

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00464 of 2015

Wednesday, this the 27th day of November, 2019

CORAM

**Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

1. Praveen Chandran Pillai,
Aged 30 years,
S/o V.Chandran Pillai,
Tax Assistant,
Office of the Commissioner of Income Tax,
Thiruvananthapuram, resing at TC 2/1514 (2),
CRA 100, Pattom PO,
Thiruvananthapuram-695 004,
(Mob No.8547001189).
2. R.Jinesh,
Aged 30 years,
S/o G.Ramesh Babu,
Tax Assistant,
Office of the Joint Commissioner of Income Tax,
Range II, Thrissur,
residing at C-I, Income Tax Quarters,
Poothole, Thrissur – 680 004.
3. Sreejith Mohan,
Aged 28 years,
S/o Mohanan A.P.,
Tax Assistant,
Office of the Commissioner of Income Tax
(International Taxation,
Kawdiar, Thiruvananthapuram,
residing at Arakkamoothath House,
Nayathode PO, Angamali – 683 572.

.2.

4. Sanitha Soman,
Aged 27 years,
D/o K.M.Soman,
Tax Assistant,
Office of the Additional Commissioner of Income Tax,
Kottayam Range, Kottayam,
residing at Nedumthottil House,
Mannanam PO,
Kottayam – 686 561.
5. Prasad C.P.,
Aged 45 years,
S/o Sreedharan,
Tax Assistant
Office of the Joint Commissioner of Income Tax,
Kannur Range,
Kannur, residing at Chenicheri Pulukool,
Kunhimangalam P.O.,
Kannur – 670 309. ... Applicant

(By Advocate Mr.P.Ramakrishnan)

Versus

1. Union of India,
represented by Secretary to Government,
Ministry of Finance, Central Board of Direct Taxes,
Directorate of Income Tax, ICADR Bhavan,
New Delhi – 110 001.
2. The Chief Commissioner of Income Tax (CCA),
Central Revenue Building, I.S. Press Road,
Ernakulam, Kochi – 682 018.
3. Hemalatha,
Tax Assistant,
Office of Joint Commissioner of Income Tax,
Kannur Range, Aayakar Bhavan, Kannur-670 301.
4. Chitra,
Tax Assistant,
Office of Joint Commissioner of Income Tax,
Range I, Aayakar Bhavan, Kawdiar,
Thiruvananthapuram – 695 003.

.3.

5. K.I.Rasheed,
Tax Assistant,
Office of Commissioner of Income Tax (TDS),
Central Revenue Building, IS Press Road,
Ernakulam, Kochi – 682 018.
6. D.Shaji,
Tax Assistant,
Office of Commissioner of Income Tax,
(Internal Audit), Aayakar Bhavan,
Sasthri Road, Kottayam – 686 001.
7. S.Sunil Kumar,
Tax Assistant,
Office of Joint Commissioner of Income Tax,
(Exemption), Ayakar Bhavan, Kawdiar,
Thiruvananthapuram – 695 003.
8. K.Aswathy,
Tax Assistant,
Office of Chief Commissioner of Income Tax,
Central revenue Building,
IS Press Road, Ernakulam, Kochi -682 018.
9. M.Madhukumar,
Office of the Assistant Director of Income Tax (Investigation),
Aayakar Bhavan, Sasthri Road,
Kottayam – 686 001.
10. R.Dhanesh,
Tax Assistant,
Office of the Assistant Director of Income Tax
(Investigation), Aayakar Bhavan, Kawdiar,
Thiruvananthapuram – 695 003.
11. Girija Madhu Pillai,
Tax Assistant,
Office of Joint Commissioner of Income Tax,
Ayakar Bhavan, English Church Road,
Palakkad – 678 001.
12. V.Raghunath,
Tax Assistant,
Office of Chief Commissioner of Income Tax,
Central Revenue Building, IS Press Road,

.4.

Ernakulam, Kochi – 682 -018.

