

(2024) 02 CAT CK 0057

Central Administrative Tribunal - Allahabad Bench, Allahabad

Case No: Original Application No. 433 Of 2015

Roy Abraham Kalathoor, Son Of
Shri A. K. Abraham

APPELLANT

Vs

Union Of India, Through The
Secretary, Department Of
Revenue, North Block, New Delhi
♦ 110011 & Ors.

RESPONDENT

Date of Decision: Feb. 27, 2024

Hon'ble Judges: Dr. A.K. Dubey, Member (A); Umesh Gajankush, Member (J)

Bench: Division Bench

Advocate: M S Trivedi, M D Mehta

Final Decision: Dismissed

Judgement

Dr. A. K. Dubey, Member (A)

1. Aggrieved by the communication dated 01.09.2015 (Annexure A/2) circulating the final All India Inter-se Seniority list of ITOs as on 01.01.2012, the applicant has preferred this OA, seeking following reliefs: -

"8(A) That the Hon'ble Tribunal be pleased to allow this petition.

(B) That the Hon'ble Tribunal further be pleased to quash and set aside the impugned ITO seniority list circulated vide Communication No. 23012/4/2012/Ad.VI dated 01.09.2015, by respondent number.2.

(C) That the Hon'ble tribunal further be pleased to refrain the respondents from conducting DPC as intended in Communication No. ADG/ Vig /WZ /VC/ Promotion /DPC/Gr.A/2015, dated 04.09.2015 and dated 10.11.2015, issued by the respondent No.2, for proposed action for conducting DPC – promotion of ITOs to the grade of ACITs – vacancies for the panel year 2014-15 status of Vigilance clearance.

(D) That, the Hon'ble Tribunal further be pleased to hold/declare that inaction on the part of the respondents in not preparing finalizing the all over India seniority list for the posts/cadre of ITOs – on implementation of Hon'ble Supreme Court in case of N.R. Parmar's case dated 27.11.2012 in Civil application No. 7514 and 7515 of 2015 with consequential effect.

(E) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.

2. The applicant joined as a direct recruit Inspector of Income Tax on 27.11.2012. He had earlier moved OA No. 145/2013 and 146/2013, seeking fixation of seniority in the

cadre of Inspector and ITOs, whereupon this Tribunal vide its order dated 19.09.2013 directed the respondents to take further steps expeditiously. Subsequently, the respondents prepared and finalized the seniority list in the cadre of Inspectors. On that basis vide letter dated 04.09.2015 (Annexure A/1) impugned herein, the respondent proceeded to solicit vigilance clearance etc. to complete the procedure for convening DPC for promotion of the ITOs to the post of Assistant Commissioners of Income Tax for the vacancy for the panel year 2014-15. Respondents had issued the re-cast seniority list in the cadre of Income Tax Inspector of Gujarat Region for the period from 01.03.1986 to 27.11.2012 and had invited objection thereto. Thereafter, receiving and considering objection, the respondents finalized the seniority list of ITI's as on 03.06.2015. Vide communication dated 01.09.2015 (Annexure A/2), the respondents circulated All India Seniority List of the cadre of ITOs as on 01.01.2012 which was subject to the outcome of the pending court cases. It is the say of the applicant that it was subject to the modification which might have been consequential to the implementation of the Hon'ble Supreme Court's order in N R Parmar Case. However, the respondents did not conduct the DPC for the post of ITOs.

2.1 The applicant also avers that by not convening DPC, the respondents did not assign seniority in the cadre of ITO from due date after taking into account the promotions etc. However, vide order dated 05.11.2015 (Annexure A/5) promotion of ITOs in Gujarat Region was notified on the basis of seniority assigned in accordance with the decision of Hon'ble Apex Court in N. R. Parmar case. Vide communication dated 20.11.2015 (Annexure A/6), the respondent no.3 sent the list for inclusion/interpolation of names for the purpose of determining the All India Seniority. It was from this All India Seniority List that the applicants would have become eligible for the vacancies for the year 2014-15 and would have been included within the zone of consideration for promotion to the post of Assistant Commissioner of Income Tax. The applicant is aggrieved by the fact that before finalization of seniority in view of the N R Parmar's Case, the proposed DPC was convened which in his view was arbitrary and illegal and not in order. Hence the petition.

3. Upon notice, respondents filed the reply. In the reply, they has referred to the decision of this Tribunal in OA No. 146/2013 wherein the prayer was to implement the decision of Hon'ble Apex Court in N R Parmar's Case in the cadre of ITI and ITO. In fact, para 10 of that order of this Tribunal gave specific steps to be taken. It will be contextually proper to extract the relevant paragraphs here: -

"Once the Hon'ble Apex Court has declared the law of subject, every department has to implement the same as expeditiously as possible. The learned counsel for the respondents submitted that they would implement the order as expeditiously as possible but she was not able to give the exact time frame or the rate of expedition. (Even when we have asked her to specify the time frame requirement, she requested us to provide a liberal time frame within which the order is to be implemented. Thus, we dispose of all the four OAs with the following directions as above as they are all in the same legal frame.

1. The respondents shall in accordance with the Parmar decision finalise the new seniority list after considering the 150 objections within a period of one month.

2. The Chief Commissioner shall constitute a committee of five senior officers to look into the objections on a day to day basis and give a report to the CC within one week of such entrustment CC shall ensure that they are free for this purpose.

3. This Committee shall consider the date of appointment as pointed out by Mr. Rao, so that the Supreme Court's order cannot be manipulated in any manner.

4. At the end of one Month period, a new final seniority list shall be brought into effect and position of all concerned shall be re-arranged forthwith.

