IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.04.2017
Delivered on : 25.04.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.Nos.5611 to 5613 of 2017,
WMP Nos.5978 to 5982 of 2017

1.Union of India Rep.by
The Revenue Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi - 110 001.

2.The Chairman
Central Board of Excise and Customs,
North Block, New Delhi - 110 001.

3.The Chief Commissioner of Central Excise,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ...Petitioners 1 to 3 in all the WPs

4.The Commissioner of Customs and Central Excise,
6/7, ATD Street, Race Course Road,
Coimbatore - 641 018. ...4th Petitioner in W.P.No.5611 & 5th Petitioner in 5613/2017

5.The Commissioner of Customs and Central Excise (Audit)
6/7, ATD Street, Race Course Road,
Coimbatore - 641 018. ...4th Petitioner in W.P.No.5613/2017

vs.

1.P.Bharathan
2.R.Mahendran
3.S.H.Karthikeyan
4.R.Vijaya Kumar
5.K.Ramesh
6.K.Natesh
7.M.A.Jithendra

8.All India Association of Central Excise
Gazetted Executive Officer Association,
Rep. by its President R.Chandramouli
No.20, Ramanujam Street, T.Nagar,
Chennai - 600 017.
9.N.Balaji
10.Venugopalan Nair
11.Indra Bahadur Mishra
12.Romi N.Pynadan ...Respondents in W.P.No.5611/2017

1.S.Rajagopalan
2.K.Chandrasekaran ...Respondents in W.P.No.5612/2017

1.S.Thangavelu
2.K.Sridhar
3.P.K.Gopalakrishnan ...Respondents in W.P.No.5613/2017

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of Certiorari, to call for the records of the Tribunal in O.A.Nos.310/01237/2016, 310/01454/2015 and 310/01536/2016 by common order dated 10.01.2017 and quash the same.

For Petitioner : Mr.G.Rajagopal
Additional Solicitor General
Assisted by Mr.T.R.Senthil Kumar

For Respondents: Mr.V.Prakash, Senior Counsel
for M/s.Akbar Row for R1 to R3
in W.P.Nos.5611 and 5613/2017

Mr.Vijayanarayanan, Senior Counsel
for M/s.Menon Karthik
for R1 and R2 in W.P.No.5612/2017

COMMON ORDER

K.K. SASIDHARAN,J.

Introductory:

The Hon'ble Minister for Law and Justice, Government of India, called upon the Government Departments not to challenge the orders passed by Courts and Tribunals before the Appellate Courts in a routine manner to prevent the Himalayan arrears. This is a classic case as to how such instruction is flouted by a Department by implementing the decision of the Hon'ble Supreme Court in Delhi and Mumbai Commissionerate, but denying similar benefits to the employees of Chennai Commissionerate.

2. The private respondents (hereinafter referred to as "Employees") in the writ petitions were appointed as Inspectors in the Department of Customs and Central Excise, through competitive examination conducted by the Staff Selection Commission. The Department finalised the seniority list in the cadre of Inspector of Excise. The employees were thereafter promoted as Superintendent of Central Excise based on seniority.

3. While so, the Hon'ble Supreme Court delivered a judgment in Union of India v. N.R.Parmar and Others [(2012) 13 SCC 340] holding that seniority should be given from the date of initiation of recruitment process. Since the judgment was not implemented by the Commissionerate at Chennai, the employees filed Original Applications before the Central Administrative Tribunal. The Tribunal found that the Commissionerate at Mumbai and Delhi implemented the judgment of the Supreme Court in N.R.Parmar by revising the seniority.

Background Facts:

4. The Central Administrative Tribunal therefore, directed the petitioners to follow the judgment rendered by the Hon'ble Supreme Court in Union of India v. N.R.Parmar and Others [(2012) 13 SCC 340] and revise the seniority taking into account the date of initiation of recruitment process and the relevant recruitment year. The order is under challenge at the instance of Union of India.

