

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No. 579 of 2016

Date of Reserve: 18.03.2019

Date of Order: 9.4.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Swapan Kumar Mohanty, aged about 48 years, Son of Late Biswanath Mohanty permanent resident of Vill. Basantamal, PO. Badala Sasan, PS Balipatna, Dist. Khurda presently working as Inspector of Income Tax in the office of Income Tax Officer, Jajpur Ward, Jajpur at Ayakar Bhawan, Shelter Square, Cuttack-8.

...Applicant

By the Advocate (s)-M/s.S.K.Ojha, S.K.Nayak

-VERSUS-

1. Union of India through the Secretary Department of Revenue, Ministry of Finance, New Delhi-110001.
2. The Chairman, Central Board of Direct Taxes (CBDT), North Block, Central Secretariat, New Delhi-110 001.
3. The Principal Chief Commissioner of Income Tax, Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Odisha, PIN-751 007.
4. Sk. Rajan Jaan presently working as Inspector of Income Tax, O/o the Joint Commissioner of Income Tax, Range-1, Ayakar Bhawan, Shelter Square, Tulsipur, Cuttack-753 008.
5. Sri Durga Prasad Acharya presently working as Inspector of Income Tax, O/o the Principal Commissioner of Income Tax-I, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007.
6. Sri Manas Ranjan Mishra, presently working as Inspector of Income Tax, O/o the Principal Commissioner of Income Tax-I, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007.

.....Respondents

By the Advocate(s)-Mr.B.P.Nayak

ORDER

PER GOKUL CHANDRA PATI, MEMBER(A)

The applicant has filed this OA being aggrieved by fixation of his seniority and promotion by the respondents as Inspector of Income Tax (referred hereinafter as 'IIT' in short), praying for the following reliefs as per the consolidated OA after incorporating the amendments made in the OA in view of change in seniority of the applicant effected vide order dated 1.4.2017 (Annexure-A/13) during pendency of the OA:-

"(i) To quash the office order dated 1.8.2016 (Annexure A/11) holding the same as illegal, contrary to the law and without jurisdiction;

(ii) To declare that the applicant is senior to the Respondent No.4 to 6 in the Inspector of Income Tax Cadre as per the DOP&T circular issued to that effect.

(iii) To modify the seniority list dated 14.9.2015 (Annexure A/6) and quash the office order dated 1.4.2017 (Annexure A/13) so far as undertaking to review of promotions for the year 2004-05 to 2016-17 holding the same are not in conformity with the rules. Further, declare that the letter dated 6.4.2009 (Annexure A/12) is not an authority to decide the inter se seniority between the departmental promotes.

(iv) To extend all consequential benefits as due and admissible.

(v) To pass any other order/orders as deem fit and proper for the ends of justice."

2. The applicant was initially appointed as a Stenographer and was promoted as IIT on 11.6.2008 on the basis of the recommendation of the Departmental Promotion Committee (in short DPC). When the draft seniority list for the IITs was circulated on

14.8.2015 (Annexure-A/4), the applicant found that his seniority was not reflected correctly, for which he submitted a representation dated 18.8.2015 (Annexure-A/5). Final seniority list was published on 14.9.2015 (Annexure-A/6) and thereafter, the representation of the applicant was rejected vide a general order dated 5.11.2015 (Annexure-A/7). It is averred in the OA that the final seniority dated 14.9.2015 has been prepared violating the guidelines of the DOPT vide the OM dated 12.12.1988, since persons getting less pay than the applicant have been placed at higher seniority. The respondent no. 4 to 6 have been promoted as IIT from the Ministerial cadre with pay scale of Rs. 5000-150-8000/- (pre-revised), where as the applicant was promoted from the pay scale of Rs. 5500-175-9000/- for which he should have been ranked higher in the seniority list of IITs than the respondent nos. 4 to 6. Another grievance of the applicant is that his seniority rank was lowered to the recruitment year 2009-10 compared to 2008-09 fixed earlier for him. Then his rank was further modified based on the review DPC recommendation to the recruitment year 2010-11 vide order dated 1.4.2017 (Annexure-A/11).

