(2024) 03 CAT CK 0005

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00627 Of 2016

Bijaya Kumar Behera — APPELLANT

Vs

Union Of India, Represented Through Its Secretary Finance, Ministry Of Finance, North Block, New Delhi-110001. & Ors. — RESPONDENT

Date of Decision : 01-03-2024

Acts Referred:

Citation : (2024) 03 CAT CK 0005

Hon'ble Judges : Sudhi Ranjan Mishra, Member (J);Pramod Kumar Das, Member (A)

Bench : Division Bench

Advocate : P.C. Sethi, S.B. Mohanty

Judgement

Ranjan Mishra, Member (J)

1. The case of the applicant is that on 17.09.1987 he joined as LDC under the respondents. On 09.07.1990, he passed the departmental examination for UDC and promoted to the said post on 25.11.1993. On 21.07.1997, he was promoted to the post of Tax Assistant and passed the departmental examination for Inspector of Income Tax on 17.06.1998. It is the case of the applicant that draft seniority list of Tax Assistant was published and circulated on 15.03.2001 wherein his name was placed above the private respondents. On 20.07.2001, he was promoted to the post of Sr. Tax Assistant and, on 29.04.2002, he was promoted to the post of Inspector of Income tax. On 31.03.2003 final gradation list of Tax Assistant was published wherein his name was shown above the private respondents. In October, 2006 he passed the departmental examination for Income Tax Officer. On 01.01.2007, seniority list of Inspector of Income Tax was published and circulated wherein his name was shown above the private respondents. He was promoted to the post of Income Tax Officer on 12.06.2008. In compliance of the decision of the Hon’ble Apex Court in the case of N.R.Parmar Vs. UOI, DoP&T issued OM dated 04.03.2014, which was circulated by the CBDT, New Delhi vide letter dated 06.06.2014, the seniority list of UDC

was revisited/recast and circulated on 05.05.2015 showing the applicant below the private respondents. On 19.05.2015, applicant submitted representation to the said revisited/recast draft seniority list and on 24.07.2015, revised draft seniority list in the grade of Tax Assistant was published, to which the applicant also submitted representation on 28.07.2015. On 14.08.2015 revised draft seniority lists in the grade of Tax Assistant, Office Superintendent and Inspector of Income Tax was circulated, to which the applicant also submitted representation on 19.08.2015. Thereafter, final seniority list in the grades of UDC, Tax Assistant, Sr. Tax Assistant and Inspector of Income Tax were published and the applicant was shown to have been reverted notionally from the post of Income Tax Inspector from the recruitment years 2012-2013 to 2013-14 vide order dated 14.09.2015. The applicant submitted representation on 05.11.2013 and thereafter approached this Tribunal in the present OA praying inter alia as under:

“(i) To hold the fixation of seniority prior to the judgment of the Hon’ble Supreme Court of India in the case of N.R. Parmar is illegal and is bad in law.

(ii) To hold the seniority of the Applicant in the post of UDC under Annexure-A. 3 is valid and legal.

(iii) To hold the action of the Respondents in preparing the seniority list contrary to the DOPT instruction under Annexure-A. 7 is illegal, arbitrary and without authority of law.

(iv) To hold the order of notional reversion of the Applicant passed by the Respondents under Annexure-A.19 is illegal, arbitrary and without authority of law.

(v) To hold the notional reversion of the Applicant in the grade of Inspector being contrary to the DOPT instruction under Annexure-A.7 is illegal.

(vi) To hold the seniority list under Annexure-A.17 series Annexure-A.18 series, and Annexure-A.19 without considering the representation of the Applicant under Annexure-A.12, A.14, A.16 is illegal, non application of mind and is bad in law.

(vii) To declare the notional reversion of the applicant by the Respondent No.3 under Annexure-A.10 pending representation of the applicant under Annexure-A.12 is illegal and bad in law.

(viii) To declare the disposal of the representation by the Respondent No.3 under Annexure-A.20 is illegal and bad in law.

(ix) To declare, the disposal of representation by the Respondent No.5 under Annexure-A.20 is illegal and bad in law.

(x) To pass any other and further order as deemed fit in the nature and circumstances of the case.”

