



**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA**

No. M.A. 350/212/2018  
M.A. 350/873/2017  
O.A. 350/604/2017

Date of order: 15<sup>th</sup> of June, 2018

Present : Hon'ble Ms. Manjula Das, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Narottam Pandey,  
Son of Late Harasit Pandey,  
Aged about 54 years,  
By Occupation – Inspector of Central Excise,  
Residing at K/J – 14, Jagatpur,  
P.O. – Aswini Nagar,  
Kolkata – 700 159.

... Applicant

**- VERSUS -**

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 Chairman,  
Central Board of Excise & Customs,  
North Block,  
New Delhi – 110 001.
3. The Chief Commissioner of Central Excise  
(presently Chief Commissioner, CGST & CX),  
Kolkata, 180, Shantipally,  
Kolkata – 700 107.
4. The Commissioner of Central Excise,  
Kolkata – II Commissionerate  
(presently Commissioner of Howrah CGST & CX),  
Customs House,  
M.S. Building,  
Kolkata – 700 001;
5. The Commissioner of Central Excise  
(presently Commissioner of Kolkata North  
CGST & CX Commissionerate),

180, Shanti Pally,  
Kolkata – 700 107.

6. Shri Manish Kumar Pintu,  
Inspector of Central Excise (Enforcement Officer)  
(Now Superintendent),  
Office of the Joint Director,  
Enforcement Directorate,  
6<sup>th</sup> Floor, Loknayak Bhavan, Khan Market,  
New Delhi – 110 003.

7. Shri Premjeet Kumar Mishra,  
Inspector of Central Excise  
(Now Superintendent)  
Service Tax – I Commissionerate,  
180, Shanti Pally,  
Kolkata – 700 107.

8. Shri Indrajit Chandra,  
Inspector of Central Excise,  
Office of the Assistant Commissioner of  
Central Excise,  
Dankuni Central Excise Division, Range-II,  
Bank of Baroda Building,  
Khalisani Station Road (Kalitala),  
Chandannagar, Hooghly,  
Pin – 712136.

9. Shri Arijit Ghosh,  
Inspector of Central Excise,  
Office of the Assistant Commissioner of  
Central Excise,  
Appeal – I, Kolkata – 169,  
AJC Bose Road, Bamboo Villa,  
5<sup>th</sup> Floor,  
Kolkata – 700 014.

.. Respondents

(Allowed to join as added/intervening parties as  
respondents vide this Tribunal's order dated  
3.11.2017 in M.A. No. 839 of 2017)

10. Kaushalendra Sahay,  
Son of Late Mahesh Sahay,  
Aged about 40 years,  
Working as Inspector,  
Kolkata South Commissionerate,  
Presently posted on Deputation as  
Senior Assistant Director in Serious

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**Fraud Investigation Office,  
Kolkata Regional Office,  
Kolkata,  
Residing at Flat No. 2B,  
Swastik apartment, 2<sup>nd</sup> Floor, 1374,  
Purbachal Road, 3/ 4, Garden Park,  
Near Purbanchal Pally Unnayan Samiti,  
Kolkata – 700078.**

- 11. Ashish Bajpai,  
Son of Prem Narain Bajaj,  
Aged about 38 years,  
Working as Inspector,  
CGST & CX, Kolkata North Commissionerate,  
Kolkata,  
Residing at Block – D, Flat – 34,  
Customs & Central Excise Residential  
Complex, 179, Shanti Pally,  
Kolkata – 700 107.**
- 12. Umesh Kumar Yadav,  
Son of Rameshwar Yadav,  
Aged about 41 years,  
Working as Inspector,  
CGST & CX (erstwhile Central Excise,  
Customs & Service Tax) In HQ Pool,  
CGST & CX Audit – 1 Commissionerate,  
Kolkata,  
Residing at Qtr. No. C-110,  
Customs & Central Excise Residential  
Complex, 179, Shanti Pally,  
Kolkata – 700 107.**
- 13. Sanjay Kumar Sinha,  
Son of Late Parmanand Prasad,  
Aged about 45 years,  
Working as Inspector,  
CGST & CX (erstwhile Central Excise Customs  
& Service Tax), in  
Bishnupur Division, Range – I,  
CGST & CX, Kolkata South Commissionerate,  
Kolkata,  
Residing at Qtr. No. C-184,  
Customs & Central Excise Residential  
Complex, 179, Shanti Pally,  
Kolkata – 700 107.**
- 14. Sanjeev Kumar Sinha,  
Son of Late Satish Kumar Sinha,  
Aged about 34 years,**

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Working as Inspector, CGST & CX  
(erstwhile Central Excise Customs &  
Service Tax), in HQ Pool, CGST & CX,  
Kolkata South Commissionerate,  
Kolkata, residing at Flat D1,  
Deb Jasmine – III, 1692 Madhurdaha,  
Kolkata – 700 107.