3. The applicant had earlier filed the OA No. 195/2016 challenging the illegal action of the respondents. This OA was disposed of by quashing the non-speaking rejection order with direction to dispose of the representation of the applicant by passing a speaking order. Accordingly, the respondents have passed the impugned order dated 1.8.2016 (Annexure-A/11) in which the reason of notional reversion of the applicant from the recruiting year 2008-09 to 2009-10 in violation of the DOPT guidelines. The seniority rank of

the applicant was modified again to the year 2010-11 from the year 2009-10 vide order dated 1.4.2017 of the respondent no.2 in pursuance to the judgment of Hon'ble Apex Court in the case of N.R. Parmar & Ors. vs. UOI. It is stated that while reviewing the promotions made since 1986, the respondents have changed the settled seniority position after a long gap due to which the seniority of the applicant as IIT was brought down to the recruiting year 2010-11 in pursuance to the judgment in the case of N.R. Parmar for which the review DPCs were convened. It is the case of the applicant that such action to review the seniority of the officials since 1986 was against the ratio of judgment of Hon'ble Apex Court in the case of Shib Shankar Mohapatra vs. State of Orissa reported in (2010) 12 SCC 471. The applicant in the OA has also cited the following judgments in support of his stand that settled seniority should not be unsettled:-

- (i) OA No. 109/2011 – **Chittaranjan Panda -vs- Union of India & Ors.**
- (ii) WP(C) No. 3087/2016 – **Ms. Veena Kothavale -vs- Union of India & Ors.**
- (iii) SLP (Civil) Diary No. 22318/2018
- (iv) **State of Punjab & Ors. -vs- Dr. R.N.Bhatnagar & Anr.** – AIR 1999 SC 647
- (v) **Union of India -vs- Atul Sukla & Ors.** – (2015) 1 SCC (L&S) 81
- (vi) **Hari Om Verma -vs- State of Punjab** – 1996 (4) SCT 244
- (vii) **Jagdish Chander Aggarwala -vs- Haryana State Federation of Consumers Co- op Wholesale Stores Ltd. & Ors.** – 2001 (2) RSJ 472
- (viii) **Union of India -vs- Mohan Singh** – 1999 (2) SCT 553

(ix) **N.R.Parmar & Ors. -vs- Union of India - Civil Appeal** No. 7414-7515 of 2005

(x) **Shib Sankar Mohapatra -vs- State of Orissa -** (2010) 12 SCC 471

(xi) **K.R.Mudgal & Ors. -vs- R.P.Singh & Ors. - AIR** 1986 SC 2086

4. The applicant has also referred to the OM dated 4.3.2014 of the DOPT (Annexure-A/16), in which the manner of implementation of the judgment in the case of N.R. Parmar has been specified, with direction that change in inter-se-seniority of the direct and promoted officials as per the judgment would be effective from 27.11.2012 and the cases which have been settled as per the OM dated 3.7.1986 of the DOPT may not be reopened. It is therefore, averred in the OA that the action of the respondents in changing the seniority of the applicant violated the DOPT's guidelines dated 4.3.2014.

5. Counter has been filed opposing the OA by stating that the inter-se- seniority between Ministerial staff and Stenographers as IIT is decided according to their order of selection of candidates for promotion following the rosters under the Recruitment rules and suggestion to decide the seniority on the basis of the pay scales ignoring the rosters of selection as stipulated in the Recruitment rules is irrational. It is also stated that as per the judgment dated 10.5.2011 of Hon'ble High Court of Orissa in case of Niranjana Behhera -vs- Union of India & Ors. in WP(C) No. 19289/2010 on the issue of promotion on own merit, none of the UR category candidates was found suitable for promotion from IIT to higher level and as a result, no vacancy in UR category was available to accommodate the

applicant in the recruitment year 2008-09 as IIT.