13. Preetha J.R.,
Tax Assistant,
Office of Joint Commissioner of Income Tax,
Ayakar Bhavan,
English Church Road,
Palakkad – 678 001.
14. H.V.Sindhu,
Tax Assistant,
Office of Joint Commissioner of Income Tax,
(TDS), Aayakar Bhavan, Kawdiar,
Thiruvananthapuram – 695 003.
15. Shyju Joseph,
Tax Assistant,
Office of Income Tax Officer, Ward I,
Ayakar Bhavan, Vidya Nagar,
Kasargode – 671 121.
16. M.K.Alikunju,
Tax Assistant,
Office of Joint Commissioner of Income Tax,
(Investigation), Central Revenue Building,
IS Press Road, Ernakulam, Kochi – 682 018.
17. Deepam V.C.,
Tax Assistant,
Office of Commissioner of Income Tax,
Central Revenue Building,
IS Press Road,
Ernakulam, Kochi – 682 018.
18. M.Mahesh,
Tax Assistant,
Office of the Joint Commissioner of Income Tax Range,
II, Aayakar Bhavan, Kawdiar, Thiruvananthapuram – 695 003.
19. Sujesh K.,
Tax Assistant,
Office of Commissioner of Income Tax,
Aayakar Building, Kozhikode.

20. P.K.Suresh Babu,
Tax Assistant,
Office of the Commissioner of Income Tax,
Ayakar Building, Thrissur – 680 001.
21. Geetha S.Kurup,
Tax Assistant,
Office of the Commissioner of Income Tax (II),
Central Revenue Building, IS Press Road,
Ernakulam, Kochi – 682 018.
22. P.Anju,
Tax Assistant,
Office of the Assistant Commissioner of Income Tax,
(TNP), Central Revenue Building,
IS Press Road, Ernakulam, Kochi – 682 018.
23. Amal Dev M.V.,
Tax Assistant,
Office of the Commissioner of Income Tax (II),
Central Revenue Building, IS Press Road,
Ernakulam, Kochi – 682 018.
24. A.Remya ,
Tax Assistant,
Office of the Commissioner of Income Tax (II),
Central Revenue Building, IS Press Road,
Ernakulam, Kochi – 682 018.
25. Deepika,
Tax Assistant,
Office of the Addl. Commissioner of Income Tax,
Range II, Ayakar Bhavan, Kozhikode-673 001.
26. A.Rajesh,
Tax Assistant,
Office of the of Income Tax Officer (Intelligence),
Ayakar Bhavan, Kozhikode – 673 001.
27. Mani Neroth,
Tax Assistant,
Office of the Addl. Commissioner of Income Tax,
Range II, Ayakar Bhavan, Kozhikode – 673 -001.

.6.

28. Sajan Baby T.,
Office of the Joint Commissioner of Income Tax,
Range – II,
Ayakar Bhavan, Thrissur – 680 001.

29. Biju Augustine,
Office of the Commissioner of Income Tax (II),
Central Revenue Building,
IS Press Road,
Ernakulam Kochi – 682 018.

..... Respondents

(By Advocate, Mr. P.R.Sreejith, ACGSC for Respondents-1&2 and Shri T.C.Govindaswamy for Respondents-3 to 29)

This application having been heard on 21st November, 2019, the Tribunal on 27th November, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

The applicants are Tax Assistants under the Income Tax Department, Kerala Region. They were recruited for appointment as Tax Assistant by Staff Selection Commission in the Combined Graduate level examination, 2011. Although they were selected for vacancies of 2011, they were issued with orders of appointment only on 24.09.2012. Copies of orders of appointment to the applicants are at Annexure A2 to A6 series.

2. The post of Tax Assistants is filled up by direct recruitment as well as by promotions. The inter se seniority of direct recruitment and promotees are governed by an Office Memorandum which was initially issued on

.7.

