

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No.260/789/2015

Present : **Hon'ble Mr. Gokul Chandra Pati, Member (A)**
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Prabhat Kumar, S/o Sri Bhola Rai, aged about 35 years, R/o Flat No. 205, Devananda Vihar Apartment, Canal Road, Bomikhal, Bhubaneswar-751010, currently working as Inspector of Income Tax, at office of the Pr.DIT(Inv), Bhubaneswar.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Ministry of Finance, Dept. of Revenue, Govt. of India, North Block, New Delhi-110001.
2. Central Board of Direct Taxes, through its Chairman, Ministry of Finance, Dept. 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 1.9.2015).
5. Ajay Ku.Das (Placed in the RY 2006-07 at Sr. No.5 in the impugned Seniority List dated 1.9.2015).
6. J.G.Singh (Placed at Sr. No. 7 in the RY 2006-07 in the impugned seniority list dated 1.9.2015)
7. S.K.Hembram (Placed at Sr. No.2 in the RY 2007-08 in the impugned seniority list dated 1.9.2015)
8. B.K.Senapati (Placed at Sr. No. 7 in the RY 2008-09 in the impugned seniority list dated 1.9.2015).
9. M.Mathew (Placed at Sr.No.9 in the RY 2008-09 in the impugned seniority list dated 1.9.2015).
10. R.K.Mahali (Placed at Sr. No. 12 in the RY 2008-09 in the impugned seniority list dated 1.9.2015)
Sl.No.4 to 10 are to be served copy through Principal Chief Commissioner of Income Tax, Orissa, Aayakar Bhawan, Rajaswa Vihar, BBSR.
(Respondent No.s 4 to 10 are the private respondents impleaded in a representative capacity and since all of them are posted under the Respondent No.3 and their whereabouts are not known to the applicant as the same is not mentioned in the impugned seniority list, they are to be served through Respondent No.3)

.....Respondents

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.C.M.Singh, counsel

Heard & reserved on : 1.8.2019

Order on :11.09.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs :

- "(a) Call for the records of the case.
- (b) Quash and set aside the impugned seniority list dated 1.9.2015 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 1.9.2015 rejecting the representation of the applicant.
- (c) Quash and set aside the advisory of the CBDT dated 16.1.2015 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- N.R.Parmar.
- (d) Declare that the applicant 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 23.7.2005-29.7.2005 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 14.9.2015 based on the impugned seniority list of Income Tax Inspectors dated 1.9.2015.
- (f) Direct the respondents to recast the seniority list of Income Tax Inspector of Odisha region by interspacing the applicants against the promotes 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 16.1.2015 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."

2. The applicant is a directly recruited Inspector of Income Tax (in short IIT) recruited through requisition to the Staff Selection Commission in 2005. He was selected and appointed as IIT in Odisha circle and joined in the said post on 1.1.2009. His seniority was shown to be for the year 2008-09 recruitment year (in short RY) in the seniority list published on 1.12.2010 (Annexure-A/6). His claim in this OA is to get his seniority relating to the RY 2005-06 in accordance with the judgment of Hon'ble Apex Court in the case of Union of India and others vs. N.R. Parmar and others. After the aforesaid judgment, the respondents issued orders to modify the seniority and hold review DPC for the next promotion and it was implemented in Odisha circle by issuing the modified seniority list for the RY from 1997-98 to 2007-08 vide the draft

seniority list dated 24.7.2015 (Annexure-A/10) and dated 14.8.2015 (Annexure-A/11). The applicant is aggrieved since the respondents have rejected his claim to have his seniority fixed along with the promotes of the year 2005-05 as per the N.R. Parmar judgment. The applicant filed the OA No. 551/2915 which was disposed of with direction to dispose of the applicant's representation on this issue. However, the respondents, vide order dated 1.9.2015 (Annexure-A/1), has rejected the representation of the applicant whose seniority has been shown for the RY 2008-09 as in the seniority list dated 1.12.2010 (A/6). Hence, this OA has been filed.

3. In the Counter, the respondents have averred opposed the OA and have averred that As per the letter received from the CBDT, the Board's requisition for the IITs on the basis of 2005 examination of the SSC was issued in 2007 for which the appointees on the basis of 2005 examination can only get the seniority of the year 2006-07 as per the Board's letter dated 16.1.2015 (Annexure-A/2 of the OA), where as they have been given the seniority of 2008-09 in Odisha Region. It is stated that a Review DPC was held on the matter on 25.8.2015. It is stated that considering the number of vacancies in the RY 2006-07 and 2007-08, the applicant could not be accommodated within the seniority for the RY 2006-07 and he could be adjusted in the RY 2008-09. The respondents disputed the contention in the OA that the applicant was entitled for the year of advertisement as per the judgment in the case of N.R. Parmar.

4. The applicant has filed the Rejoinder mainly reiterating his contentions in the OA that he was entitled for the seniority for the RY 2006-07. It is stated that the vacancy position in Odisha circle has been incorrectly mentioned in the Counter as the requisition of the Board to the SSC has taken care of all vacancies for the year 2005-06 and there should not be any difficulty in adjusting him for the RY 2006-07 as per the available vacancy.

