
(2019) 09 CAT CK 0049

In the Central Administrative Tribunal

Case No : Original Application No. 3644, 3833, 3834, 3835, 3836 Of 2015

Sudhir Kumar And Ors

APPELLANT

Vs

Central Vigilance Commission And Ors

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Citation : (2019) 09 CAT CK 0049

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

Bench : Division Bench

Advocate : Ajesh Luthra, Hanu Bhaskar, Rajesh Srivastava, S. K. Gupta,

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

This batch of OAs arises in the context of application of the principle laid down by the Hon'ble Supreme Court in Union of India v. N. R. Parmar (2012) 13 SCC 340.

2. It is not uncommon that appointments to certain posts, mostly in the middle level of the establishments are partly by promotion and partly through direct recruitment. The principles governing the fixation of seniority of the employees who are appointed from both the streams are fairly well settled. No problem is faced in case the promotion on the one hand, and direct recruitment on the other hand, take place simultaneously. In certain cases, the roster is fixed and slots are allotted for the direct recruits and promotees, in accordance with their ratio. In other cases, the direct recruits of a batch or recruitment year, are en bloc placed above the promotees of that batch or year, unless the rules provide for the otherwise.

3. Problems do arise when the process of direct recruitment is delayed for one reason or the other. The delay can be at the very initiation of the process or in holding the test for the purpose of selecting the candidates. Whether the selection process is undertaken by the department itself or by any designated

agency, such as, UPSC or SSC, the issue arises as to what should happen in case the date of joining of the direct recruits is much subsequent to the date of joining of the promotees.

4. The DoP&T issued circular dated 03.03.2008 suggesting that the date of joining shall be the guiding factor in determining the seniority of the officers of the same batch, whether appointed through direct recruitment or promotion. This gave rise to several anomalies. Ultimately the matter reached the Hon'ble Supreme Court in N. R. Parmar's case. Their Lordships held that if the intimation of the vacancies to the selecting agency is in the year of vacancy itself, and the examination is also conducted in the same year, the mere fact that the results were declared at a later point of time or joining of the duty by direct recruits is delayed, would not be a factor to deny them, the seniority. The OM dated 03.03.2008 was declared null and void.

5. Several claims poured in from various departments, particularly from direct recruits for re-fixation of their seniority; after the judgment of the Hon'ble Supreme Court. To handle the situations of this nature, the DoP&T issued Official Memorandum dated 04.03.2014 laying down the guidelines in the light of the Judgment of the Supreme Court. At the same time, it is mentioned that the process contemplated therein would be effective from 27.11.2012, the date of judgment, and that the seniority lists which assumed finality, shall not be reopened.

6. In the Central Vigilance Commission (CVC), there existed vacancies in the post of Assistant, referable to the years 2002 to 2006. It is stated that the examination, to select candidates by direct recruitment in respect of the vacancies of the year 2002 was conducted in that year itself, and the selected candidates also have joined without much delay. As regards subsequent years, there was some delay in finalizing the selection of the direct recruits on account of the fact that the vacancies were deemed to have lapsed and steps had to be taken for revival thereof. The result was that the direct recruit candidates joined long after the promotees of the corresponding years. In the seniority lists published in the years 2003 and 2009, the direct recruits figured below the promotees.

7. Stating it to be a corrective measure, in light of the judgment in Parmar's case, the CVC came forward with a draft seniority list of the Assistants, dated 06.04.2015. The applicants in these OAs raised an objection pleading that the judgment in Parmar's case never directed that the seniority lists which became final be reopened, and invoked the clauses contained in OM dated 04.03.2014. A final seniority list was published on 08.09.2015, drastically changing the places of the Assistants in the seniority list.