Submissions:

5. The learned Additional Solicitor General contended that the Central Administrative Tribunal ought to have dismissed the Original Applications on the ground of delay and laches. According to the learned Additional Solicitor General, seniority was fixed long back, taking into account the date of appointment. It is true that in N.R.Parmar, the Supreme Court held that date of initiation of recruitment process should be taken for fixing the seniority. According to the learned Additional Solicitor General, seniority already determined in accordance with the existing memorandum would not be re-opened and the same was indicated in the Circular issued by the Department of Personnel and Training. The learned Additional Solicitor General contended that in case, the seniority is revised at this point of time, it would be a long drawn process.

6. The learned Senior Counsel appearing for respondents 1 to 3 in W.P.Nos.5611 and 5613 of 2017, contended that the Commissionerate of Central Excise at Delhi has already implemented the direction of the Supreme Court in N.R.Parmar by redrawing the seniority. According to the learned Senior Counsel, only the Commissionerate at Chennai, dragged its employees to the midst of litigation, notwithstanding the law

declared by the Hon'ble Supreme Court in N.R.Parmar.

7. The learned Senior Counsel appearing for respondents 1 and 2 in W.P.No.5612 of 2017 contended that even if the earlier Officer Memorandum is taken note of, still, the employees are entitled for revision of seniority. According to the learned Senior Counsel, the recruitment process initiated prior to the Office Memorandum dated 7 February, 1986, should also abide by the decision of the Hon'ble Supreme Court in N.R.Parmar. It was further contended that the employees of Chennai Commissionerate were treated differently without giving them the benefits of the judgment in N.R.Parmar.

Discussion:

8. The employees concerned in these three writ petitions were appointed as Inspectors in the Department of Customs and Central Excise through Staff Selection Commission. The Department finalised the seniority list in the cadre of Inspector of Central Excise, as on 1 January 1998. Subsequently, the Inspectors were given promotion to the post of Superintendent of Central Excise.

9.The Employees taking into account the law declared by the Hon'ble Supreme Court in N.R.Parmar, submitted series of representations to the Chief Commissioner of Central Excise, Chennai to revise their seniority. The representations were rejected on the ground that the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, in its Office Memorandum, dated 4 March 2014, indicated that the cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in the Office Memorandum, dated 7.2.1986 and 3.7.1986 would not be reopened.

10. The Supreme Court in N.R.Parmar held that seniority of direct recruits would commence from the date of initiation of recruitment process when the vacancies were notified by the department to the recruitment agency. The Supreme Court interpreted the term "availability' in the Office Memorandum dated 3 July 1986 and observed that direct recruits should join within the recruitment year itself in the vacancies of that year and the date of appointment would not be a relevant factor for determining the seniority. In short, it would suffice if the action has been initiated for direct recruit vacancies within the recruitment year, in which vacancies have become available.

11. The Department of Personnel and Training, issued Office Memorandum dated 4 March 2014 implementing the judgment in N.R.Parmar. The memorandum made it clear that initiation of recruitment process against a vacancy year would be the date of

sending of requisition for filling up of vacancies to the recruitment 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 DPC to fill up the vacancies through promotion. It was further stated that 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 modes as well.

12. The Department of Personnel and Training made it clear that the seniority already settled with reference to Office Memorandum, dated 7.2.1986 and 3.7.1986 would not be reopened. The representation submitted by the employees was rejected only on the ground that in view of the circular, it would not be possible to re-open the seniority already settled, with reference to the applicable interpretation of the term "availability".

13. It is a matter of record that in spite of the Office Memorandum dated 4.3.2014, the Central Excise Commissionerate of Delhi, Mumbai and Shillong, have amended the seniority list of Inspectors with retrospective effect.

14. We have perused the orders passed by the Commissionerate of Delhi and Mumbai revising the seniority. We have also perused the related orders passed by the Principal Bench of the Central Administrative Tribunal, dated 20.03.2007 in O.A.No.2093 of 2005, the order dated 6.5.2014 in O.A.Nos.692 and 741 of 2013 and the related judgment of the Mumbai High Court dated 22.09.2014 in W.P.No.6784 of 2014.

