

(2023) 07 CAT CK 0018

In the Central Administrative Tribunal

Case No : Original Application No. 200, 140 Of 2022

Kishan Kumar Tahilyani & Ors

APPELLANT

Vs

Director General, Establishment Branch-II, ESI Corporation,
Hqrs Office, Panchdeep Bhawan, CIG Marg, New Delhi
110002 & Ors

RESPONDENT

Date of Decision : 13-07-2023

Acts Referred:

Citation : (2023) 07 CAT CK 0018

Hon'ble Judges : Akhil Kumar Srivastava, Member (J); Kumar Rajesh Chandra, Member (A)

Bench : Division Bench

Advocate : Shri Ishan Soni, Bhagwan Singh, Sanjeev Tuli

Final Decision : Allowed

Judgement

Kumar Rajesh Chandra Member (A)

1. Since both the above O.As have common facts and grounds of law and as such they have been heard together and are being disposed of by a common order.
2. In the above O.As, the applicants have challenged the order dated 3.12.2021 by means of which an advice has been given pursuant to letter dated 23.11.2021 to review/recast the seniority list for the post of UDC published on 14.10.2019 according to vacancy year-wise. The applicants have also assailed the Memorandum dated 10.1.2022 whereby the seniority list in the cadre of UDC of M.P. Region for the years 2015-16 to 2017-18 has been issued inviting objection, if any, within a period of 30 days. The applicants have also prayed to convene a review DPC as per the existing finalized seniority list dated 14.10.2019 to the post of Assistant (O.A. No. 158 of 2022).
3. The facts of O.A. no. 140 of 22 are being taken, being leading one, for brevity of the case.

3.1 The facts of the case are that the Department of Personnel & Training has issued instructions vide O.M. dated 4.3.2014 on the subject of inter-se seniority by withdrawing the earlier O.M. dated 3.3.2008 by treating the same as non-existent/withdrawn. The said O.M. dated 4.3.2014 provides certain guidelines for determination of inter-se seniority of Direct recruits and promotees and the same would be against the recruitment year in which the recruitment process was initiated for filling up the vacancies and the recruitment year would be the year of initiation of the Recruitment process against the vacancy year. In the said O.M., it was also clarified that the vacancy year would be the date of sending of requisition for filling up of vacancies to the recruitment agency in case of direct recruits and in the case of promotees, the date on which a proposal is sent to UPSC/Chairman-DPC was sent (Annexure-2).

3.2 It is averred in the O.A. that the respondent nos. 4 & 5 through Memorandum dated 13.8.2018 published the Draft Seniority List for the post of Upper Division Clerk (UDC) of M.P. Region as on 31.3.2017, inviting the Objections, if any, from all the concerned UDCs on or before 28.8.2018. Thereafter, the respondent nos. 4 & 5 vide Memorandum dated 29.8.2019, almost after a period of one year, issued final seniority list for the year 2017 (as on 31.3.2017) for the cadre of UDC.

3.3 Thereafter, the respondent nos. 4 & 5 through Memorandum dated 13.8.2018 published/circulated a draft Seniority list in the cadre of UDC for the year 2018 (as on 31.3.2018) inviting objections from the affected persons within a period of 15 days. After considering the Objection as filed by one Sri K.P. Sudesh Kumar, another draft seniority list in the cadre of UDC was issued by the respondents vide Memorandum dated 29.8.2019 inviting objections, if any, on or before 16.9.2019. Thereafter, respondent nos. 4 & 5, almost after a gap of one year, have issued final seniority list in the cadre of UDC for the year 2018 (as on 31.3.2018) vide letter/order dated 14.10.2019 wherein the names of applicants (O.A. No. 140 of 2022) find place at sl. Nos. 50 and 74 respectively.

3.4 It is pleaded in the O.A. that one UDC, who joined the ESI Corporation in the month of December, 2017, has filed an objection through letter dated 27.1.2020 and after considering his objection/ representation, the respondent nos. 4 & 5 have rejected/cancelled the list published on 14.10.2019.