22.12.1959 and then reissued by Ministry of Personnel and Training on 03.07.1986 (Annexure A7). Government of India issued a letter dated 14.05.1990 to all heads of Department under the Central Board of Direct Taxes regarding the conditions to be followed in respect of non-gazetted staff who move from one charge to another. As per the letter (Annexure A8) one of the conditions relating to such inter-charge transfer was to the effect that service rendered in the erstwhile charge will not be counted in the new charge for the purpose of seniority.

3. Following the judgment of the Apex Court in **Union of India and others Vs. N.R.Parmar and others – 2012 (13) SCC 340**, Government took action to pre-date the year of recruitment to the date when the process of recruitment had been initiated during the recruitment year in which the vacancy had arisen. The applicants herein got the benefit of **N.R.Parmar** and although they were appointed in 2012 were assigned seniority with effect from 2011.

4. On the other hand Respondents-3to29 are Tax Assistants, who came on inter-charge transfer from other Regions to Kerala Region. By virtue of Annexure A8 their seniority in the cadre in Kerala Region was only from the date of joining this Region and they were not to rank senior to any official who belonged to the batch selected on merit whose inter se seniority is not regulated by date of joining. The applicants cited this ground for claiming

.8.

that they are entitled to seniority over Respondents-3 to 29, who all had joined Kerala Region after 2011.

5. Consequent to the judgment in **N.R.Parmar**'s case and the principle enunciated therein, the 2nd Respondent issued lists of Tax Assistants proposing revision of seniority position. The existing list showed the existing position of the Respondents-3 to 29 as above the applicants and the proposed revised seniority list of Respondents- 3 to 29 as below the applicants. In March, 2015, the 2nd Respondent published yet another seniority list calling it to be "Seniority of officials in the cadre of Tax Assistants from 01/01/2002 onwards". In this list, copy at Annexure A10, applicants are shown below Respondents-3 to 29 in both the existing seniority list and proposed revised seniority list. The applicants submitted representations stating that by virtue of Annexure A7 and the decisions of the Apex Court in **N.R.Parmar**, they were entitled to seniority with effect from 2011 and hence they were to rank senior to Respondents 3 to 29. These representations are copied at Annexure A11 to A15 series. It is further stated to strengthen their contentions that in other regions such as TamilNadu, the transferees have all been placed below direct recruits (Annexure A16).

6. The Respondents-1&2 have filed a reply statement denying the contentions raised in the OA. It is admitted that in view of the decision of

.9.

Apex Court in **N.R.Parmar**, the CBDT had issued advisory for uniform implementation of the revision of seniority lists in all Regions and as per the said advisory the date of said examination 2011 is 02.02.2011 and the recruitment year of the direct recruits from 2011 exam is 2011-12. It is also a fact that as per CBDT letter dated 14.05.1990, paragraph no.2(f) of Annexure A8, the officials who joined on inter-charge transfer are to be placed at the bottom of the seniority list of employees of concerned cadre in the new charge and their seniority in the cadre to which they are transferred will start the day they report for duty.

7. Confidential reports for Respondents-3 to 29 were called for in view of the CAT, interim order dated 21.05.2015 in OA No.1103/2014. But the confidential report of the applicants were not called for, since they have not completed their probation period as on 01.01.2014, the crucial date for determining eligibility for promotion for the recruitment year 2014-15.

8. Respondents-3 to 29 have also filed reply statement. They submit that as per recruitment rules relating to Tax Assistants, Tax Assistants with three years regular service would be considered eligible for promotion subject to the condition of having qualified in the prescribed departmental examination for ministerial staff. The applicants are not to be considered as they had not completed the period of probation on the cut of date of eligibility, viz., 01.01.2014

9. Heard Shri Prathap on behalf of Shri P.Ramakrishnan, learned Counsel for the applicants, Shri P.R.Sreejith, learned ACGSC Respondents-1&2, Shri T.C.Govindaswamy for Respondents-3 to 29. All pleadings and documentary evidence were examined.