6. The applicant has filed the Rejoinder broadly reiterating the averments made in the consolidated OA without bringing up any new points. A copy of the order dated 15.9.2017 of this Tribunal passed in the OA No. 109/2011 has been enclosed as Annexure-A/17, which is stated to be applicable to the present applicant's case.

7. We have heard learned counsel for both the parties and also perused the records. Claim of the applicant for seniority is on account of two reasons. The first being the order to modify his year of recruitment with consequential seniority from 2008-09 to the year 2009-10 and to assign respondents No. 4 to 6 higher seniority in the seniority list dated 14.9.2015 (Annexure A/6). He is also aggrieved by the order dated 1.4.2017 (Annexure-A/16), by which his seniority was further downgraded to the year 2010-11 on the pretext of the review as per the judgment of Hon'ble Supreme Court in the case of N.R. Parmar which, according to the applicant, is incorrect in view of the guidelines of the DOPT dated 10.9.1985 and 12.12.1988 as stated in his representation dated 18.8.2015 (A/5). The respondents, in their Counter, have justified the fixation of seniority of the applicant in view of the Recruitment Rules and the guidelines of the CBDT dated 6.4.2009 (Annexure-A/12) and have cited the order of the Tribunal passed in the OA No. 228/2006 and OA Nos. from 9 to 14 of 2009, filed by similarly situated IITs which were dismissed by the Tribunal.

8. The relevant issue to be decided in this case are following :

- (a) Whether the office order dated 1.8.2016 (Annexure A/11) rejecting the representation of the

applicant to modify the recruitment year of the applicant as IIT from 2008-09 to 2009-10 is sustainable under law;

(b) Whether the claim of the applicant that he is senior to the respondent nos. 4 to 6 as Inspector of Income Tax is acceptable in view of the existing rules; and

(c) Whether the order dated 1.4.2017 passed by the respondents to modify the seniority of the applicant from the recruiting year 2009-10 as per the order dated 1.8.2016 is sustainable.

9. Regarding the issue (a) of para 8 about the impugned order dated 1.8.2016 (Annexure A/11), it is seen that following reasons have been mentioned in the said order for modifying the seniority of the applicant –

(i) The implementation of the order of the Hon'ble High Court of Orissa dated 10.5.2011 in case of Niranjana Behhera –vs- Union of India & Ors. in WP(C) No. 19289/2010 on the issue of promotion on own merit, the review DPC was held on 4.8.2011 and accordingly the seniority of the applicant was modified from 2008-09 to recruitment year 2009-10 vide order dated 5.8.2011. Applicant's earlier representation dated 14.3.2012 in this regard was rejected vide order dated 14.5.2012, which has not been challenged by the applicant.

(ii) No general category candidate was eligible for promotion to the grade of ITO which is next higher promotion of the Inspectors. Hence, no vacancies of IITs were available for general category in 2008-09 as a result of which the applicant, on promotion had to be taken to the subsequent year when UR vacancy of IIT was available. While

rejecting the claim the order has also discussed about the guidelines of DOPT and CBDT dated 6.4.2009 according to which the inter se seniority of Ministerial and Stenographers on promotion as IIT is required to be fixed in the following order:- (i) Ministerial (Seniority), (ii) Ministerial (Year of passing), (iii) Ministerial (Seniority) and (iv) Stenographer (Seniority).

10. We do not find sufficient grounds furnished in the OA to counter the arguments given in the impugned order dated 1.8.2016 passed by the respondent No.3 rejecting the representation of the applicant. As stated in the said order, due to non-eligibility of the UR category IITs for promotion to next higher level during 2008-09, no vacancy on account of promotion was available for the year 2008-09. As a result, the applicant who belongs to UR category, could not have been promoted during the recruitment year 2008-09 and we do not find anything wrong in fixing the applicant's seniority for the recruitment year 2009-10. Moreover, his earlier representation dated 14.3.2012 was rejected vide order dated 14.5.2012, which is not impugned in this OA. Therefore, we are of the view that the applicant has not been able to prove that the order dated 1.8.2016 (A/11) is flawed and the issue (a) of para 8 is decided against the applicant.

