(2021) 02 CAT CK 0059

In the Central Administrative Tribunal

Case No : Original Application 100, 2487 Of 2015, Miscellaneous Application 100, 2418 Of 2016

Pramod Kumar APPELLANT

Vs

Union Of India & Others RESPONDENT

Date of Decision : 02-02-2021

Acts Referred:

Citation : (2021) 02 CAT CK 0059

Hon'ble Judges : L. Narasimha Reddy, J;Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : Nilansh Gaur, Rajeev Kumar

Final Decision : Partly Allowed/ Disposed Of

Judgement

L. Narasimha Reddy, J

1. The applicant was initially appointed as UDC in 1996 in the Income Tax Department and was promoted to the post of Senior Tax Assistant on

22.06.2001. He was promoted to the post of Income Tax Inspector on 02.08.2010 and he was part of the Delhi charge. On a request made by him, he

was transferred to Kolkata charge through order dated 25.05.2011 in accordance with the applicable rules. He was shown at Sl. No.584 in the

Gradation list of 2012 in Kolkata charge.

2. On 04.06.2014, the respondents issued another gradation list, stating it to be in accordance with the judgment of the Honâ??ble Supreme Court in

Union of India and others vs. N.R. Parmar (2012) 13 SCC 340. The applicant was relegated to Sl. No.660. This OA is filed challenging the gradation

list dated 04.06.2014.

3. The applicant contends that several Income Tax Inspectors who were

appointed through direct recruitment long after he joined the Kolkata Charge

were placed above him in the impugned gradation list. He submits that the respondents did not issue any notice, nor they have indicated the reasons

for the phenomenal change of places in the gradation list.

4. On behalf of the respondents, a detailed counter affidavit is filed. The fact that the applicant was transferred from Delhi charge to Kokata charge,

and that he was placed at Sl. No.584 in the gradation list of 2012 is not denied. It is further stated that the necessity to rearrange the places in the

gradation list in the year 2014 has arisen on account of the judgment in N.R. Parmarâ??s case (supra). The respondents further stated that the

applicant can wait till the comprehensive and final exercise is undertaken in this behalf.

5. We heard Mr. Nilansh Gaur, learned counsel for the applicant and Mr. Rajeev Kumar, learned counsel for the respondents.

6. On his request, the applicant was transferred as Income Tax Inspector from Delhi charge to Kolkata charge. The department has its own

guidelines in the context of assigning places to the officials who are transferred on their own request. Two important principles are: (a) the official

shall take the bottom seniority in the cadre to which he was transferred and (b) the direct recruit transferred officer shall take the seniority with the

direct recruit officers and the promotee officers after the promotees. In the process, the applicant was assigned, the place at No.584 in the year 2012.

He did not have any qualm about it.

7. On 31.05.2014, the respondents published a gradation list substantially altering the places of the Income Tax Inspectors. This was stated to be on

the basis of the judgment of Honâ??ble Supreme Court in N.R. Parmarâ??s case (supra). Reference is also made to an order dated 07.10.2013

passed by the Kolkata Bench of this Tribunal in OA No.429/2013. The relevant portion of the counter affidavit reads as under:-

â??In view of the said communication and advisories of the CBDT regarding implementation of the DP&T OM dated 04-03-2014 in respect

of all the cadres from the recruitment year 1986-87 to recruitment year 2015-16, the exercise is going on and almost the entire exercise has

been accomplished as on date. On completion of the exercise in full, the seniority is going to be revised in all the cadres, since, in a cadre where direct recruitment method is a method of appointment, the direct recruits will be inter spaced with the promotes after review of DPC in

respect of promotees.â??

8. The fact that the exercise undertaken by them is not final, is evident from the following paragraph of the counter affidavitâ??-

â??In short, the applicant seeks seniority list of ITIs as on 04-06-2014 to be revised in his favour. Actually, the whole seniority list in the

cadre of ITI along with all other Group â?"C cadre is under revision vide judgment of the HonÃible Supreme Court in the case of N. R.

Parmar vs. UOI dated 27.11.2012. The applicant has joined this charge in the year 2011-12. Seniority list of ITI for recruitment year (RY)

2011-12 is not yet finalized as per N. R. Parmar judgment, so, the applicant may wait till finalization of seniority list of ITI for RY 2011-

12.â??

9. Assuming that the respondents propose to alter the gradation list, in view of the judgment of the Honâ??ble Supreme Court in N.R. Parmarâ??s

case (supra), they were under obligation to put the affected person on notice. A provisional gradation list ought to have been published first, inviting

objections and thereafter, a final gradation list ought to have been issued. The reason is that the department may have its own view about the method

of implementation but the affected persons may, at least in some cases, be able to convince them to take a different view.

10. One important development in this regard is that during the pendency of the OA, the Honâ??ble Supreme Court, in K. Meghachandra Singh vs.

Ningam Siro (2020) 5 SCC 689 held that the judgment inN . R. Parmarâ??s case (supra) does not represent the correct law. There again, certain

directions were issued regarding the manner in which the effect of the judgment in N. R. Parmarâ??s case (supra) must be undone. In this

scenario, the impugned gradation list dated 31.05.2014 can be treated as a provisional one, enabling the affected officials to make representations.

Thereafter, the respondents can publish a final gradation list, in accordance with law.

11. We, therefore, partly allow the OA directing that the gradation list dated 31.05.2014 shall be treated as a provisional one, and the concerned

authority shall issue a notice enabling the affected parties to submit their representations within four weeks. The final gradation list shall be published

within eight weeks thereafter, in accordance with law. Pending MA also stands disposed of. There shall be no order as to costs.

