

(2025) 03 DEL CK 1062

In the Delhi High Court

Case No : Writ Petition (C) No. 3303 Of 2021, Civil Miscellaneous Petition Nos. 10087, 28433 Of 2021 & 26569 Of 2022

Union Of India & Ors

APPELLANT

Vs

Mukta Srivastava & Ors

RESPONDENT

Date of Decision : 17-03-2025

Acts Referred:

Citation : (2025) 03 DEL CK 1062

Hon'ble Judges : C.Hari Shankar, J;Ajay Digpaul, J

Bench : Division Bench

Advocate : R.V. Sinha, A.S. Singh, Amit Sinha, Shriya Sharma, Anil Singal, Akarsh Sharma,

Final Decision : iii K. Meghachandra Singh & Ors. V Ningam Siro & Ors.

Judgement

C. Hari Shankar, J

1. By this writ petition, the Union of India "UOI" calls into question the correctness of order dated 20 February 2020 passed by the Central Administrative Tribunal "the Tribunal" in OA 1645/2018 Mukta Srivastava & others v UOI & others, and order dated 17 November 2020 passed by the Tribunal in RA 55/2020, whereby the UOI sought review of the order dated 20 February 2020. The Tribunal has allowed the OA in part and has dismissed the RA.

2. We have heard Mr. R.V. Sinha for the UOI, Mr. Anil Singal for Respondents 1 to 5 and Mr. Akarsh Sharma for Respondents 9 and 10.

Facts

3. We may note, at the outset, that the prayer in OA 1645/2018 appears to suffer from a typographical error, as it seeks quashing of the "final Seniority List dated 16 May 2014 and Memorandum dated 27 June 2016", whereas no such Seniority List or Memorandum forms part of the record. The challenge is actually

to a revised Seniority List dated 19 December 2017, issued by the Central Board of Excise & Customs "CBEC", Department of Revenue, Ministry of Finance for the grade of Chemical Examiner-II "CE-II" in the Central Revenues Control Laboratory "CRCL".

The impugned order of the Tribunal

4. There were five applicants before the Tribunal, of which Applicant 1 was Mukta Srivastava, who is Respondent 1 in the present writ petition. There were five private respondents before the Tribunal, of which the first private respondent was Respondent 4 Ajay Kumar Singh, who is Respondent 6 in the present writ petition. Respondents 1 to 5, therefore, were the applicants before the Tribunal and Respondents 6 to 10 were the private respondents before the Tribunal. They shall be referred to, hereinafter, as "Mukta Srivastava etc." and "Ajay Kumar Singh etc." respectively.

5. Mukta Srivastava etc. were working as Chemical Examiner-I "CE-I", at the time when they petitioned the Tribunal. They had been promoted as CE-I in 2015, on the basis of a Seniority List of CE-II published by the CBEC on 29 January 2014, reflecting the seniority of CE-IIs as on 1 January 2012 and 1 January 2013.

6. On 19 December 2017, the CBEC issued a revised Seniority List of CE-II, superseding the earlier Seniority List of 29 January 2014. The seniority of Mukta Srivastava etc. in the revised Seniority List of 19 December 2017, was lower than their seniority position as reflected in the Seniority List of 29 January 2014. The CBEC was also proposing to constitute a review Departmental Promotion Committee "DPC", to review the promotion of CE-II to CE-I which had taken place in 2015 on the basis of the earlier Seniority List of 29 January 2014. In other words, the fate of the promotion of Mukta Srivastava etc. to CE-I, already granted in 2015, also hung in the balance.

7. In these circumstances, Mukta Srivastava etc. approached the Tribunal by way of OA 1645/2018, challenging the revised Seniority List dated 19 December 2017 and contending that the CBEC could not have revised, thereby, the seniority position as reflected in the Seniority List dated 29 January 2014. The proposal to conduct a review DPC, on the basis of the revised Seniority List of 19 December 2017, was also challenged. It was contended that the CBEC had no justifiable cause to revise the promotions to CE-I of Mukta Srivastava etc., which had already taken place in 2015, based on the Seniority List of 29 January 2014.

