

(2021) 04 DEL CK 0071

In the Delhi High Court

Case No : Civil Writ Petition No. 3576 Of 2021

Yash Rattan & Ors

APPELLANT

Vs

Union Of Indian And Ors

RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:

Citation : (2021) 04 DEL CK 0071

Hon'ble Judges : Rajiv Sahai Endlaw, J; Amit Bansal, J

Bench : Division Bench

Advocate : Maninder Acharya, Ayush Anand, Shubhendu Anand, Mrinal Elker, Viprav Acharya, Shikhar Kishore, Gaurang Kanth, Amit Dogra, Biji Rajesh, Shreesh Chadha, Harpreet Singh, Arunesh Sharma, Suhani Mathur

Final Decision : Dismissed

Judgement

Amit Bansal, J

C.M. No.10817/2021 (for exemption)

1. Allowed, subject to all just exceptions and as per extant Rules.

2. The application stands disposed of.

W.P.(C) 3576/2021 & C.M. No.10818/2021 (for leave to file the present writ petition on behalf of petitioners No. 3 to 18.)

3. The present writ petition impugns the order dated 13th October, 2020 passed by Central Administrative Tribunal (CAT) in OA No.2955/2019. By the said impugned order, OA filed by respondents no.4 to 31 herein (who were the applicants before the CAT) was allowed and the seniority list dated 15th March, 2018, which was the subject matter of challenge before the CAT, was set aside. The present petition has been filed by the petitioners, who were the respondents before the CAT.

4. The brief facts giving rise to the present petition are set out hereinafter.

5. The petitioners herein were appointed as Inspectors in the Delhi Commissionerate of the respondents in the year 2016 under the direct recruit quota. The private respondents (who were the petitioners before the CAT) were also direct recruits recruited in the year 2011 in various zones outside Delhi. At their request, they were transferred to the Delhi Zone in the year 2014. On 31.07.2014, there was a substantial re-structuring in the department, resulting in steep increase in the number of posts of Inspectors in Delhi Zone. On account of the increase in number of vacancies, the private respondents took a transfer to Delhi Commissionerate from their parent cadre and were placed at the bottom of the seniority list. The petitioners who were appointed on direct recruitment basis against the vacancies for the year of 2014, joined cadre only in the year 2016. On 15th March, 2018, the respondents came out with a seniority list of Inspectors in which the respondents herein were placed below the petitioners. The seniority list was prepared on the basis of OM No. 20011/1/2012-Estt.(D) dated 4th March, 2014 which in turn had been prepared in terms of the ratio of the Hon'ble Supreme court in Union of India & Ors. Vs. N.R. Parmar & Ors., (2012) 13 SCC 340. The private respondents made various representations against the said seniority list.

6. The representations not having been considered favourably, the private respondents filed OA No.1251/2019 challenging the seniority list of Inspectors as on 31st March, 2015 issued on 15th March, 2018. On 5th August, 2019, the official respondents amended the RRs with regard to promotion of Inspectors to the post of Superintendents. On 16th September, 2019, the private respondents withdrew OA No.1251/2019 with liberty to file fresh OA. On 30th September, 2019, fresh OA No.2955/2019 was filed by the private respondents challenging the seniority list dated 15th March, 2018, from which the present petition arises. The main ground of challenge in the said OA was that the petitioners who had joined the department after the joining of the private respondents cannot be placed above them in the seniority list. Reliance was placed on the decision of the Hon'ble Supreme Court in K. Meghachandra Singh & Ors. Vs. Ningam Siro & Ors., (2020) 5 SCC 689, in which the earlier judgment of N.R. Parmar (supra) was overruled. The said OA was contested by both, the official respondents as well as the petitioners herein by filing counter affidavits.

7. The said OA 2955/2019 was allowed by the Tribunal vide the impugned order and the seniority list dated 15th March, 2018, to the extent it placed petitioners who were appointed and joined Delhi Commissionerate subsequent to the date of the transfer of the private respondents, was set aside. It was held by the CAT that (i) the petitioners herein who were appointed in the year 2016 cannot be placed above the private respondents who were appointed in the year 2011 and came on transfer to Delhi Zone in the year 2014; (ii) the judgment of the Hon'ble Supreme Court in N.R. Parmar (supra) would apply only in the context of fixation of inter se seniority between the promotees on one hand and direct recruits on the other hand; (iii) on transfer to Delhi Zone, the private respondents would be placed in the seniority after directly recruited Inspectors of the year 2014 on the

principle that whoever comes on transfer has to take the last place in the seniority in the zone, to which he comes on transfer; (iv) since the petitioners as well as the private respondents were direct recruits, the judgment in N.R. Parmar (supra) would have no impact on them; (v) there was no basis or justification to place the petitioners, who were appointed in the year 2016, above the private respondents in the Delhi zone; and (vi) the judgment of the Hon'ble Supreme Court in N.R. Parmar (supra) has been overruled by the Supreme Court judgment in the case of K. Meghachandra Singh (supra). Hence, the OA was allowed and the seniority list dated 15th March, 2018 was set aside to the extent it placed the petitioners above the private respondents.