10. Two initiatives introduced by the respondents are at work here. The first is the readjustment of the recruiting year of the applicants in line with **N.R.Parmar** judgment. The applicants are Staff Selection Commission recruits, who have got the benefit of **N.R.Parmar** pre-dating their selection to 2011, although they joined only in 2012. In view of the regulation that an inter-charge transferee can count his service only from the date of joining the new charge, it would appear that the applicants would be senior to those who joined from other charges on subsequent dates. The second initiative is with reference to the notification of the CBDT that introduced a condition that for eligibility for promotion, a candidate must have successfully completed his probation on the 1st of January of the relevant year. The applicants who had got their seniority readjusted on the lines of the **N.R.Parmar** judgment, however, were not eligible for promotion, unlike the respondents who were ostensibly their juniors. This is on account of the fact that they had not successfully completed their probation as on 01.01.2014.

.11.

11. To reinforce this point, an extract of the notification brought out by Central Board of Direct Taxes, Department of Revenue dated 02.09.2003 may be seen below which reads:

'12. *Grade from which recruitment by promotion/deputation/absorption /short-term contract re-employment is to be made.*

100% by promotion from amongst Tax Assistants who have rendered a minimum regular service of three years in the grade and have qualified the prescribed departmental examination for Ministerial staff.

Promotee Tax Assistants will not be eligible for promotion as Senior Tax Assistant till they qualify the departmental examination for data entry skills of 5000 key depressions per hour.

.....

***If a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation.
(emphasis supplied)***

12. Admittedly, the applicants had not completed the probation as on 01.01.2014. Facts being as above, the applicants do not have a case. The OA is dismissed as devoid of merit. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

sd

List of Annexures in O.A. No.180/00464/2015

- 1.** Annexure A1 - True copy of Hall Ticket issued to the 1st applicant.
- 2.** Annexure A2 - True copy of order of appointment dated 24/09/2012 issued to the 1st applicant.
- 3.** Annexure A3 - True copy of order of appointment dated 24/9/2012 issued to the 2nd applicant.
- 4.** Annexure A4 - True copy of the order of appointment dated 24/9/2012 issued to the 3rd applicant.
- 5.** Annexure A5 - True copy of the order of appointment dated 24/9/2012 issued to the 4th applicant.
- 6.** Annexure A6 - True copy of order of appointment dated 24/9/2012 issued to the 5th applicant.
- 7.** Annexure A7 - True copy of office memorandum dated 3.7.1986 issued by the Ministry of Personnel & Training.
- 8.** Annexure A8 - True copy of the letter dated 14/5/1990 issued by the 1st respondent.
- 9.** Annexure A9 – True copy of list of Tax Assistants proposing charge in seniority position.
- 10.** Annexure A10 – True copy of list of officials in the cadre of Tax Assistant from 1/1/2002 onwards.
- 11.** Annexure A11 – True copy of objections dated 10/4/2015 submitted by 1st applicant.
- 12.** Annexure A12 – True copy of objections dated 6/4/2015 submitted by 2nd applicant.
- 13.** Annexure A13 – True copy of objections dated 7/4/2015 submitted by the 3rd applicant .
- 14.** Annexure A14 – True copy of objections dated 7/4/2015 submitted by 4th applicant.
- 15.** Annexure A15 – True copy of objections dated 6/4/2015 submitted by 5th applicant.

16. Annexure A16 - True copy of letter dated 20/2/2015 written by the office of the Principal Chief Commissioner of Income Tax, Tamil Nadu.

17. Annexure R3(a) - True copy of draft seniority list circulated in terms of F.No.CCIT-CHN/Estt.1/Misc/2014-15 dated 22nd May, 2014, issued by the Principal Chief Commissioner of Income Tax.

18. Annexure R3(b) – True copy of the covering letter of Annexure A10 bearing F.No.CCIT-CHN/Estt.1/Misc./2014-15 dated 24th February, 2015.

19. Annexure R3(c) - True copy order of the Government of India, Department of Personnel and Training bearing F.No.22011 /9/98-Estt.(G) dated 08.09.1998.