8. In the counter-affidavit filed by way of response to the OA, the UOI contended that the revised Seniority List dated 19 December 2017 had been issued in compliance with the direction of a Division Bench of this Court in its judgment dated 18 December 2014 in *Bhuwan Ram v UOI* MANU/DE/3958/2014. As such, it was submitted that the prayers of Mukta Srivastava etc. lacked merit.

9. The impugned order dated 20 February 2020, of the Tribunal, adjudicates

these rival claims. Paras 6 to 10 of the order of the Tribunal read thus:

"6. The various facts mentioned above are borne out by record. The applicants were assigned certain places in the seniority list dated 29.01.2014, and they were also promoted to the post of CE-1 on that basis. In the covering letter for the revised seniority list dated 19.12.2017, it is mentioned that the draft seniority list dated 22.12.2016 was circulated, and thereafter the final seniority list is being published in respect of the seniority list, referable to the years 2004, 2008, 2009 and 2011 to 2014. However, the basis for that is not indicated.

7. In their counter affidavit, the respondents have made an extensive reference to the judgment of the Hon'ble Delhi High Court in WP(C) No. 6435/2002 and 4396/2008. The relief in that Writ Petition, in turn, was granted on the basis of the judgment of the Hon'ble Supreme Court in N.R.Parmar "UOI v N R Parmar, (2012) 13 SCC 340". The relevant paragraph reads as under:-

"26. For the above reasons, we find no merit in WP(C) No. 6345/2002. The same is rejected. WP(C) No. 4396/2008 has to succeed. The findings and reasoning given in OA No. 1694/2006 are, accordingly, unsustainable and are set aside. The UOI is directed to calculate the seniority of the direct recruits and promotes afresh in the light of the orders of this Court in and in the light of the decision in Parmar (supra) within ten weeks. WP(C) No. 4396/2008 is, accordingly, allowed. Parties shall bear their own costs."

8. It is no doubt true that in N.R. Parmar's case, a principle was laid to the effect that in case the direct recruitment process is delayed for any reason, the candidates selected in the process cannot be denied of the benefit of their seniority vis-a-vis the promotees of the same panel year. However, that judgment was revisited by the Hon'ble Supreme Court recently in K. Meghachandra Singh & Ors. v Ningam Siro & Ors., Civil Appeal No.8833-8835/2019 (2020) 5 SCC 689, referred to, hereinafter, as "Meghachandra", and their Lordships specifically overruled it. In Para 40, it was observed that the inter se seniority, which is already decided, on the basis of the judgment in N.R. Parmar's case be not disturbed.

9. We find a typical situation, obtaining in the instant case. The revised seniority list, no doubt, was published. However, the resultant revision of promotions which have already taken place, was not done. The OA was filed at a time when the respondents were about to revisit the promotion of the applicants. Therefore, even while honouring the observations of the Hon'ble Supreme Court in K. Meghachandra Singh's case that seniority list, which is already prepared in accordance with the judgment of the Hon'ble Supreme court in N.R. Parmar, shall not be disturbed, the promotions, which have already been extended to the applicants, cannot, equally be disturbed. It is now for the respondents to examine the steps to be taken in light of the judgment of the Hon'ble Supreme Court in K. Meghachandra Singh.

10. We accordingly allow the OA in part, by directing that the promotion of the

applicants to the post of CE-I shall not be disturbed on the basis of the revised seniority list dated 19.12.2017, and it is for the respondents to take the necessary steps in accordance with law, regarding fixation of the seniority in the post of CE-II. We clarify that the further promotions beyond the post of CE-I shall be without disturbing the positions of the applicants as they exist now. The respondents shall also fix the seniority for the cadre of CE-II, in accordance with law.

Interim order passed earlier shall cease to be in force, in view of the final adjudication. Pending MA, if any, shall also stand disposed of. There shall be no order as to costs.”

(Emphasis supplied)

Thus, the Tribunal has proceeded on the following reasoning:

(i) The revised Seniority List dated 19 December 2017 purported to have been issued on the basis of the judgment of the Supreme Court in Parmar, in compliance with the directions of the judgment of the Division Bench of this Court in Bhuwan Ram.