2. Respondents filed their counter stating inter alia that even though the

applicant was junior to most of the private respondents, he was promoted to the grade of Inspector vide order dated 29.04.2002 as he belonged to Scheduled Caste (SC). Thereafter, he was promoted to the post of Income Tax Officer on 12.06.2008. As there was excess representation of SC in the grade of Inspector, he was reverted to the grade of Inspector on 10.08.2011 and again promoted to the grade of Income Tax Officer taking into consideration the revised seniority list vide order dated 12.06.2012. In adherence to the OM of the DoP&T, which was issued in compliance of the order of the Hon'ble Apex Court in the case of N.R.Parmar, and circulated by the CBDT New Delhi, the entire issue of seniority of the officers of Income Tax Department of Orissa region was revisited. Accordingly, review DPC was held and necessary follow up action was taken. Thus, there was no illegality or irregularity committed in the matter of resettling and recasting the entire matter of promotion between promottees and direct recruit officers. Thus, the applicant has no case and the OA is liable to be dismissed.

3. According to Ld. Counsel for the applicant, the draft seniority list lowering down the applicant qua private respondents is contrary to law. It is submitted that the judgment of the Hon'ble Apex Court in the case of N.R.Parmar is applicable prospectively w.e.f. 27.11.2012, i.e. from the date of judgment. The DoP&T Memorandum dated 07.02.1986/03.07.1986 will continue to determine the seniority between the direct recruit and the promotees and the said principle is to be effective from 27.11.2012, i.e. the date of the judgment in N.R.Parmar Case. The respondents issued draft seniority list in the grade of LDC, UDC, TA, Supervisor Grade-II and Inspector of Income Tax for the RY 1986-87 to 1996-97 and notionally reverted the applicant to RY 1986-97 against the RY 1993-94 in defiance to the order of the Hon'ble Apex Court read with DoP&T instruction. The applicant filed OA No. 561/2015 praying therein to direct the respondents to show his name in the modified gradation list of UDC for the vacancy year 1993-94, Inspector of Income Tax for the vacancy year 2001-2002 and ITO for the vacancy year 2008-2009 and to grant him all consequential service and financial benefits and further direction to the respondents to prepare the gradation list strictly in accordance with the decision of the Hon'ble Apex Court in the case of N.R.Parmar Vs. UOI & Ors and O.A No.561/2015 is pending adjudication before this Tribunal and, therefore, issuance of final modified seniority list showing the applicant below the private respondents is bad in law. Lastly it was contended by the Ld. Counsel for the applicant that this case is covered by the decision of this Tribunal in batch of cases viz OA Nos. 918 & 919 of 2015 and 124 & 588 of 2016 disposed of vide common order dated 10.04.2023.

4. On the other hand, Ld. Counsel for the respondents denied the stand of the applicant that this case is covered by the decision of this Tribunal in OA Nos. 918 & 919 of 2015 and 124 & 588 of 2016. So far as merit of the matter is concerned, it is submitted that the entire recasting of the seniority in various grades were necessitated following the decision of the Hon'ble Apex Court in the

