
(2021) 04 CAT CK 0030

In the Central Administrative Tribunal

Case No : Original Application No. 1212 Of 2017, Miscellaneous Application No. 935 Of 2021, 2191, 4764 Of 2017, 4428 Of 2018

S.V. Chak & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 01-04-2021

Acts Referred:

Citation : (2021) 04 CAT CK 0030

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

Bench : Division Bench

Advocate : Ajesh Luthra, Gyanendra Singh, H.K. Gangwani

Final Decision : Disposed Of

Judgement

L. Narasimha Reddy, J

1. The applicants were initially appointed as Junior Technician, in the Ministry of Corporate Affairs between, 1996 & 1999. The next promotion is to the post of Senior Technician Assistant (STA). Under the Recruitment Rules, as they existed before 2012, 50% of the appointments to the post of STA were by way of direct recruitment, 25% by promotion on seniority basis, and remaining 25%, on the basis of the performance in Limited Departmental Examination (LDE).

2. It is stated that though decision was taken in the year 1998 to merge the vacancies meant for promotion in Limited Departmental Examination (LDE), the rules were amended only through Notification dated 16.08.2012, and that LDE examination was not held for several years. The applicants contend that they were promoted on ad hoc basis against the vacancies of LDE quota. On 11.02.2011, 7 of the applicants was regularly promoted on 18.09.2012, after the amendment of rules, and one of them was promoted under the un-amended rules on 19.08.2011 on the basis of seniority.

3. The applicants further contend that advertisements for recruitment to the posts of STA of the year 2008-09, 2009-10 and 2010-2011 were issued, and

later, all the selected candidates joined in the year 2011-12, 2012-13 and 2014-15 for the respective years. The respondents issued a tentative seniority list for the post of STA on 27.01.2015, followed by another tentative seniority list on 11.03.2016. The objections submitted by the officials were considered and the final seniority list was published on 21.03.2017. Since appointment to the post of STA was by direct recruitment and promotion in equal shares, the posts were interspersed equally. In other words, every alternative vacancy was for direct recruitment or promotion, as the case may be. In the process, the direct recruits referable to the year 2008-09, 2009-10 and 2010-11 were shown against those vacancies and thereby they became seniors to the promotees who were promoted much earlier.

4. A representation was made by the applicants raising objections. That was replied on 21.03.2017 stating that the seniority list was prepared strictly in accordance with the judgment of Hon'ble Supreme Court in *Union of India & Ors. vs. N. R. Parmar* reported in (2012)13 SCC 340. This OA is filed challenging the final seniority list dated 21.03.2017, and for a direction to the respondents to prepare the seniority list strictly in accordance with the date of appointment through promotion.

5. The applicants contend that whatever may have been the purport of the judgment in *N. R. Parmar's* case (supra), the Hon'ble Supreme Court, in the recent past in *K. Meghachandra Singh vs Ningam Siro JT 2019 (11) SC 407* held that under no circumstances, an employee can be assigned seniority, earlier to the date of the actual appointment, particularly, when it is by way of direct recruitment. Various other contentions are also urged.

6. The respondents filed separate counter affidavits. According to them, the seniority list was made strictly in accordance with the relevant principles of law. It is also stated that under no circumstances, the promotee can be shown against a vacancy earmarked for direct recruitment and vice versa, and showing of a direct recruitment against the slot meant for that, does not lead to a situation of his being treated as having been appointed earlier to the actual date of appointment.

7. Today we heard Shri Ajesh Luthra, learned counsel for the applicants, Shri Gyanendra Singh, learned counsel for the official respondents and Shri H. K. Gangwani, learned counsel for the private respondents.

8. The matter pertaining to fixation of inter se seniority between direct recruits on the one hand and promotees on the other hand, was the subject matter of quite a voluminous litigations.

9. The problem arises mostly in cases where the recruitment rules provide for the seniority being accorded en bloc to all the direct recruits. In such cases, even where the direct recruitment was delayed, all the direct recruits, whenever appointed are placed en bloc above the promotes; who were appointed many years earlier thereto. The problem would not be that acute where it is by way of

interspersing or the vacancies are rotated.

10. In N. R. Parmar's case (supra), it was held that irrespective of the date on which the examination for direct recruitment takes place or orders of appointments are issued, the candidates would be entitled to take their seniority with reference to the year in which the test was held. That judgment resulted in revision of the seniority lists in almost every department. That, in turn, led to a spate of litigation. Then came the judgment of Meghachandra's case (supra). Their Lordships took the view that the judgment in N. R. Parmar's case (supra) does not lay down the correct law. It was further held that a direct recruit cannot take the seniority from any date, earlier to the one on which, he was appointed. At the same time, the seniority lists which were prepared on the basis of the judgment in N. R. Parmar's case (supra) were saved.

11. In the instant case, the impugned seniority list was preceded by two tentative seniority lists. It is not a case in which final seniority list for the post of STA was revised on the strength of the judgment in N. R. Parmar's case (supra). Though the principle laid down therein is said to have been adopted, the applicants challenged the same in the right earnest. In the meanwhile, judgment in Meghachandra's case (supra) came. Further, in OA No.4334/2014, this Tribunal indicated the nature of steps to be taken in the light of these two judgments. We are of the view that the applicants can make a comprehensive and detailed representation, indicating their understanding of the purport of the judgments referred to above; to the respondents, and the latter, in turn, can be required to pass orders within a reasonable time.

12. We, therefore, dispose of the OA, leaving it open to the applicants to make a representation indicating purport of the judgments in N. R. Parmar's case (supra) and Megha Chandra's case (supra). As and when such representation is made, the order shall be passed thereon within a period of two months from the date of receipt of a copy of the representation. If it becomes necessary, the respondents shall take into account the views of the affected persons. There shall be no order as to costs.

Pending MAs, if any, shall stand disposed of.