of vacancies, are still remained to be

adjusted and, according to the minutes of the Review DPC, the seniority of persons against vacancies of R.Y. 2008-09 be placed in the R.Y. 2009-10. However, those two persons, viz. Prabhat Kumar and Shreekant Barnwal, who were Direct Recruits sponsored by the SSC to be placed as per their date of joining in the R.Y., i.e. below all the persons selected by the DPC for this R.Y. and these two OBC vacancies may be adjusted from future vacancies. So, instead of showing gratitude to the Department for adjusting the applicant and another Prabhat Kumar, a spurious litigation has been filed.

9. There is considerable force in the submission of the Ld. Counsel for the Respondents that the Hon'ble Supreme Court had clarified that the seniority of the Direct Recruits would arise from the year in which the requisition was sent to the SSC. However, in the case before the Hon'ble Supreme Court, both, the year of requisition and vacancy were the same. Ld. Counsel for the Respondents further submitted that judgment of the Hon'ble Apex Court is silent on the situation that would arise if the years were different. In case the requisition has been made before the year in which the vacancy arises then the vacancy shall be adopted as per the year of seniority and in case requisition has been made after vacancy year then the year of such requisition shall be materialized. If the vacancy did not exist in the year of requisition, the question of allotment for the DRs does not arise. Positive case of the Respondents is that CBDT letter dated 20.08.2008 allocated a list of 16 candidates, including the applicant, recommended

by the SSC for appointment to the post of IIT, Orissa region, on the basis of SSC Examination-2005 and, accordingly, the applicant joined as Inspector of Income Tax on 01.01.2009. There is no dispute about the fact that initiation of the recruitment process against the vacancy year would be reckoned as the date of sending requisition for filling up of the vacancy to the recruitment agency. The Advisory Board on 16.01.2015 sent requisition for the year 2006-07 wherein the applicant was selected but the Committee recommended six Direct Recruits, out of 12 Direct Recruits selected from the 2005 panel, wherein the present applicant found place. According to the Ld. Counsel for the Respondents, since no illegality has been committed in the case of the applicant no interference is called for.

10. Needless to say that vide letter dated 04.03.2014 (Annexure-A/17 to the Rejoinder), the DoP&T has issued an Office Memorandum on the subject of inter se seniority of the Direct Recruits and Promotees. Under the said circular, there has been several guidelines and the relevant observations as reflected in paragraph 5 is quoted hereunder:

“5. The matter has been examined in pursuance of Hon’ble Supreme Court judgment on 27.11.2012, in Civil Appeal No. 7514 -7515/2005 in the case of N. R. Parmar Vs. UOI & Ors in consultation with the Department of Legal Affairs and it has been decided, that the manner of determination of inter-se-seniority of direct recruits and promotes would be as under:

- a) DoP&T OM No. 20011/1/2006-Estt.(D) dated 03.03.2008 is treated as non-existent/withdrawn ab initio;*
- b) The rotation of quota based on the available direct recruits and promotees appointed against*

the vacancies of a Recruitment Year, as provided in DOPT O.M. dated 07.02.1986/03.07.1986, would continue to operate for determination of inter se seniority between direct recruits and promotees;

- c) The available direct recruits and promotees, for assignment of inter se seniority, would refer to the direct recruits and promotees who are appointed against the vacancies of a Recruitment year;*
- d) Recruitment year would be the year of initiating the recruitment process against a vacancy year;*
- e) Initiation of recruitment process against a vacancy year would be the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits; in the case of promotees the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up the vacancies through promotion would be the relevant date.*
- f) The initiation of recruitment process for any of the modes viz direct recruitment or promotion would be deemed to be the initiation of recruitment process for the other modes as well;*
- g) Carry forward of vacancies against direct recruitment or promotion quota would be determined from the appointments made against the first attempt for filing up of the vacancies for a Recruitment Year.*
- h) The above principles for determination of inter se seniority of the 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.*
- i) The case 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.”*

The above circular clearly indicates that determination of inter se seniority of the Direct Recruits and Promotees would be effective from 27.11.2012, i.e. the date of the judgment of the Hon'ble Supreme Court in the case of N.R.Parmar, and the cases of seniority already been

settled with reference to the applicable interpretation of the term availability, as contained in DoP&T O.M. dated 07.02.1986/03.07.1986, may not be reopened.

11. There is no dispute about the DoP&T guidelines that the recruitment year would be the year of initiating the recruitment process against the vacancy year and the initiation of the recruitment process against a vacancy year would be the date of sending requisition for filling up of vacancy to the recruiting agency in the case of Direct Recruits. There is also no dispute about the fact that assignment of recruitment year shall be subject to the vacancy. As there was no vacancy to adjust the applicant in the OBC category, the DPC recommended for adjustment in the subsequent vacancy year and, accordingly, the applicant has been given the vacancy year 2008-09.

12. Needless to say that taking aid of N.R.Parmar's case, the clock cannot be rotated back as the judgment is prospective in nature. Earlier, the applicant, along with other similarly situated persons had approached this Tribunal in O.A. No. 551/2015. This Tribunal disposed of the said O.A. at the admission stage with direction to the Respondents to dispose of the representation of the applicants and communicate the decision thereon. After the said decision dated 27.08.2015, the Respondents have categorically pleaded in paragraph-17 of the counter that all the representations of the applicant were considered by the review DPC on 25.08.2015. In response to the said DPC and in compliance to the judgment of N.R.Parmar's case, the office of Pr. Chief

Commissioner of Income Tax, Orissa, has published the year wise seniority in the grade of IIT vide letter dated 01.09.2015 wherein, under Sl. No. 14, the applicant has been assigned R.Y. 2008-09. Had any person below the merit list of the applicant in the OBC category been assigned higher recruitment year, the case of the applicant could have received favourable consideration. The applicant also challenges the CBDT's letter dated 16.01.2015 (Annexure-A/3) which is only a direction to implement the direction of the Hon'ble Supreme Court in the case of N.R.Parmar. There is nothing wrong in the circular calling for interference. The applicant intentionally has not challenged the findings of the review DPC, which recommended his case to be interspaced in the R.Y. 2008-09. The applicant also challenges the order dated 14.09.2015 (Annexure-A), which has been passed only in compliance of the judgment of the Hon'ble Supreme Court in the case of N.R.Parmar. The applicant has no locus standi to challenge such order as he is not connected with it. The applicant also challenges the allocation of charges, in respect of candidates who qualified the Graduate Level Examination, 2005, vide order dated 20.08.2008. It is not known as to how the applicant is competent to challenge such order of 2008 in an O.A. filed in 2015. Even the applicant had not challenged the seniority list of Inspector of Income Tax published as on 01.12.2010 (Annexure-A/7), in which the name of the applicant finds place at Sl. No. 102. The whole claim of the applicant for a direction to the Respondents to recast the seniority list of Inspector of Income Tax of Orissa region is

misconceived as there is nothing wrong in assignment of seniority to the applicant.

13. To sum up, interspacing would have been allowed had there been vacancy in that particular year but since there was no vacancy, question of adjusting the applicant in the year 2005-06 or 2006-07 does not arise. There is nothing wrong in the corrigendum advisory of CBDT dated 16.01.2015 calling for interference or for a direction to recast the seniority list for the R.Y. 2006-07. Hence ordered.

14. O.A. being devoid of merit is dismissed. No costs.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

RK