(ii) Parmar, however, stood revisited by the Supreme Court in Meghachandra.

(iii) While directing that seniority of direct recruits and promotees would not be fixed on quota-rota basis, but would be on the basis of their respective dates of joining their service, in the absence of any rule to the contrary and, thereby, overruling Parmar, Meghachandra, in para 40 para 39 in the SCC, observed that the inter se seniority, which was already decided on the basis of Parmar was not to be disturbed.

(iv) In the present case, the revised Seniority List of 19 December 2017, no doubt, already stood issued prior to the decision in Meghachandra, which was rendered on 19 November 2019.

(v) However, if the seniority position which already stood finalized prior to the rendition of the decision in Meghachandra could not be disturbed, by virtue of para 40 of that decision, “the promotions, which had already extended to the applicants, cannot, equally, be disturbed”.

Following this line of reasoning, the Tribunal allowed the OA filed by Mukta Srivastava etc. in part, by directing that their promotion to the post of CE-I would not be disturbed on the basis of the revised Seniority List dated 19 December 2017. Thereafter, the Tribunal directed the UOI “to take necessary steps in accordance with law, regarding fixation of the seniority in the post of CE-II” and further directed that “further promotions beyond the post of CE-I shall be without disturbing the positions of the applicants (i.e., Mukta Srivastava etc.) as they exist now”.

10. Aggrieved by the aforesaid order, the UOI has approached this Court by means of the present writ petition.

Rival contentions

11. Mr. R V. Sinha, learned Counsel appearing for the petitioners, submitted that the revised Seniority List dated 19 December 2017, having been issued strictly in compliance with the directions contained in the judgment of the Division Bench of this Court in Bhuwan Ram, and the review DPC, revisiting the promotions from CE-II to CE-I based on the earlier Seniority List dated 29 January 2014, having been effected in compliance with the directions contained in the said judgment, the Tribunal was in error in interfering therewith. He submits that, in fact, Contempt Case 561/2017 Arun Kumar Maurya v Hansmukh Adhia had been filed alleging non-compliance with the directions in Bhuwan Ram. It was only when this Court was apprised of the holding of the review DPC – with which Mukta Srivastava etc. were aggrieved – that the Court closed the contempt proceedings, observing that the directions in Bhuwan Ram’s stood compliance with.

12. Mr. Sinha submits that Mukta Srivastava etc. were, in fact, by their OA, calling upon the Tribunal to review the decision in Bhuwan Ram, which was clearly impermissible.

13. Mr. Akarsh Sharma, learned Counsel who appears for Respondents 9 and 10, who were private respondents before the Tribunal along with Ajay Kumar Singh, points out that the decision of the Division Bench of this Court in Bhuwan Ram was carried to the Supreme Court by way of SLP (C) Diary No. 5640/2018 Sahdev Kumar v UOI, which was dismissed by the following order dated 12 March 2018:

“There is a delay of 1063 days in filing the special leave petition, which we are not inclined to condone.

Even on merits, no ground for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India.

The special leave petition is accordingly dismissed on the ground of delay as well as on merits. Pending application, if any, stands disposed of.”

14. Thus, Mr. Akarsh Sharma submits that the judgment in Bhuwan Ram stood affirmed on merits by the Supreme Court, and there could, therefore, be no question of any interference with the Seniority List dated 19 December 2017 or the review DPC, which was reviewing the promotions from CE-II to CE-I based on the earlier Seniority List dated 29 January 2014.

15. As against this, Mr. Anil Singal, learned Counsel appearing for Respondents 1 to 5, submits that para 40 of Meghachandra would not apply in the present case, as, on 13 November 2019, when Meghachandra was rendered, OA 1645/2018 was pending before the Tribunal. The seniority position of CE-II could not, therefore, be treated as “settled” on the date when Meghachandra was pronounced. He relies, for this purpose, on the following paragraph from the judgment of a Coordinate Division Bench of this Court in Yash Rattan v UOI 2021