5. If there are any lacuna in the determination made by the CC, all such employees are hereby granted liberty to approach the Tribunal for redressal of their grievances on their individual representations that they have already submitted and also which they may submit after the recasting is done highlighting their specific grievance. Therefore, the interest of all the general public in having the best governance possible, the interest of all the employees in having the rightful level of seniority and the department in proper utilization of their employees force shall be finalized if the time factor is expeditiously kept as proposed and directed.”

The reply further informs that there was procedural delay in complying with that direction of this Tribunal against which the Contempt Petition was preferred by some officials. However, those Contempt Petitions were dismissed. Applicants in those OAs preferred SCA No. 7465/2014 before Hon'ble High Court of Gujarat challenging the refusal by Tribunal to take out contempt proceedings, which was disposed of by Hon'ble High Court of Gujarat vide its order dated 17.06.2014 with the observation that it was expected that such seniority list would be finalized as far as possible by 15.10.2014. Be that as it may, the directions of this Tribunal in OA No. 146/2013 were complied with. This sequence of event is relevant here to confirm that the action of the department in fixing/assigning the seniority was in compliance with the order of this Tribunal.

3.1 The reply further informs that as per the extant instruction, the seniority of ITIs had been region wise. But the seniority list of ITOs is not region specific; it is on All India Seniority basis. Since the seniority list in the cadre of ITOs is All India based, the same can be finalized by adopting the procedure of holding DPCs for promotion from ITIs to ITOs in all the regions of the country and upon completion of such exercise, the region wise seniority list would have to be drawn and considered by the Central Board of Direct Taxes for carrying out further necessary action for finalizing All India Seniority List. It is contended in the reply that this was a mammoth task and required great amount of time and effort. It has been averred that there were instruction governing such promotions and seniority had to be assigned as per those instructions.

3.2 The reply also informs that it was necessary to convene the DPC in different regions because insufficient and inadequate number of ITOs were available for the promotion to the post of Assistant Commissioner and the requisite zone of consideration was not available and therefore it was incumbent upon the department to convene DPC to complete the promotion from ITI to ITO so that further chain of promotion could be preponed and considered. It was imperative to do so as large number of vacancies were pending which could not have been left unfilled for long.

4. After, completion of pleading the matter came up for final hearing on 19.10.2023. The learned counsel for the applicant reiterated the arguments taken in the OA particularly submitting that without completing the seniority as per the N R Parmar, convening the DPC was not in order and therefore, he had prayed for quashing the communication dated 01.09.2015 (Annexure A/2) by which the final All India Seniority List of ITOs as on 01.01.2012 was circulated. He has also challenged the communication dated 04.09.2015 (Annexure A/1) initiating the process of DPC.

5. The learned counsel for the respondents submitted that the seniority list impugned here was actually prepared under the direction of this very Tribunal. She further submitted that the respondent department dealt with the issue on the basis of DoPT's

OM dated 04.03.2014 (which was later superseded by the DoPT's OM dated 13.08.2021). She also submitted that the decision of Hon'ble Apex Court in N R Parmar case was superseded by its later decision in K Meghachandra Singh's case and the dictum in K Meghachandra Singh case was to apply prospectively. She further submitted that the DoPT's OM dated 04.03.2014 was pursuant to the decision in N R Parmar case whereas the OM dated 13.08.2021 was pursuant to K Meghachandra Singh case. She also filed in open court a communication to her from the respondents dated 16.02.2023 conveying that All India Inter-se Seniority List of ITO's as on 01.01.2012 as notified in communication dated 01.09.2015 (Annexure A/2) was followed for promotion to ACIT. She undertook to furnish the copy of these Two OMs within a week's time.

6. The copies of these two OMs have since been submitted..

7. A bare perusal of the OM dated 04.03.2014 makes it absolutely clear that the decision of the DoPT was based on the law laid down by Hon'ble Apex Court in N R Parmar case; how assignment of seniority particularly the Inter-se Seniority between the direct recruits and the promotees would be governed, laid down in that OM. This OM dated 04.03.2014 was in supersession of the DoPT's OM dated 03.03.2008. This OM also specified that since the conferment of seniority would be with reference to the recruitment year, it had directed all the administrative authorities to send the vacancy for direct recruitment to the recruiting agency as well as strictly adhere to the timeline specified in the model calendar of DPCs, so that the promotees' cases were processed and considered in time. Subsequently, the DoPT issued the OM dated 13.08.2021 which was in view of the judgment of Hon'ble Supreme Court in K. Meghachandra Singh & Ors Vs Nigam Siro & Ors. dated 19.11.2019 which had reversed its own decision in the Parmar's case, but with prospective effect. It is interesting to note that this OM is in supersession of the OM dated 04.03.2014 but specifies that the cases need not be reopened. This OM too gives the modality of assigning seniority but the major shift is that whereas on the basis of N R Parmar's decision, the initiation of the recruitment process was the reference point, in the K Meghachandra case direct recruitment/promotion in the notified recruitment year (which means the recruitment year) became the reference point. In both these cases, the rotation of quota between the promotees and direct recruit was retained. When the respondents issued the order dated 05.11.2015 and further order dated 20.11.2015 referred above, by then the DoPT's OM dated 13.08.2021 was not there at that time and rightly the respondents had gone ahead with the implementation of the decision in N R Parmar case. Even in K. Meghachandra case, it has been observed that the seniority already assigned or determined on the basis of N R Parmar need not be disturbed.

8. In this factual matrix, we are therefore of the considered opinion that the impugned communication dated 01.09.2015 and 04.09.2014 are in accordance with the N R Parmar case which was to be followed at the relevant point of time and more so the very process of determination/assigning of seniority was in compliance with the order of this very Tribunal in OA No. 146/2013. Therefore we do not consider that the applicant has merit in his case. The OA lacks merits and is therefore dismissed. No cost.