15. The issue raised by the employees in the original applications and relevant to the subject writ petitions, was the very same issue before the Mumbai Bench of the Central Administrative Tribunal in O.A.No.741 of 2013. The Tribunal quashed the combined seniority list and directed the Commissionerate to prepare a fresh seniority list of Inspectors appointed by direct recruitment and promotees.

16. The matter was taken up by the Commissionerate of Customs, Mumbai before the Bombay High Court in W.P.Nos.6784 and 6785 of 2014. Before the High Court, it was represented that the Commissionerate has already implemented the order passed by the Central Administrative Tribunal. The writ petitions were accordingly disposed of by the Bombay High Court by order dated 22 September 2014.

17. The Commissionerate at Delhi revised the seniority list without dragging its employees to the midst of litigation. The proceedings of the Chief Commissioner of Central Excise, Delhi

indicated that the seniority has been re-fixed in accordance with the judgment in N.R.Parmar. The relevant portion is extracted below:-

> " (ii) For Direct Recruit Inspectors of Delhi Zone selected through SSC Examination, 1984 and 1985, the recruitment process had been initiated prior to issuance of DoP&T's OM dated 07.02.1986; so as per para 7 of the said OM, the seniority of these Inspectors has been fixed in accordance with the principle in force prior to the issuance of the OM i.e, as per principles contained in DoP&T's OM dated 22.12.1959. For Direct recruit Inspectors of Delhi Zone selected through SSC Examination of 1986 onwards, the seniority has been fixed in accordance with the provisions of DoP&T's OM dt.07.02.1986."

18. It is therefore clear that the Commissionerate at Mumbai and Delhi followed the law laid down by the Supreme Court in N.R.Parmar and revised the seniority.

19. The Commissionerate at Chennai is challenging the direction given by the Tribunal for revision of seniority primarily on the ground of delay and laches.

20. The Commissionerate of Central Excise at Delhi revised the seniority even, without a direction given by the Central Administrative Tribunal or High Court. The question of delay and laches is raised only when proceedings were initiated to revise the seniority in accordance with the law laid down in N.R.Parmar. The same principle is not made applicable to other employees to whom benefits were conferred without even filing original proceedings before the Tribunal. It is too late on the part of the petitioners to contend that the request to revise the seniority should be rejected on the ground of delay and laches.

21. The Central Board of Excise and Customs is the Apex body and the Commissionerates are all working under the said body. It would not be proper for the Central Board of Excise and Customs, to challenge the order passed by the Tribunal extending the benefits to the employees of the Chennai Commissionerate, after implementing similar orders passed by the Central Administrative Tribunal in the case of employees of Mumbai Commissionerate and giving revised seniority in accordance with the judgment in N.R.Parmar in the case of employees of Delhi Commissionerate even without an order passed by the Tribunal or High Court. The Central Board of Excise and Customs must adopt a policy, uniform to all its employees irrespective of the Commissionerate. There cannot be a different policy, one for the Commissionerate at

Delhi and another for Chennai. The discriminatory attitude shown by the Central Board of Excise and Customs made the employees to approach the Central Administrative Tribunal and that too to implement the law declared by the Hon'ble Supreme Court. The initiation of writ petitions is an exercise in futility. There is absolutely no merit in any of the contentions taken by the writ petitioners.

22. In the up shot, we dismiss the writ petitions without any liability to pay costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Revenue Secretary
   Union of India
   Mininstry of Finance
   Dept of Revenue
   North Block, New Delhi 110 001.

2. The Chairman,
   Central board of Excise & Customs
   North Block, New Delhi 110 001

3. The Chief Commissioner of Central Excise
   26/1 Mahatma Gandhi Road
   Nungambakkam
   Chennai 34

4. The Commissioner of Customs & Central Excise
   6/7 ATD Street, Race Course Road
   Coimbatore 641 018

5. The Commissioner of Customs & Central Excise(Audit)
   6/7 ATD Street, Race Course Road
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+1 CC to M/s. Menon Karthik, Advocate sr 25430
+2 Ccs to M/s.Akbar Row , sr 25168
+3 CC to Mr.T.R. Senthil Kumar sr 24764

W.P.Nos.5611 to 5613 of 2017

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