"16. We have examined the rival contentions. It is a matter of fact that the seniority position in the present case was not finally settled when the judgment in the case of K. Meghachandra Singh (supra) was delivered by the Hon'ble Supreme Court on 13th November, 2019. The impugned seniority list was issued on 15th March, 2018 and immediately thereafter, various representations were filed on behalf of the private respondents against the said seniority list. When no response was received on the said representations, the private respondents filed the OA before the CAT, challenging the said seniority list, from which the present petition arises. In fact, OA was also filed before the judgment in K. Meghachandra Singh judgment (supra) was delivered. Therefore, it is incorrect on the part of the petitioners to say that the seniority position was settled and therefore the same has to be protected in terms of the judgment in K. Meghachandra Singh judgment (supra). Accordingly, once the seniority list itself was subject matter of challenge before CAT, the law laid down in the case of K. Meghachandra Singh (supra) had to be applied."

The Tribunal, therefore, according to Mr. Singal, was entirely justified in holding as it did.

Analysis

16. We may observe, here, that while issuing notice in the present matter on 15 March 2021, a Coordinate Division Bench of this Court, in para 4 of its order, expressed a prima facie view that the reasoning of the Tribunal, in para 9 of the impugned order, appeared to be correct.

17. Having heard learned Counsel for the parties and examined the matter thoroughly, we regret our inability to concur with this view.

18. To our mind, the impugned order of the Tribunal is inherently contradictory and, in fact, impossible of compliance. This is apparent at a plain reading of paras 9 and 10. The Tribunal has not disbelieved the stand of the UOI that the revised Seniority List of 19 December 2017 was in fact issued in compliance with the directions contained in the judgment of the Division Bench of this Court in Bhuwan Ram. The Tribunal also defers to the observation, in para 40 of the judgment of the Supreme Court in Meghachandra, that seniority, which stood settled prior to the rendition of the decision in Meghachandra, on the basis of Parmar, would not be disturbed. We may, for ready reference, reproduce the said observation in Meghachandra thus:

"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."

In effect, therefore, the Tribunal acknowledges that Meghachandra did not permit interference with the revised Seniority List dated 19 December 2017, as it had

been issued on the basis of Parmar, prior to the rendition of decision in Meghachandra.

19. Strangely, however, the Tribunal observes that, even while honouring the observation of the Hon'ble Supreme Court in Meghachandra that the Seniority List, which was already prepared in accordance with the judgment of the Hon'ble Supreme Court in Parmar, could not be disturbed, "the promotions, which have already been extended to the applicants, (could not), equally, be disturbed". These italicized words are markedly contradictory to the preceding part of the same sentence. There is no dispute about the fact that the promotion of Mukta Srivastava etc. as CE-I had been made on the basis of the pre-revised Seniority List of CE-II dated 29 January 2014. The revision of that Seniority List, by the Seniority List dated 19 December 2017, necessarily entailed, in its inexorable wake, revision of the promotions from CE-II to CE-I which had taken place on the basis of the earlier Seniority List.

20. The Tribunal could not have, therefore, upheld the revision of the Seniority List of 29 January 2014 by the Seniority List dated 19 December 2017 and, at the same time, directed that the promotions of Mukta Srivastava etc. as CE-I, which had taken place on the basis of the superseded Seniority List of 29 January 2014, would remain undisturbed. Even on this sole ground, therefore, the impugned order of the Tribunal cannot sustain.

21. We do not deem it necessary to enter into the intricacies of the decision in Bhuwan Ram, as it is not necessary to do so. Bhuwan Ram, which was rendered on 18 December 2014, concludes with the following directions:

"26. For the above reasons, we find no merit in WP(C) No.6345/2002. The same is rejected. WP(C) 4396/2008 has to succeed. The findings and reasoning given in OA No.1694/2006 are, accordingly, unsustainable and are set aside. The UOI is directed to calculate the seniority of the direct recruits and promotees afresh in the light of the orders of this Court and in the light of the decision in Parmar (supra), within ten weeks. WP(C) No.4396/2008 is, accordingly, allowed. Parties shall bear their own costs."

22. Following Bhuwan Ram, therefore, the petitioner had no option but to revise the Seniority List of CE-II, published on 29 January 2014. It was thus that the revised Seniority List of CE-II dated 19 December 2017, came into being.