3.5 It is also stated in the O.A. that one UDC, who joined the services on 28.12.2017 preferred a representation to the respondent no.1 calling review of the final seniority list published on 14.10.2019 pursuant to O.M. dated 4.3.2014 issued by the DoP&T. The said representation was forwarded to the competent authority through email dated 22.11.2021. To this, the competent authority sent a reply through email dated 23.11.2021 to the respondent no.1 explaining the factual position. Pursuant to the comments as submitted by the competent authority, respondent no.1 i.e. ESIC Headquarters vide their letter dated 3.12.2021 directed the respondent no.4 to recast the seniority list for the post of UDC published on 14.10.2019 according to year-wise vacancy.

3.6 The applicants have also averred in their O.A. that the action of the respondents is totally perverse, illegal and against the law, on the subject, as reconsideration of the seniority as per the DoP&T O.M. dated 4.3.2014 has already been withdrawn by the DoP&T by issuing another O.M. dated 13.8.2021 in compliance of the order passed by Hon'ble Supreme Court in the case of K. Meghachandra Singh & Others Vs. Ningam SIRO and others reported in 2020(5) SCC 689. Further, the review is sought as per the law laid down by Hon'ble Supreme Court in the case of N.R. Parmar Vs. Union of India & Others, which has already been overruled by the Full Bench of Hon'ble Supreme Court in the case of K. Meghachandra Singh & Others (supra) and on the basis thereof, O.M. dated 4.3.2014 issued by the DoP&T has already been withdrawn. It is further submitted by the applicants that the seniority shall be reckoned from the date of actual appointment and not from the date of initiation of process or date of vacancy as has been held by the Hon'ble Supreme Court in the case of K. Meghachandra Singh & Others (supra). Learned counsel for the applicants emphasized that the judgment rendered by Hon'ble Supreme Court in the case of K. Meghachandra Singh & Others (supra) is prospective, therefore, cases of inter-se seniority of direct recruits and promotees in terms of DoP&T O.M. dated 4.3.2014 shall not be disturbed and old cases shall not be reopened. It is also stated that in cases where the seniority is not finalized by 18.11.2019, then the same shall be governed by DoP&T O.M. dated 4.3.2014 and not otherwise.

3.7 It is averred in the O.A. that the respondent nos. 1 to 3 in violation of the instructions contained in the O.M. dated 13.8.2021 issued by the DoP&T pursuant to decision of Hon'ble Supreme Court in the case of K. Meghachandra Singh (supra) has directed the respondent no.4 to recast/ review the final seniority list for the post of UDC published on 14.10.2019 in term of O.M. dated 4.3.2014 with a further mention that DoP&T O.M. dated 4.3.2014 has already been withdrawn with clear instructions that old cases shall not be reopen. Against that, the applicants preferred a representation before the authorities concerned on 7.1.2022 with a request to maintain status quo. However, the respondent nos. 4 & 5 pursuant to order dated 3.12.2021 issued Memorandum dated 10.1.2022 for recasting the final seniority list for the post of UDC, which has already been finalized on 14.10.2019. Hence, the above O.As.

4. Per-contra, the respondents have contested the claim of the applicants by filing a detailed Reply wherein they have stated that inter-se seniority of UDC is to be fixed by rotation of quotas amongst Direct Recruitment (75%), promotion (15%) and Limited Departmental Competitive Examination (10%) as per the ratio of 15:10:75. They have further stated that in the final seniority list for the post of UDC, names of some UDC who were appointed against the clear vacancy as per notification dated 4.12.2015, finalized on 10.11.2017, could not be included, and as such they preferred representations before the competent authority. With a view to remove the anomaly, an order dated 3.12.2021 was issued and in compliance thereof, order dated 10.1.2022 was issued. The respondents also took the plea that they underwent to remove its own mistakes,

if any, in the matter of issuance of final seniority list as per Rules & Regulations applicable.