.. Respondents

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

For the Respondents : Mr. K. Prasad, Counsel (Official)  
Mr. S.K. Dutta, Counsel (Private)

### ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

A Miscellaneous Application No. 873 of 2017 has been filed by private respondent Nos. 10 to 14 impleaded in O.A. No. 604 of 2017 vide Tribunal's order dated 3.11.2017. Another Miscellaneous Application No. 212 of 2018 has been filed by the official respondents in the O.A.

2. Both Miscellaneous Applications seek vacation of the interim order issued on 14.9.2017 in M.A. No. 350/735/2017 arising out of O.A. 607 of 2014, which reads as follows:-

" The applicant has approached this Tribunal by challenging the fixation of seniority on 30.11.2015 as per N.R. Parmar's case passed by the Hon'ble Apex Court.

2. Heard Mr. A.K. Manna, Id. Counsel for the applicant and Mr. K. Prasad, Id. Counsel for the respondents.

3. Ld. Counsel for the applicant fairly submits that nine applicants were appointed long back as UDC and thereafter got promotion to the post of Inspectors vide order dated 1.1.2008 and published on 21.2.2008. According to the Ld. Counsel their seniority was fixed as per DOPT O.M. dated 3.7.86 and subsequently also their seniority was fixed on 3.3.2008 as per the guidelines of O.M. of the DOPT. Ld. Counsel submits that subsequently also their seniority was fixed on 3.3.2008 as per the guidelines of O.M. of the DOPT. Ld. Counsel submits that subsequently the Hon'ble Apex Court in the case of N.R. Parmar passed an judgment dated 27.11.2012 whereby major changes occurred in determination of seniority.

4. According to the Ld. Counsel all the applicants' seniority were fixed before 2012 i.e. before passing of the order/judgment. An office memorandum was subsequently issued by the DOPT on 4.3.2014 by

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following the decision of N.R. Parmar's case. In Srl. No. 4 of the Office Memorandum dated 4.3.2014 stipulates that: "divergent stance taken by different Ministries/Departments on interpretation of 'available direct recruits and promotees' in the context of O.M. dated 7.2.86, the DOPT had issued O.M. No. 20011/1/2006-Estt.(D) dated 3.3.2008, which provided that the actual year of appointment, both in the case of direct recruits and promotees, would be reckoned as the year of availability for the purpose of rotation and fixation of inter se seniority." Clause 5(h) further stipulates that the 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 v. U.O.I. & oprs.

5. In view of that, Ld. Counsel for the respondents submits that the case of the applicants is not covered by the subsequent office memorandum dated 4.3.2014 and the seniority fixed later on vide the impugned order is not permissible under the law.

6. We have heard the Ld. Counsel for the parties. The Ld. Counsel for the respondents submits that in the meantime some Inspectors have been promoted to the post of Superintendent as per seniority list published on 30.11.2015, which is under challenged in this O.A.

7. Parties are directed complete the pleadings by exchanging their reply and rejoinder respectively within two months.

8. As an interim measure, we pass an order that the applicants position shall not be prejudiced and the seniority in question is outcome of the result of the O.A.

Meanwhile, no further promotion shall be made from the seniority list dated 30.11.2015 till disposal of the O.A.

9. List this matter on 28.11.2017."

3. The private respondents, who subsequently impleaded themselves after passing of the interim order dated 14.9.2017, have pleaded as follows:-

That, the applicants are all Direct Recruit Inspectors of Central Excise belonging to 2003 batch of Direct Recruit Inspectors. In view of the decision of the Hon'ble Apex Court in the case of N.R. Parmar and in view of the subsequent instructions of the Government of India, the Office of the Commissioner of Central Excise, Kolkata – II published a seniority list of Inspectors dated 28.3.2015 and after considering the representations made against the said seniority list dated 28.3.2015, the office of the Commissioner of Central Excise, Kolkata – II published the seniority list of Inspectors in the Central Excise Zone, Kolkata (as on 1.4.2015) on 30.11.2015.

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That, the applicant of the Original Application, Shri Narottam Pandey had represented against the seniority list dated 28.3.2015 (as inferred from his Original Application) as per stipulation in the Office Memorandum dated 28.3.2015 inviting representations and, after considering all the representations including the representation of the applicant to the Original Application, the seniority list dated 30.11.2015 was published and circulated.