case of N.R.Parmar Vs. UOI & Ors., Civil Appeal No. 7514-7515/2005, based on which DoP&T issued OM dt. 04.03.2014 (A/7), which were circulated by the CBDT. Accordingly, the entire issue of seniority of the officers of the Income Tax Department of Odisha region was revisited in the cadres like Inspector of Income Tax and UDC and as it was found that the DoP&T OM dated 07.02.1986/03.07.1986 were not followed scrupulously in fixing the inter se seniority of the promotes and direct recruits in the grades of Inspector and UDC/ Tax Assistant, in compliance of the order of the Hon'ble Apex Court, Review DPCs were held and the seniority were recast. It is submitted that some of the private respondents were directly recruited UDCs, for which most of them were placed above the applicant taking into account the reporting of vacancies in different recruitment years and some were promoted to UDC from LDC. Some of the private respondents were directly recruited Inspector and some were promotees from the grade of Stenographer cadre and, hence, the applicant cannot be treated as senior to them in the grade of Tax Assistant as the post of Tax Assistant is below the rank of Inspector. It is further contended that the applicant is also not senior to all the private respondents in the grade of UDC, TA and Sr. TA. Respondent nos. 6-14, 16-21, 23-38, 44, 50-52, 54-57, 57, 59, 62,64,69,72 were appointed either in the grade of LDC and subsequently promoted to the grade of UDC or directly recruited in the grade of UDC and they all are senior to the applicant in the grade of UDC. Respondent Nos. 53, 58, 60, 61, 63, 67 and 70 belong to Stenographers cadre and they have been considered separately for promotion to the grade of Inspector, keeping in view the number of vacancies reserved for them. Respondent Nos. 49, 65, 66, and 68 belong to direct recruit Inspector and their seniority has been fixed based on the quota reserved for direct recruitment and promotion. Respondents Nos. 39, 40, 42, 43, 45, 46, & 48 those were junior to the applicant in the grade of UDC as per gradation lists on 01.11.1995 to 01.01.2005 became senior, after implementation of judgment of the Hon'ble Apex Court. The Respondents no. 71, 73, 74, 75 were neither senior to the applicant in the gradation list of UDC of 2000-01 nor have become senior after the implementation of Parmar judgment. Respondent No. 15 & 22 are junior to the applicant in the grade of LDC and they were promoted to the grade of UDC and were also junior to the applicant in that grade. After review of promotions, taking into account the case of N.R. Parmar, they are placed above the applicant in different Recruitment Years, where they have been considered from the reserved category of ST, keeping in view the roster requirement for the said community. Res. No. 15 has been considered in the R.Y. 1993-94 (1st DPC) and empanelled from the ST community as there was one post reserved for ST. So he was selected from the list of eligible ST candidates below the applicant in the seniority list of LDC as on 01.01.1990. Similarly, Respondent No. 22 was also considered from the ST community keeping in view the requirement of the reserved vacancy for the R.Y. 1993-94 (2nd DPC) from the seniority list of LDC as on 01.01.1990 below the applicant. Therefore, they become senior to the applicant in the grade of UDC. Further, the applicant was at Sl. No. 64 and the above Respondents were at Sl. 76 & 79 respectively. Respondent Nos. 41 & 47 were senior to the Applicant in the grade of LDC. The applicant was promoted to the grade of UDC in the R.Y. 1993-94. At the time of promotion of the applicant, though the above respondents are senior to the applicant, they had not passed the Departmental Examination for Ministerial Staff, which is pre-requisite for promotion to the grade of UDC. Hence, they were not promoted to the grade of UDC at that time. After review of promotion as per N.R.Parmar case, the above Respondents were considered for promotion to the grade of UDC for the R.Y. 1996-97 along with the applicant and placed senior to him as they were senior to the applicant in the feeder grade of LDC. These Respondents passed the Departmental Examination for Ministerial Staff in the year of 1996 which made them eligible to be considered for promotion to the grade of UDC in the R.Y. 1996-97. Earlier also these two respondents were promoted to the grade of UDC on 13.12.1996 (Annexure-R/1). Accordingly, Ld. Counsel for the respondents submitted that neither on facts nor based on the earlier order, referred by the Ld. Counsel for the applicant, the applicant is entitled to the relief as claimed in this OA. Hence, they have prayed for dismissal of the OA.

5. We have considered the rival submissions and perused the records.

6. The operative part of the decision dated 27.11.2012 in Civil Appeal No. 7514-7515/2005 in the case of N.R.Parmar vs UOI & Ors is as under:

31. The seniority rule applied in Jagdish Ch. Patnaik's case (supra) has been extracted in paragraph 24 of the said judgment. The seniority rule in question, inter alia expressed, that seniority would be determined with reference to the date of recruitment. In Suraj Prakash Gupta's case (supra), the relevant seniority rule was extracted in paragraph 53 which provided, that seniority would be determined with reference to the date of first appointment. The rule itself expressed that the words "date of first appointment" would mean the date of first substantive appointment against a clear vacancy. In Pawan Pratap Singh's case (supra) the question which arose for consideration, related to determination of inter se seniority between two sets of direct recruits. The first set comprised of vacancies advertised in 1987 which came to be filled up in 1994, and the second set comprised of vacancies of the year 1990 which came to be filled up in the year 1991. The controversy in Pawan Pratap Singh's case (supra) was conspicuously different from the controversy in hand. In view of the fact that the seniority rules, as also the factual matrix in the cases relied upon was substantially at variance with the relevant OMs dated 7.2.1986 and 3.7.1986 (which are the subject of interpretation in so far as the present case is concerned), as also the facts of the cases in hand, it is apparent, that the judgments relied upon by the learned counsel are inapplicable to determine the present controversy.

32. One finds attracted to the observations recorded in Jagdish Ch. Patnaik's case (supra) wherein it was observed, "when the language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the statute, the end result is neither arbitrary, nor irrational nor contrary to the

object of the statute, then it is the duty of the court to give effect to the words used in the statute because the words declare the intention of the law making authority best". We are of the view that the aforesaid observations are fully applicable to the present controversy. We may add that the various OMs and letters issued by the DOPT (referred to above) do not leave room for any ambiguity.