8. Aggrieved by the said decision of the CAT, the present writ petition has been filed by the petitioners. With the consent of the parties, the petition has been taken up for final disposal on the basis of the pleadings filed by the parties before the CAT.

9. On behalf of the petitioners, it has been argued by Ms. Maninder Acharya, Senior Advocate that even though petitioners were appointed in 2016, they were appointed against the vacancies of the year 2014. It was submitted that (i) promotees of the vacancies of 2014 were appointed on 1st April, 2014; (ii) cadre re-structuring took place in July, 2014 which resulted in creation of additional vacancies, out of which 459 vacancies were available for direct recruit quota and 229 for promotion quota; (iii) at that point of time, 185 applications for inter Commissionerate transfer were pending from different zones to Delhi Zone; (iv) it was decided that 200 out of 459 vacancies of direct recruits should be filled up through transfer and remaining 259 vacancies were to be filled up through direct recruitment quota; (v) the process for recruitment of 259 Inspectors on direct recruitment basis started on 2nd September, 2014; (vi) on 7th December, 2014, 240 more vacancies were made available to be filled through direct recruitment quota and 120 through promotion quota; (vii) the petitioners qualified the SSC (CGL) Examination, 2014 against the vacancies for 2014 and were appointed as Inspectors on direct recruitment basis in the Delhi zone in 2016; (viii) on 15th March, 2018, the respondents finalized the seniority list of Inspectors upto 31st March, 2015, in which the name of the private respondents was below the petitioners.

10. The learned Senior Counsel on behalf of the petitioners has strenuously argued that the impugned order of the CAT is erroneous as it fails to consider that, while preparing seniority list, the recruitment year of the candidates is relevant and not the year in which they join the cadre. The seniority list impugned before CAT was prepared strictly in terms of OM dated 4th March, 2014 which was based on N.R. Parmar judgment (supra). Relevant provisions of the OM dated 4th March, 2014 relied on behalf of the petitioners are set out below:-

"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."

11. It was further submitted that on the date the said seniority list was prepared, N.R. Parmar judgment (supra) of the Supreme Court held the field and therefore, the seniority list was correctly prepared on the basis of the said judgment. The said judgment was overruled by a three-Judge Bench of the Hon'ble Supreme court in K. Meghachandra Singh judgment (supra), which was delivered on 13th November, 2019, however, the said overruling was prospective and therefore, seniority already decided in terms of N.R. Parmar (supra) would be protected. Reliance is also placed on the transfer order dated 20th April, 2013 in respect of the private respondents wherein it is specifically noted that transferee officers will be placed below all officers appointed regularly to the post/grade in terms of para 3.5 of the DoP&T's OM dated 3.7.1986. The said Clause 3.5 of the OM dated 3.7.1986 is set out below:-

"3.5 In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption."

12. It was further contended by the Learned Senior Counsel for the petitioners that if the directions of the CAT are implemented, it would also disturb the inter se seniority between the direct recruits and the promotees. In the impugned seniority list, direct recruits and the promotees for the vacancies have been interspersed and the promotees have not challenged the same. Therefore, in terms of the impugned order of the CAT even the said interspersing between the promotees and the direct recruits would go and the petitioners would become junior to the promotees.

13. The official respondents, represented by Mr. Gaurang Kanth, Advocate, have supported the case of the petitioners. Mr. Kanth has placed reliance on para 3.3 of the OM dated 3.7.1986 and defends the OM dated 4th March, 2014, in terms of which the official respondents have correctly drawn the seniority list.

14. Per contra, Mr. Harpreet Singh, learned counsel for the private respondents submits that the petitioners have wrongly stated that the private respondents are transferees. In reality, the said transferees are also direct recruits of the year 2011 and therefore have a right to be interspersed with the promotees of 2015. He further submits that the private respondents were placed at the bottom of the promotees and the direct recruits of 2014. Prior to the cadre re-structuring, the number of vacancies available for Inspectors in direct recruitment quota was only 12. Only after cadre re-structuring in October, 2014, the vacancies became 561. So, cadre re-structuring benefitted petitioners also inasmuch as posts for direct recruits increased. Requisitions to fill in direct recruitment vacancy were sent to

SSC only after they had joined Delhi Zone. It was contended that the N.R. Parmar judgment (supra) was not applicable because the said judgment dealt with seniority between direct recruits and promotees, whereas the controversy in the present case relates to seniority between two different categories of direct recruits, inasmuch as the private respondents are also direct recruits and this fact has been noted in para 6 of the impugned order. He further submitted that when the private respondents joined the cadre, petitioners were not even borne in the cadre. He submits that para 3.3 of the OM dated 3.7.1986, is not relevant as same applies only when an employee is appointed by transfer in accordance with provisions of RRs providing for such transfer in the event of non-availability of suitable candidate by direct recruitment or promotion, which is not the case here. He further states that the seniority position was not settled when the K. Meghachandra Singh judgment (supra) was delivered, as the private respondents had filed objections against the seniority list of 15th March, 2018 and further had challenged the same before the CAT before the K. Meghachandra Singh judgment (supra) was delivered by the Hon'ble Supreme Court. Therefore, it is wrong to state that the seniority position was settled.