11. Regarding the next issue (b) relating to the inter-se-seniority of the applicant vis-a-vis respondent nos. 4 to 6, we also do not find adequate justification in the pleadings of the applicant in support of his contention in this regard. As stated by the respondents in the impugned order dated 1.8.2016 (A/11), the inter-se-seniority is required to be fixed as per the selection rosters as per the CBDT

guidelines dated 6.4.2009 and it is noted that there is no conflict between these guidelines and the DOPT guidelines. In the representation dated 18.8.2015 (Annexure A/5), the applicant has extracted the DOPT guidelines which states as under :

“Clarification – Where the posts in the feeder grades are in different scales of pay or even in the identical or equivalent scales of pay, the officers up to the number of vacancies for each feeder grade as per the quota may be selected and interpolated in a combined select list according to the grading by the DPC should be arranged in the consolidated order of merit with reference to the date arrived at after adding the requisite number of years of qualifying service in the feeder grade to their date of appointment, i.e. with reference to the date from which they became eligible for promotion after rendering the prescribed qualifying service in the feeder grade, maintaining their inter se seniority in the parent service/grade.

Among the persons in the feeder grades given the same grading, those in the higher scales of pay will rank senior to those in the lower scale of pay.”

It is seen from the above that the argument of the applicant that the persons with higher scale of pay should rank senior with those of lower scale of pay as per DOPT guidelines is applicable for the employees with same grading assigned by the DPC and in that case candidates with higher pay scale will be assigned higher seniority. Otherwise grading given by the DPC should be the basis for seniority in the consolidated order of merit. Hence, the averment in the OA that the applicant should have been assigned higher seniority compared to respondent nos. 4, 5 & 6 because of high higher pay scale at the time of promotion to IIT, is not in accordance with the DOPT guidelines referred in the OA.

12. The applicant has also cited the order dated 15.9.2017 of this Tribunal in OA No. 109/2011 in the case of Chitta Ranjan Panda –vs-

The Secretary to Govt., Department of Revenue, Ministry of Finance and others in which the principle of a candidate drawing higher pay scale to have higher rank in seniority list of IITs was accepted. It is seen from the order dated 15.9.2017 that the applicant in OA No. 109/2011 was assigned higher position in the seniority list by the DPC for recruitment year 2006-07, which was modified by the respondents subsequently. In the present OA before us, the applicant was initially placed for the recruitment year 2008-09. It is noted that the 6th Pay Commission recommendations w.e.f. 1.1.2006 have been implemented by Government of India in 2008 and after that the pay scales Rs. 5000-8000 and Rs. 5500-9000 have merged to one pay band. It has not been clearly demonstrated by the applicant in the OA that after implementation of the revised pay as per 6th Pay Commission, if the applicant was getting higher pay scale than the respondents nos. 4 to 6 during the recruitment year 2008-09 when he was considered for promotion to the post of IIT. Hence, the cited case is factually distinguishable. Accordingly, the issue (b) of para 8 is decided against the applicant.

13. Regarding the issue (c) of para 8 about the validity of the order dated 1.4.2017 (Annexure A/13 of the consolidated OA), the following justifications have been given in the impugned order dated 1.4.2017:-

"In compliance to CBDT's letters dated 14.7.2016 & 23.8.2016 in F.No.C-18013/13/2016-SO(VNL) & F.No.C-18013/30/2016-V&L respectively read with DOPT's order dated 27.6.2016 in F.No.15/1/2016-R&R/DC, meetings of review DPCs have been held for the R.Yrs, 2004-05 to 2016-17 to recommend persons for promotion to the grade of 'Inspector of Income Tax' for different R.Yrs. and (ii) to refix the inter se seniority between Direct Recruits and Promotees for different R.Yrs....."