That, in the said Original Application, Shri Narottam Pandey has impleaded four Direct Recruit Inspectors as Respondent Nos. 6 to 9 out of whom Respondent Nos. 6 and 7 belong to the batch of 2003 and the Respondent Nos. 8 and 9 belong to the batch of 2006. So far as the Respondent Nos. 6 and 7 are concerned, they have already got promotion as Superintendent which is the next higher post of Inspector.

That, the applicant had filed O.A. 604 of 2017 without impleading the applicants in M.A. 873 of 2017 and the Tribunal had been pleased to grant an interim order dated 14.9.2017 to the effect that the position of the applicant in O.A. No. 604 of 2017 shall not be prejudiced and the seniority in question will be subject to outcome of the result of the O.A. It was further ordered by the Tribunal that in the meanwhile, no further promotion shall be made from the seniority list dated 30.11.2015 till the disposal of the O.A. The applicants in M.A. 873 of 2017, however, had no opportunity of being represented during the stage when the Tribunal had passed the interim order as they had not been impleaded.

The applicants of the M.A. 873 of 2017 further stated that since they are necessary parties to the original application, they filed a Miscellaneous Application for being added as Respondent Nos. 10 to 14 and after hearing the said application, the Tribunal was pleased to add the applicants as Respondent Nos. 10 to 14.

The primary submissions of the applicants in M.A. No. 873 of 2017 are that the next promotion from the post of Inspector to the post of Superintendent is

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based on Zonal Seniority List but further promotion from the post of Superintendent to Assistant Commissioner is based on a Combined All India Seniority List of Superintendents prepared on the basis of date of promotion as Superintendent in various zones. As such, the applicants herein would not only suffer financially but also would be denied of status of Assistant Commissioners on account of the stay on promotion pending disposal of the O.A.. The applicants would also be relegated as juniors to the Inspectors belonging to the same batch or subsequent batches who would get promotion on the basis of the Revised Seniority List published by different zones according to the law laid down by the Hon'ble Apex Court in the case of N.R. Parmar.

The applicants in M.A. No. 873 of 2017 have pleaded that due to the order of stay dated 14.9.2017, not only would the applicants suffer due to denial of status as Superintendent by way of promotion but also incur financial loss. The stay would also cause the applicant to continue to suffer for the rest of their career.

The applicants in M.A. No. 873 of 2017 have further pleaded that in the event the original application is not decided in favour of the applicant in O.A. No. 604 of 2017, they would only be entitled to prospective promotion as Superintendent post disposal of the O.A. and would be deprived of the pay and allowances of the post of Superintendent in the interim period. Further, due to prospective promotion, the applicants would never get the back wages and at the same time due to such delay in promotion, the applicants would not get their due position in the All India Combined Seniority List to be prepared for the purpose of consideration for further promotion as Assistant Commissioner and that the applicants would be severely prejudiced in their promotions as Superintendent.

4. In their Miscellaneous Application No. 212 of 2017, the official respondents, inter alia, has supported the contention of the private respondent

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Nos. 10 to 14 (who are also applicants in M.A. No. 873 of 2017) and have stated that on account of the stay on promotion,

- (1) The department would face difficulty in discharging official work due to shortage of personnel in the department.
- (2) That, on account of the stay and ban on promotion, annual DPC meeting for 2018-2019 to the grade of Superintendent has been held up and no promotions could be granted to posts of Superintendents.
- (3) That, regularization of approximately 200 Superintendents promoted on adhoc basis during 2017 cannot be made during pendency of the stay order.
- (4) That, these officials are being deprived of their all India seniority on account of the ban.
- (5) That, the ban on promotion to Superintendents has affected those lower down the promotional ladder in both executive and Ministerial posts.
- (6) That, the single applicant in the O.A. 604 of 2017 has held up the entire promotion list without even impleading the necessary parties.

5. The applicant has filed rejoinder to both the Miscellaneous Applications. In his rejoinder to M.A. No. 873 of 2017 filed by the private respondents, the applicant has stated, inter alia, that the impugned stay order dated 14.9.2017 has in no way, infringed or prejudiced the rights of the respondents as promotion to a higher post is not a matter of right but that of equal opportunity as guaranteed by Article 16(1) of the Constitution of India.

While filing the rejoinder to the M.A. filed by the official respondents, the applicant has referred to the board's letter dated 8.9.2014 wherein the following has been stated:-

" However, the Seniority List of Inspector is subject to the final outcome of the O.A. No. 3 of 2013 – case of Shri Manajit Sarkar & ors. And WPCT No. 81 of 2014 (UOI & Ors. – Vs.- Devesh Shankar Srivastava & ors.) in the

Hon'ble High Court at Calcutta and other Court cases, if any, and also be subject to O.M. dated 10.8.2010 and any other order of Ministry. This Seniority List shall be subject to any review of promotion to the post of Inspectors (if and wherever required) and any subsequent revision in the Seniority List of Ministerial Post with retrospective effect, having any impact on this Seniority List. ...."