33. Having interpreted the effect of the OMs dated 7.2.1986 and 3.7.1986 (in paragraphs 20 and 21 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried forward vacancies, or vacancies which came to be filled up by a "later" examination/selection process. The facts only reveal, that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the inter-se seniority between the direct recruits and promotees, carried out through the OM dated 7.2.1986, and the compilation of the instructions pertaining to seniority in the OM dated 3.7.1986, leave no room for any doubt, that the "rotation of quotas" principle, would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year.

34. In view of the above, the Civil Appeals, the Transferred Case, as well as, the Transfer Case (filed by the direct recruits and the Union of India) are hereby allowed. The claim of the promotees, that the direct recruit Income Tax Inspectors, in the instant case should be assigned seniority with reference to the date of their actual appointment in the Income Tax Department is declined.

7. In compliance of the aforesaid decision of the Hon'ble Apex Court in the case of N.R.Parmer, the DoP&T issued OM dated 4th March, 2014, relevant portion of which is as under:

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. U01 & 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 promotes would be as under:

a) DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as nonexistent/ withdrawn ob 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.

As the conferment of seniority would be against the Recruitment Year in which the recruitment process is initiated for filling up of the vacancies, it is incumbent upon all administrative authorities to ensure that the recruitment process is initiated during the vacancy year itself. While requisition for filling up the vacancies for direct recruitment should be sent to the recruiting agency, complete in all respects, during the vacancy year itself, the timelines specified in the Model Calendar for DPCs contained in DoPT O.M. No.22011/9/98-Estt(D) dated 8.9.98 and the Consolidated Instructions on DPCs contained in O.M. No.22011/S/86-Estt(D) dated April 10, 1989 should be scrupulously adhered to, for filling up the vacancies against promotion quota."

8. In accordance with the above instruction and law, respondents recast the seniority between promotees and direct recruits. The applicant has not impugned the OM of the DoP&T, which was issued in compliance of the order of the Hon'ble Supreme Court. Therefore, the action taken by the respondents department in compliance of the decision of the Hon'ble Apex Court and the DoP&T OM cannot be faulted with. Hence, this Tribunal is not inclined to grant any of the reliefs

claimed in this OA. However, as the only question that left for consideration, according to the applicant, is that the respondents while revisiting the matter did not pay due regard to his seniority position in so far as SC category is concerned and, therefore, as per the earlier decision of this Tribunal in OA No. 918/2015 (Fulgence Kiro, disposed of on 10.04.2023) the matter needs reconsideration by the respondents. It is seen that the above OA was disposed of much after the filing of the counter in this OA on 13.10.2017 and obviously there was no occasion for the respondents to state whether this matter is substantially same and similar to the OA No. 918/2015 although the facts and both the cases, prima facie, looks different. The direction of this Tribunal in OA No. 918/2015 is as under:

"9. In the peculiar facts and circumstances of the case as discussed above, while declining to grant the reliefs prayed for by the applicant in this OA, respondent No. 3 is directed to reconsider the issue raised by the applicant that his seniority position in the grade of IIT ought to have been respected while promoting and placing the private respondents above him in the grade of ITO vis a vis the stand taken in the representation dated 29.07.2015 (A/10) and communicate the said decision to the applicant in a well reasoned/speaking order within a period of 90 days from the date of receipt of a copy of this order.

10. The submissions of the Ld Counsel for both sides discussed above were same and similar in respect of OA Nos. 919/2015, 124/2016 and 588/2016. Having heard Ld. Counsel for the sides in length in all these cases, as stated above, one after the other and upon perusal of records of each case, we are convinced that similar order would serve the ends of justice in all these cases. Therefore, we feel that there is no necessity to put in records the facts of all the cases and it would suffice to state that the direction made above at paragraphs 8 and 9 would also be complied with by the respondent No.3 in respect of these cases within the time stipulated."

9. Taking into consideration the submissions of the Ld Counsel for the applicant, the respondents are directed to relook/reconsider the case of the applicant keeping in mind the direction of this Tribunal in OA No. 918/2015 (referred to above) and communicate the decision to the applicant in a well reasoned order within a period of 90 days from the date of receipt of a copy of this order.