It is found that another circular dated 1.9.2015 (Annexure A/14 of the consolidated OA) was issued prior to the impugned order dated 1.4.2017, in which the seniority of the Inspectors from the recruitment year 2006-07 to 2008-09 was reviewed in view of the judgment of Hon'ble Supreme Court in N.R.Parmar's case. It is stated in order dated 1.9.2015 (Annexure-A/14) as under:-

"In compliance to the judgment dated 27.11.2012 of Hon'ble Supreme Court passed in Civil Appeal No. 7414-7515 of 2005 in the case of N.R.Parmar & Ors. – vs- Union of India & Ors. and CBDT's letter dated 4.3.2014 issued from F.No.20011/1/2012-Estt(D) read with letter dated 6.6.2014 issued from F.No.C-18013/4/2014-Ad.VII and DIT(HRD),CBDT's letters dated 29.9.2014 & 7.11.2014 issued from F.No. HRD/CM/2220/14/2013-14, meetings of review DPCs have been held for the R.Yrs, 1986-87 to 2008-09 to (i) recommend persons for promotion to the grade of 'Inspector of Income Tax' for different R.Yrs. and (ii) to refix the inter se seniority between Direct Recruits and promotes for different R.Yrs."

Since the applicant's recruitment year was earlier changed to 2009-2010, his case was not considered in the order dated 1.9.2015 (Annexure A/14). His case was considered subsequently in the order dated 1.4.2017 (A/13), by which the review DPC was held in 2004-05 to 2016-17 as mentioned above. The copy of the review DPC and justifications for modifying the applicant's seniority from 2009-2010 to 2010-2011 vide the order dated 1.4.2017 have not been mentioned by the respondents in their counter filed on 6.4.2018 for the consolidated OA. Further, copy of the review DPC, where it was recommended to change the recruitment year of the applicant from 209-2010 to 2010-2011, has not been produced by the respondents before us. The applicant has filed a copy of the DOPT OM dated 4.3.2014 (Annexure A/16 of the consolidated OA, in which the

following guidelines have been issued by the DOPT for implementation of the judgment dated 27.11.2012 of Hon'ble Apex Court in the N.R.Parmar's case:

"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 promotees would be as under:

a) DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as nonexistent/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 7.2.1986/3.07.1986, 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 mode 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 filling up of the vacancies for a Recruitment Year;

h) The above principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012, the date of Supreme Court

Judgment in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar Vs. U01 & Ors.

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

It is revealed from the above guidelines of the DOPT that the case of seniority which have already been settled with reference to the earlier interpretation as per the DOPT OM dated 7.2.1986 by 3.7.1986 are not required to be re-opened as per the DOPT's OM dated 4.3.2014.

14. However, the respondents, in the case of the applicant in this case, have reviewed the inter se seniority fixed for the year 2009-10 and have modified his seniority as well as recruitment year of the applicant from 2009-2010 to 2010-2011 and no justification for the same has been furnished by the respondents in their pleadings or in the impugned order dated 1.4.2017. It is found that the seniority position of the applicant which was earlier settled by fixing his seniority for the recruitment year 2009-2010 vide order dated 5.8.2011, has been modified in the year 2017 changing his recruitment year to 2010-2011 with consequential reduction in his seniority rank, without furnishing any justification. It is rightly mentioned by the applicant in the OA, Hon'ble Supreme Court in catena of cases has laid down the principle that the settled position of the seniority should not be altered. Applying the ratio of these judgments, the change in the recruitment year of the applicant as IIT from 2009-10 to 2010-11 without furnishing any reason or justification, cannot be sustained.

15. We are, therefore, of the considered view that the impugned

order dated 1.4.2017 (Annexure A/13) in respect of the applicant is not sustainable. Accordingly, the said impugned order dated 1.4.2017 in respect of change of the recruitment year of the applicant from 2009-10 to 2010-11 is set aside only to the extent of the applicant. The respondents are directed to fix the seniority of the applicant as Inspector of Income Tax treating his recruitment year to be 2009-10 as per the seniority list dated 14.9.2015 (Annexure A/6) and allow the consequential benefits as per law to the applicant after restoration of his seniority as above.

16. The OA is allowed in part as above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(JUDL.)

(GOKUL CHANDRA PATI)
MEMBER(ADMN.)

BKS