23. Promotions from CE-II to CE-I which had already been made on the basis of the earlier Seniority List of 29 January 2014 had necessarily, therefore, to be revisited. Those promotions had been made on the basis of a Seniority List which was not in accordance with Parmar. The Seniority List of 19 December 2017, on the other hand, was in accordance with Parmar and was prepared as per the directions contained in para 26 of Bhuwan Ram. The Tribunal could not, therefore, legitimately have interfered with the decision of the UOI to revisit the promotions made from CE-II to CE-I, on the basis of the Seniority List dated 29 January 2014, which stood revised.

24. The impugned decision, apparently, has been passed by the Tribunal more on considerations of equity than of law. The Tribunal appears to have been persuaded by the consideration that it was unfair to revisit the promotions of Mukta Srivastava etc., which had already taken place. In adopting this view, however, the Tribunal, with respect, failed to notice that the said promotions had been effected on the basis of Seniority List of 29 January 2014, which could not continue to subsist after the judgment in Bhuwan Ram, rendered on 18 December 2014, which stood affirmed, on merits, by the Supreme Court. The necessity of reworking the seniority, in compliance with the directions contained in the said judgment, also resulted in the necessity of revising promotions made on the basis of the earlier seniority. It was unfortunate, but unavoidable. To reiterate, the Tribunal could not simultaneously have upheld the revised Seniority List dated 19 December 2017, as well as the promotions of Mukta Srivastava etc. from CE-II to CE-I based on the earlier Seniority List dated 29 January 2014.

25. We now advert to the contention of Mr. Singal, predicated on the judgment of the Coordinate Bench of this Court in Yash Rattan. Para 16 of Yash Rattan, on which Mr. Singal relies, in our view, does not apply. That was a case in which the Division Bench of this Court categorically noted that, on the date of rendition of the judgment in Meghachandra, the seniority position of Inspectors in the Delhi Commissionerate, which was subject matter of dispute before it, had not yet been finally settled. It is noted, in the said decision, that the Seniority List, which was issued on 15 March 2018, was immediately subjected to various representations and that the representationists, on finding no response to their representations, had forthwith approached the Tribunal by filing OAs, before Meghachandra was rendered.

26. As against that, in the present case, the revised draft Seniority List of CE-II were circulated by the CBEC on 22 December 2016. Comments from all were invited. Mukta Srivastava etc. also represented against the draft Seniority List. Their representations were considered and disposed of, by the competent authority, on 19 December 2017, while issuing the final Seniority List of CE-II.

27. Unlike the position which obtained in Yash Rattan, therefore, the present case is not in one in which the representations against the draft Seniority List were remaining undecided, and the representationists had approached the Tribunal before Meghachandra was rendered. In the present case, the representations were not only decided, but a final Seniority List was also issued on 19 December 2017. By no stretch of imagination can it, therefore, be said that the seniority position had not been decided prior to the rendition of the judgment in Meghachandra. The mere fact that Mukta Srivastava etc. may have chosen to challenge the final Seniority List dated 19 December 2017, and that, too when review DPCs were at the cusp of being held, and that the said OA may have been pending on the date when Meghachandra was decided, cannot insulate them from the effect of para 40 of the decision in Meghachandra. The reliance, by Mr. Singal, on Yash Rattan, is, therefore, in our opinion, misplaced.

28. We are fortified in the view that we take by the fact that Bhuwan Ram was also affirmed, on merits, by the Supreme Court, in its order dated 12 March 2018 in Sahdev Kumar.

29. There was, therefore, merger of the judgment in Bhuwan Ram with the order passed by the Supreme Court in Sahdev Kumar. The impugned decision of the Tribunal, which directs status quo to be maintained with respect to the promotions of Mukta Srivastava etc., from CE-II to CE-I, and injuncts the UOI from revisiting the said promotions, cannot, therefore, sustain.

30. As a result, we are constrained to set aside the impugned order dated 20 February 2020 passed by the Tribunal in OA 1645/2018. Resultantly, OA 1645/2018 shall stand dismissed.

31. The present writ petition is allowed accordingly, with no order as to costs.