The Ld. Counsel for the applicant in the original application had also furnished a copy of the Hon'ble Apex Court's orders which had dismissed Special Leave Petition against the order of Delhi High Court dated 22.1.2018 in WP (C) No. 3087 of 2016 and 8443 of 2016 passed in the matter of Dibakar Singh v. Union of India & ors. A copy of the judgment of the Hon'ble High Court of Delhi has also been furnished by the respondent to the M.A. and applicant in the original application.

While responding to M.A. No. 212 of 2017, the applicant in O.A. No. 604 of 2017 has also argued that official respondents are at liberty to issue promotion orders from the "settled" seniority list of 2008/or from 2010 seniority list kept alive in WPCT No. 81 of 2014.

As we are not entering into the merits of the original application, however, the references are not being discussed at this stage.

6. Our limited role at this stage is only to consider as to whether the interim order passed on 14.9.2017 deserved to be vacated or modified in the context of the two Miscellaneous Applications.

7. The Ld. Counsel for the private respondents has very strongly argued that the next promotion for the post of Inspector to the post of Superintendent is based on the Zonal Seniority List but further promotion from the post of Superintendent to the post of Assistant Commissioner is based on Combined All India Seniority List of Superintendents prepared on the basis of dates of promotion as Superintendent in various zones and the fact that the interim order stipulates that no further promotion shall be made from the seniority list dated

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30.11.2015 till disposal of the O.A. implies that none of the private respondents 10 to 14, who are Direct Recruits, will be entitled for promotion given that the Zonal Seniority List in Kolkata Zone has been called in question by the instant application. In case the application is decided in favour of the applicant, the interim order at Para 8 of Tribunal's order dated 14.9.2017 namely, that,

" As an interim measure, we pass an order that the applicant's position shall not be prejudiced and the seniority in question is outcome of the result of the O.A."

will ensure that the applicant's interests are protected. At the same time, in case the result of the application is not in favour of the applicant, the private respondents will be deprived of their promotion in the interim period during the pendency of the matter not only as Superintendents but also as Assistant Commissioners in the Combined All India Seniority List.

8. We find that there is a lot of strength in these arguments of the Ld. Counsel of the private respondents. While contending that promotion is not a matter of right, the applicant has not brought on record any material to justify that the private respondents, who are applicants in M.A. No. 873 of 2017 are not entitled to promotion whatsoever and hence depriving them of their justifiable entitlement to promotion, subject to rules of the respondent organisation, will be severely prejudicial to the private respondents who are applicants of M.A. No. 873 of 2017 and this deprivation can never be compensated either by money or by status irrespective of the decision in the Original Application.

The applicant in the Original Application has also not produced any other stay orders by any other coordinates Benches and hence the stay dated 14.9.2017 will only affect the promotion and consequent benefits of those in the Calcutta Zone.

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9. The official respondents have also prayed for vacation of the interim order on the grounds that the private respondents would be prejudiced in the All India Combined Seniority List if their promotions are withheld during pendency of the application. The official respondents have also pleaded that, functionally speaking, the department would face problems due to shortage of Superintendents in the Department and that regularisation of approximately 200 Superintendents promoted on adhoc basis during 2017-18, until the stay order dated 14.9.2017 is vacated, will deprive of their All India Seniority on account of the stay. This will have cascading effect on the lower grades in the executive ladder.

10. We have applied our judicial mind and considered the contents of applications as well as the rejoinder thereto and the arguments and counter arguments of respective Counsel.

11. We find that there is considerable force in the argument of the Id. Counsel for private respondents as that the prejudice caused to them on account of stay of promotion would continue to pursue the/affect them for the rest of their service career and they will in no way be compensated whatever be the decision in the Original Application.

12. The official respondents have also justified the functional requirement of more Superintendents and the cascading effect on the lower executive.

13. Accordingly, we modify the interim order as follows:-

The first part of the interim order, that is,

"8. As an interim measure, we pass an order that the applicant's position shall not be prejudiced and the seniority in question is outcome of the result of the O.A." remains unchanged.

The second part of para 8 is modified as follows:-

"Meanwhile, any further promotion made from the seniority list dated 30.11.2015 will be subject to the outcome of the O.A."

The interim order hence stands modified in accordance with the above directions.

14. The M.A.s stands disposed of accordingly.

15. List the O.A. on 10.7.2018.

(Nandita Chatterjee)  
Administrative Member

(Manjula Das)  
Judicial Member

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