15. In rejoinder, it has been submitted on behalf of the petitioners that (i) private respondents may be direct recruits, but not for the purposes of Delhi Commissionerate; (ii) promotees and direct recruits sink and sail together and therefore, cannot be separated in the seniority list; (iii) the petitioners who were borne elsewhere have to come after the promotees and the direct recruits and cannot be sandwiched between them; (iv) the judgment in K. Meghachandra Singh (supra) protected the inter se seniority based on N.R. Parmar (supra); (v) when the petitioners applied for transfer, there were no posts available under the Delhi Commissionerate; and, (vi) CAT did not examine the aspect of promotees being benefitted at the expense of the petitioners.

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 following paragraphs from the judgment in K. Meghachandra Singh (supra) may be referred to:-

"37. When we carefully read the judgment in N.R.Parmar, it appears to us that the referred OMs (dated 7-2-1986 and 3-7-1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OMs had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process. But surprisingly, the judgment while referring to the illustration given in the OM in fact overlooks the effect of the said illustration. According to us, the illustration extracted in N.R. Parmar itself, makes it clear that the vacancies which were intended for direct recruitment in a particular year (1986) which were filled in the next year (1987) could be taken into consideration only in the subsequent year's seniority list but not in the seniority list of 1986. In fact, this was indicated in the two OMs dated 7-2-1986 and 3-7-1986 and that is why the Government issued the subsequent OM on 3-3-2008 by way of clarification of the two earlier OMs.

38. At this stage, we must also emphasise that the Court in N.R. Parmar need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between the initiation of process and appointment. Such observation is fallacious inasmuch as none can be identified as being a selected candidate on the date when the process of recruitment had commenced. On that day, a body of persons aspiring to be appointed to the vacancy intended for direct recruits was not in existence. The persons who might respond to an advertisement cannot have any service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the applicant morphs into a selected candidate and, therefore, unnecessary observation was made in N.R. Parmar to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in Shankarsan Dash v. Union of India, where it was held that even upon empanelment, an appointee does not acquire any right.

39. The judgment in N.R. Parmar 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 had incorrectly distinguished the long-standing seniority determination principles, propounded in, inter alia, Jagdish Ch. Patnaik, Suraj Parkash Gupta v. State of J&K and Pawan Pratap Singh v. Reevan Singh. These three judgments and several others with like enunciation on the law for determination of seniority 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 Jagdish Ch. Patnaik and consequently we disapprove the norms on assessment of inter se seniority, suggested in N.R. Parmar. 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."

17. From a reading of the above passages, the dicta of the Hon'ble Supreme Court that emerges, can be summarized, as below:-

(i) OMs dated 07.02.1986 and 03.07.1986 were not properly construed in the N.R. Parmar (supra) judgment. The said OMs made it clear that seniority of direct recruits had to be fixed from the date of appointment and not from the date of initiation of recruitment process;

(ii) Persons aspiring to be appointed to a vacant post do not have any vested right. Only upon completion of the selection process, a candidate becomes a selected candidate and therefore, the finding in N.R. Parmar (supra) that the selected candidate cannot be blamed for administrative delay, was not correct;

(iii) N.R. Parmar (supra) has incorrectly distinguished the longstanding seniority determination principles propounded in the following cases:-

(a) Jagdish Ch. Patnaik Vs. State of Orissa, (1998) 4 SCC 456;

(b) Suraj Prakash Gupta Vs. State of J&K, (2000) 7 SCC 561; and,

(c) Pawan Pratap Singh Vs. Reevan Singh, (2011) 3 SCC 267

(iv) In service jurisprudence, seniority cannot be claimed from the date when the incumbent is yet to be borne in the cadre and therefore, norms on assessment of inter se seniority, suggested in N.R. Parmar (supra) case were disapproved;

(v) Decision in N.R. Parmar (supra) case is overruled, however the decision will not affect the inter se seniority already based on N.R. Parmar (supra) case and the same is protected. Decision will apply prospectively.

18. Therefore, in our view CAT has correctly applied the dicta in K. Meghachandra Singh (supra) case in the present case and has proceeded to quash the seniority list to the extent it placed the petitioners above the private respondents. The fact that the CAT decision would impact the inter se seniority between the promotees and direct recruits (petitioners), is not the subject matter of the present petition, and therefore, need not be examined. It is also an admitted position that in the present case requisitions for the appointment of the petitioners were sent to SSC the recruiting authority on 11th February, 2015, after the private respondents had already joined the Delhi Commissionerate. Therefore, even in terms of OM dated 4th March, 2014, the petitioners cannot be placed above the private respondents.

19. Therefore, we see no merit in the present petition.

Dismissed.