4.1 The respondents have also stated that the impugned seniority list finalized on 29.8.2019 and 14.10.2019 respectively was not as per the DoP&T instructions issued vide O.M. dated 4.3.2014. They have further stated that the principles for determination of inter-se seniority of direct recruits and promotees laid down in DoP&T instructions contained in the O.M. dated 4.3.2014 is effective from 27.11.2012, the date of judgment of Hon'ble Supreme Court in the case of N.R. Parmar Vs. Union of India & Others. The respondents also pleaded that the DoP&T O.M. dated 13.8.2021 is not applicable in the instant case as the same is applicable prospective. Had the seniority of the applicant been fixed as per DoP&T O.M. dated 4.3.2014, it would not have been reopened to remove the anomaly. Undue benefit bestowed to the applicants due to incorrect fixation of seniority cannot be claimed as a matter of right. Lastly, the respondents have stated that the O.A. has no merit and the same is liable to be dismissed.

5. The applicants have filed Rejoinder to the Reply as filed by the respondents refuting the contentions made in the Reply while reiterating the averments as already advanced in the O.A.

6. We have heard the learned counsel for the parties at length and also perused the pleadings available on record.

7. The issue involved in these O.As whether the action of the respondents for issuance of the order dated 3.12.2021 and in pursuance thereof, issuance of Memorandum dated 10.1.2022 by which recast of final seniority in the cadre of UDC in view of the decision of Hon'ble Supreme Court in the case of K. Meghachandra Singh, is justified or not ? The facts as presented by the applicants have not been disputed. It is also not in dispute that the seniority list in the cadre of UDC has been finalized by the competent authority vide order dated 14.10.2019 pursuant to O.M. dated 4.3.2014 issued by the DoP&T in compliance of judgment and order of Hon'ble Supreme Court in the case of N.R. Parmar Vs. Union of India.

8. The Hon'ble Supreme Court in the case of K. Meghachandra Singh(supra)after dealing with the earlier judgments on the issuehas held as under:-

"40. The Judgment in N. R. Parmar (Supra) relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar (Supra) had incorrectly distinguished the long-standing seniority determination principles propounded in, inter-alia, J.C. Patnaik (Supra), Suraj Prakash Gupta &Ors. vs. State of J&K & Ors. (2000) 7 SCC 561 and PawanPratap Singh &Ors. Vs. Reevan Singh &Ors.(Supra). These three judgments and several others with like enunciation on the law for determination of seniority 4 (1991) 3 SCC 47 5 (2000) 7 SCC 561 Page 25/32 makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is

yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in J.C. Patnaik (Supra) and consequently we disapprove the norms on assessment of inter-se seniority, suggested in N. R. Parmar (Supra). Accordingly, the decision in N.R. Parmar is overruled. However, it is made clear that this decision will not affect the inter-se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy/ the date of advertisement.”

9. From the perusal of aforesaid judgment, it is amply clear that the decision rendered by the Hon’ble Supreme Court in the case of N.R. Parmar has been overruled and the ratio laid down in the case of K. Meghachandra Singh would now be applicable from the date of pronouncement of the order. Admittedly the seniority list in the cadre of UDC has been finalized by the competent authority vide letter dated 14.10.2019, whereas the decision of Hon’ble Supreme Court in the case of K. Meghachandra Singh (supra) has come subsequent to the finalization of seniority list in the cadre of UDC through letter dated 14.10.2019 i.e. on 19.11.2019 and as such the ratio laid down by the Hon’ble Supreme Court in the case of K. Meghachandra Singh (supra) would be attracted with a rider that the said decision will not affect the inter-se seniority already based upon the decision of N.R. Parmar’s case and the same is protected. It has also been mentioned that the decision will apply prospectively except where seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement.

10. Pursuant to the aforementioned decision of Hon’ble Supreme Court in the case of K. Meghachandra Singh (supra), the DoPT issued O.M. 13.8.2021 by withdrawing the O.M. dated 4.3.2014 wherein it has been clearly mentioned that the old cases shall not be reopened.

11. In view of the above discussions and also the law laid down by the Hon’ble Supreme Court in the case of K. Meghachandra Singh(supra), both O.As. succeed. Order dated 3.12.2021 is quashed. Respondents are directed to act in accordance with the ratio laid down by the Hon’ble Supreme Court in the referred case within a period of 90 days from the date of receipt of copy of this order. There shall be no order as to costs.

12. A copy of this order be placed in the connected O.A. as well.