8. These OAs are filed challenging the final seniority list dated 08.09.2015. According to the applicants, final seniority lists published way back in the years 2004 and 2009 assumed finality. It is stated that draft seniority lists were

published inviting objections and final seniority lists were published thereafter, and there was absolutely no basis for changing the seniority annulling the earlier final seniority lists. Reliance is placed upon the judgments of Hon'ble Delhi High Court in Prakash Singh vs. Union of India and Anr. W.P. (c) No.9580/2015 decided on 03.06.2016 and Ms. Veena Kothavale & Ors. vs. Union of India & Ors. W.P. (C) No.3087/2016 decided on 22.01.2018.

9. On behalf of the CVC, a detailed counter affidavit is filed in respective OAs. It is stated that the judgment in N. R. Parmar's case is very clear in its purport, and since it was found that the earlier seniority lists published in the year 2004 and 2009 were on the basis of OM dated 03.03.2008 and an occasion has arisen for addressing the entire issue in accordance with law since the OM was set aside by the Hon'ble Supreme Court. It is stated that the clauses contained in the OM dated 04.03.2014 to the effect that the OM will be effective from 27.11.2012 and that the seniority list shall not be reopened; are not absolute, and that it became necessary to verify as to whether the direct recruits were denied their due places, in the respective years.

10. On the same lines, the private respondents also filed their counter affidavits.

11. We heard Shri Ajesh Luthra and Shri S. K. Gupta, learned counsel for the applicants, Shri Hanu Bhaskar and Shri Rajesh Srivastava, learned counsel for the official respondents and Shri M. K. Bhardwaj, learned counsel for the private respondents.

12. The appointment to the post of Assistant in CVC is through direct recruitment as well as promotion; as mentioned in the preceding paragraphs. Though the appointments through direct recruitment were made in time in the year 2002, the joining of such candidates was a bit late. The draft seniority list for the post of Assistants as on 30.09.2003 was published on 21.10.2003 duly inviting objections. The applicants in OA Nos.3833, 3834, 3835 and 3836/2015 were shown at Sl. Nos.23 to 26. The respondents 2 & 3, by name, Shri P. V. R. Krishna and Shri Amrender Kumar, who were direct recruits, were shown at Sl. Nos.28 & 30. The Office Memorandum dated 21.06.2004 was issued with reference to the draft seniority list. It reads as under:-

"Office Memorandum Sub : Seniority list in the grade of Assistant in the Commission.

Draft seniority list in the grade of Assistant in the Commission as on 30.09.2003 circulated on 21.10.2003 is hereby treated as final. A copy of the final seniority list of Assistants, excluding those who have been promoted to the post of Section Officer on regular basis and including those who have been promoted to the post of Assistant on regular basis within this period, is enclosed for information of all Assistants."

The seniority list as on 30.09.2003 assumed finality since it was not challenged before any forum.

13. The direct recruitment for that post for the years 2003 to 2006 was delayed. The appointments against those vacancies were made only in the year 2009. Similar steps were initiated in the year 2010 after the direct recruits were appointed against the vacancies referable to the years 2003 to 2006. A draft seniority list was published on 09.07.2010. The applicants in the aforesaid OAs were shown at Sl. No.15 to 19 and the 2nd respondent therein was shown at Sl. No.20. In the covering letter dated 09.07.2007, it was mentioned that if no objections/ representations were received within the stipulated time, the seniority list shall be deemed to be final. In respect of this list also, no proceedings were initiated. It is also necessary to mention that the delay in making appointments through direct recruitment against the vacancies referable to the years 2003 to 2006 was on account of the ban on appointments, and the deemed abolition of the posts. The efforts for revival of the posts took some time and the appointments were made only on 29.06.2009.

14. In Parmar's case, the Hon'ble Supreme Court was dealing with the cases where the issuance of requisitions, publication of advertisement and conducting of examination by the agency, had taken place in the same year, in which the vacancies had arisen. The only basis for denying seniority to the direct recruits vis-à-vis the promotees was that the former joined later. This was on the basis of the OM dated 03.03.2008. The Hon'ble Supreme Court has set aside that OM and directed that the direct recruits be assigned their proper seniority. The relevant paragraphs read as under:-

"33. Having interpreted the effect of the OM's 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."