5. The applicant has filed an Additional Affidavit on 22.4.2019 stating that employees who were below the applicant in the SSC merit list have been placed in the seniority for the RY 2006-07 in other circles, where as the applicant's seniority in Odisha circle has been placed in the RY 2008-09. The name of such employees who were lower in the SSC merit list but adjusted in the RY 2006-07, has been furnished in para 5 of the additional affidavit. It is also stated that in another case of Sri Shrikant Barnwal, who had challenged his seniority in RY 2008-09 in the Tribunal and his OA was dismissed. He filed a writ petition before Hon'ble High Court which was disposed of with a direction to the respondents to assign the seniority of RY 2006-07 to Sri Barnwal and this order of Hon'ble High Court has not been challenged by the respondents in Hon'ble Apex Court. Copy of the order dated 6.7.2018 of Hon'ble High Court in

the case of Sri Shreekant Barnwal vs. Union of India and others in W.P. (C) No. 25844/2017 has been enclosed with the additional affidavit.

6. The respondents have filed the Reply to the additional affidavit in which it is stated regarding the order dated 6.7.2018 of Hon'ble High Court in the case of Sri Shreekant Barnwal (supra) that the contention of the applicant is not maintainable since as per the letter dated 27.5.2019 (Annexure-R/3 to the Reply), the CBDT has directed "to review the gradation list (seniority List) passed earlier and to implement N.R. Parmar judgment prospectively w.e.f. 27.11.2012 in the light of Hon'ble Supreme Court's judgment dtd. 16.5.2018 (Annexure-R/2) in SLP No. 11905-11906/2018 filed by Shri Diwakar Singh on judgment of Hon'ble Delhi High Court in the case of Ms. Veena Kothwale vs. UOI [W.P. (C) 2087/2016] (Annexure-R/1)."

7. Learned counsel for the applicant was heard. He restricted his prayer to the para '8(f) or' of the OA and did not want to press other reliefs sought for. The relief sought for in para '8(f) or' is as under:-

"In the alternative, if the corrigendum advisory of CBDT dated 16.1.2015 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."

Learned counsel for the applicant justified the claim made in the OA in view of the judgment in the case of N.R. Parmar and the fact that the employees who were below the applicant in the SSC merit list have been allowed the seniority of the RY 2006-07 in other circles as stated in para 5 of the Additional affidavit filed by the applicant. Learned counsel at the time of hearing filed a copy of the order dated 6.5.2019 passed by the respondents allowing the notional seniority of the year 2006-07 to Shri Shreekant Barnwal in compliance of the order dated 6.7.2018 of Hon'ble High Court.

8. Learned counsel for the respondents was also heard and he also filed a written note of submissions reiterating the fact that as per the letter dated 27.5.2019, the CBDT has instructed to implement the judgment in the case of N.R. Parmar prospectively w.e.f. 27.11.2012. It is stated that in the case of Shri Shreekant Barnwal, the respondents are considering to file a Review petition before Hon'ble High Court to review the order dated 6.7.2018. It is further submitted that in view of the decision of the CBDT to implement the judgment in the case of N.R. Parmar vide letter dated 27.5.2019 of the CBDT, the applicant's seniority has to be fixed at the RY 2008-09.

9. We have considered the submissions as well the pleadings of both the parties on record. It is clear that the controversy raised by the applicant in this OA is required to be considered in the light of the letter dated 27.5.2019 of the CBDT (Annexure-R/3 of the Reply filed by the respondents to the applicant's additional affidavit), which was issued on the basis of the judgment dated 16.5.2018 of Hon'ble Apex Court (Annexure-R/2 of the Reply). The letter dated 27.5.2019 states as under:-

- i) xx xx xx
- "ii) That the N.R.Parmar case judgment of Hon'ble Supreme Court of India shall be implemented in the Department in the respective grades prospectively i.e., 27.11.2012 as has been implemented in the various Ministries/Departments of the Government of India in terms of DoP&T's OM No.20011/1/2012-Estt.(D) dated 04.03.2014. The cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in DoP&T OM dated 7.2.86/3.7.86 shall not be reopened. The regions are required to undo the actions taken by them in the light of advisories dated 29.09.2014, 07.11.2014 and 16.01.2015, issued by the O/o. DGIT (HRD) and restore the seniority position of the respective officers in the respective grade that was maintained before N.R.Parmar order.
- iii) That as the DoP&T has withdrawn its OM dated 03.03.2008, only the DPCs that have been conducted between 2008 & 27.11.2012, if any, by giving effect to DoP&T's OM dated 03.03.2008 in the feeder grade needs to be reviewed. Regional Seniority lists of ITOs so prepared, after nullifying the effect, if any, of DOP&T OM dated 03.03.2008 and after implementation of N.R.Parmar with effect from 27.11.2012, shall be forwarded to the Board for inclusion in the final All India Inter-se Seniority List of ITOs (As on 01.01.2012) that was circulated by the CBDT, vide letter dated 01.09.2015".

10. In view of the letter as extracted above, the CBDT has withdrawn the letter dated 16.1.2015, which has been impugned by the applicant in this OA and it has been decided that the cases of seniority prior to 27.11.2012 will not be reopened and the cases where the seniority was changed prior to 27.11.2012, will be reviewed. Since the letter dated 16.1.2015 of the CBDT has been withdrawn, the relief sought under para '8(f) or' cannot be considered in this OA. The respondents are directed to take action as deemed appropriate to implement the instructions contained in the letter dated 27.5.2019 of the CBDT as expeditiously as possible. If after such review, any of the employees

with lower in the SSC rank than the applicant was allowed higher seniority compared to the applicant, he will be at liberty to challenge the same as a fresh cause of action as per law.

11. The OA is disposed of in terms of the para 10 above. No order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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