15. The relief was granted to the applicants therein. The Hon'ble Supreme Court did not indicate that as a general rule, the seniority in all the departments and establishments must be re-determined on the strength of the observations made therein.

16. The DoP&T issued OM dated 04.03.2014 providing the guidelines to be followed, in the context of determination of seniority in the light of the judgment of Hon'ble Supreme Court in N. R. Parmar's case. Omitting the introductory portion, the relevant guidelines read 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 non-existent/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.

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."

17. What becomes relevant here, are the clauses (h) and (i) of the above OM. The 1st is to the effect that the principles incorporated in the order would be effective from 27.11.2012, i.e., the date of judgment, and the 2nd is that the seniority lists which have already become final, may not be reopened.

18. The facts of the present case reveal that the two seniority lists, one in the year 2003, and the other in the year 2009 for the post of Assistants. Both of them became final. No promotions have taken place thereafter, till the OAs were filed. It is not in dispute that the OM issued by the DoP&T applies to the services in the CVC also. The CVC issued a circular dated 29.04.2015 proposing to revisit the seniority lists for the post of Assistants. Reference was made to the OM dated 04.03.2014 issued by the DoP&T. The places of the Assistants in the seniority lists of 2003 and 2009 were completely changed through the impugned seniority list. The direct recruits were placed above the promotees, irrespective of the year of recruitment or date of joining. The applicants submitted their representations. After considering the same, the CVC issued OM dated 08.09.2015. It reads as under:-

"OFFICE MEMORANDUM Sub : Seniority List for the post of Assistant in the Commission-Reg.

In terms of DoP&T's OM No.20011/1/2012-Estt.(D) dated 04.03.2014 which has been issued subsequent to Hon'ble Supreme Court's Judgment dated 27.11.2012 in Civil Appeal No.7514-7517/2015 in the case of N. R. Parmar Vs. UOI & others the seniority for the post of Assistant in the Commission had been revisited and a draft seniority list was issued vide Circular of even No.dated 29.04.2015 for inviting any objection within 30 days of the receipt of that circular.

2. All the representations received in this connection within the stipulated period have been examined by the Competent Authority and after considering the submissions of all officials, seniority list for the post of Assistant, as on date, has been finalized and the same is enclosed herewith for information of all concerned.

3. This issues with the approval of the Competent Authority."

The draft seniority list was made final and the applicants were pushed down.

19. Two questions arise for consideration in this behalf. The first is whether the revision of seniority of the Assistants can be sustained on the touchstone of the judgment of Hon'ble Supreme Court, and OM dated 04.03.2014; and the second is whether the seniority list, once became final, can be reopened at a subsequent stage. In a way, both the questions are intertwined.

20. The operative portion of the judgment in Parmar's case has already been

extracted. Nowhere in the body of the judgment or in the operative portion, it was indicated that the seniority lists which have been finalized earlier, must be reopened, if they did not accord with the principles laid down therein. Secondly, that was a case where the requisition was given, advertisement was published and examination was conducted in the same year in which the vacancies arose. Though such a situation may exist in some of the OAs which relate to the recruitment in the year 2002, the same does not hold good vis-à-vis the recruitment against the vacancies of the years 2003 to 2006. The intimation itself was issued in the year 2009 and appointments were made on 29.06.2009 vis-à-vis the vacancies of those years. The factual matrix of such recruitments does not fit into the judgment of Parmar's case.

21. The purport of the judgment in N. R. Parmar's case as well as the OM dated 04.03.2014 was taken into account and interpreted by the Hon'ble High Court of Delhi in Ms. Veena Kothavale (supra). In paras 61 to 63, their Lordships observed as under:-

"61. To literally construe the observations made by the Supreme Court in N.R. Parmar(supra) vis-à-vis the O.M. dated 03.03.2008, would lead to infraction of the settled position in law -that settled seniority should not be unsettled on account of a change in the rule position/ applicable principle. That would lead to unsettling of seniority positions of hundreds, if not thousands, of employees engaged in Central Services all over the country, which would give rise to a spate of avoidable litigations.

62. During the course of hearing, we had enquired from Mr. Narula whether post the decision of the Supreme Court in N.R. Parmar(supra), the Central Government had undertaken a general exercise of re-drawing the seniority lists by ignoring the seniority lists which may have been drawn in terms of the OM dated 03.03.2008 in all services and departments of the Central Government. Mr. Narula could not confirm that the Government of India had taken a general decision to revise all such seniority lists which had been drawn on the basis of the OM dated 03.03.2008 between the period 03.03.2008 and the date of the decision of the Supreme Court in N. R. Parmar (supra), i.e., 27.11.2012.

63. Pertinently, even though the decision in N.R. Parmar(supra) does not state that the said decision would be applicable only from the date on which it was rendered, the OM dated 04.03.2014 states that "principles for determination of inter se seniority of direct recruits and promotees" which are contained in the OMs dated 07.02.1986 / 03.07.1986, "would be effective from 27.11.2012, the date of the Supreme Court judgment in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar Vs. UOI & Others". Thus, even as per the OM dated 04.03.2014, the decision in N.R. Parmar(supra) was sought to be given effect to from the date of the said decision, i.e. 27.11.2012. The consequence of the application of the OM dated 04.03.2014, in our view, is that the seniority positions as settled up to the date of decision of N.R. Parmar(supra), were treated as final.

In a different situation, the issue was dealt with in Prakash Singh's case (supra). In that case, the petitioner approached the Tribunal with a prayer to direct the respondents to assign him, the seniority in view of the judgment of Parmar's case. The OA was disposed of on 17.02.2014 with a direction to the respondents to pass orders on the representation of the applicant. The respondents therein passed an order on 29.04.2014 rejecting the representation by observing that the issue has assumed finality and it cannot be reopened at that length of time. That was challenged in OA No.2719/2014, and it was dismissed on the ground of limitation. Thereupon, the petitioner filed W.P.(C) No.9580/2015.

22. Through a detailed judgment dated 03.06.2016, the Hon'ble High Court of Delhi has taken the view that the seniority which assumed finality cannot be reopened and that the Hon'ble Supreme Court, in its judgment in N. R. Parihar's case did not direct that the seniority lists, which assumed finality, must be reopened. The finding that the OA was barred by limitation, was upheld by referring to various judgments of the Hon'ble Supreme Court. Even otherwise, the DoP&T had incorporated two pertinent clauses in its OM dated 04.03.2014, and the exercise undertaken by the CVC, for revisiting the seniority list is clearly barred by those clauses. There is nothing on record to disclose that the CVC made an effort to seek any clarification from the DoP&T in this behalf. Therefore, we hold that the exercise undertaken by the respondents does not have any support from the judgment of N. R. Parmar's case.

23. Coming to the 2nd question, it is evident that after the process of selection and appointments had taken place, for the concerned years, the respondents published the provisional seniority list in the year 2003 and 2009 respectively, objections were invited and thereafter the draft seniority lists assumed finality. They would hold good and continue to govern the service of the employees mentioned therein, unless they were set aside by any Court of Law. None of the private respondents in the OAs have challenged the provisional or final seniority lists. The occasion to alter them would arise, if only any Court of law issued specific directions. None of the circumstances existed in these cases, and the CVC has undertaken the exercise, on its accord.

24. Firstly, neither the judgment in Parmar's case, nor the OM dated 04.03.2014 permitted this. Secondly, the rights that accrued to the employees on the basis of the final seniority list published earlier, cannot be taken away.

25. We, therefore, allow the OAs, and set aside the impugned order dated 08.09.2015.