IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17935 of 2017

1. Prasun Kumar Jha, S/o Arbind Kumar Jha, resident of Flat No-501, Ganga Darshan Apartment, Chanakya Vihar Colony, P.S.- Barari, District- Bhagalpur- 812003 at present posted as Inspector of Income Tax, in Office of Tax Recovery Officer, Kachari Chouk, Bhagalpur- 812001.
2. Rajiv Kumar, S/o Ramakant Dubey, Magadh Colony, Chandauti More, Behind Transmission I.B. (on Nala), P.S.- Gaya, District- Gaya- 823001 at present posted as Inspector of Income Tax in Office of Income Tax Officer, Ward- 3 (1), Ranchi.
3. Gaurav Kumar, S/o Arun Mahaseth, Vill- Pandasarai, P.S.- Laheriasarai, District- Darbhanga, Bihar- 846001, Inspector of Income Tax, at present posted in Office of ITO (TDS), Darbhanga, Aayakar Bhawan, Opposite- Old Bus Stand, Lalbagh, Darbhanga- 846004.
4. Satyendra Kumar, S/o Janak Nandan Prasad, resident of Village- Chainpur, Near Jogapur, PO & PS- Sherghati, Dist- Gaya, Bihar- 824211, at present posted as Inspector of Income Tax posted in Office of Assistant Commissioner of Income Tax, Circle- 1, Ranchi.
5. Vivek, S/o Late Ram Niwas Sinha, Singh Sadan, Pokharipir, Sadpura, PO- Ramna, District- Muzaffarpur- 842002, Bihar at present posted as Inspector of Income Tax in Office of Pr. Commissioner of Income Tax, Bela, Kothi Post Office, MIC, Muzaffarpur.
6. Ajay Kumar, S/o Late Yadunandna Prasad. Krishna Kutir, Azad Path, PS- Chandmari Road, District- Patna- 800020, Bihar at present posted as Inspector of Income Tax in Office of the Deputy Commissioner of Income Tax, C.R. Building, Ranchi.
7. S.M. Ashraf Ali, S/o Ashfaque Ahmad, 3rd Floor, ALA Complex, Brahpura Road, Near Madina Masjirl, PS- Bhikhanpur, District- Bhagalpur, Bihar, at present posted as Inspector of Income Tax, in Office of Income Tax Officer, Ward- 1 (1), Bhagalpur, R.N. Plaza, Kachari Chauk, Bhagalpur.
8. Abhishek Kumar, S/o Chandra Mohan Prasad Sinha, Type- III/ 14, Income Tax Colony, P.S.- Lalpur, District- Ranchi- 834001, at present posted as Inspector, in Office of Deputy Director of Incme Tax (Inv), Ranchi.
9. Deepak Kumar, S/o Chandrika Prasad, Vill+ PO- Jharana Saren, PS- Nimchak Bathani, District- Gaya, Bihar- 843311, at present posted as Inspector of Income Tax in Office of Income Tax Officer (TDS), Bokaro.
10. Pankaj Kuamr Jha, S/o- Vijay Kumar Jha, Vill- Dharhara, PO- Ganpatganj, District- Supaul, Bihar- 852109 at present posted as Inspector of Income Tax, in Office of Assistant Commissioner of Income Tax, Circle- 2, Lok Nayak Jay Prakash Bhawan, Dak Bunglow Road, Patna- 800001.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, Department of Revenue, New Delhi- 110001.
2. The Chairman, Central Board of Direct Tax, Ministry of Finance, Ministry of Finance, Government of India, Department of Revenue, New Delhi- 110001.
3. The Member of Income Tax (V & L), Ministry of Finance, Government of India, Department of Revenue, New Delhi- 110001.
4. The Director of Income Tax (HRD), Central Board of Direct Tax, ICADR Building, Plot No- 6, Basant Kung Institutional Area, Phase- II, Ministry of Finance, Government of India, Department of Revenue, New Delhi- 110001.
5. The Principal Chief Commissioner of Income Tax (CCA), Bihar & Jharkhand, C.R. Building, Birchand Patel Path, Patna- 800001.
6. Anish Chandra Satya, son of Late Satish Chandra Verma, Inspector of Income Tax, Office of the Assistant Commissioner of Income Tax, Circle- 4, Patna- 800 001 (Bihar).
7. Prabhu Nath Singh, son of Late Shiv Jatan Singh, Inspector of Income Tax, Office of the Income Tax Oficer, Ranchi.
8. Kundan Kumar, son of Late J.P. Gupta, Inspector of Income Tax, Office of the Joint Commissioner, Income Tax, Hazaribagh.
9. Gopal Kumar Pandey, son of Sri Sirdhar Pandey, Inspector of Income Tax, Investigation Wing, Jamshedpur.
10. Pawan Kumar Singh, son of Late Deep Narayan Singh, Inspector of Income Tax, Ward No. 3 [2], Purnea [Bihar].
11. Rajesh Kumar Choudhary, son of Sri B.B. Choudhary, Inspector of Income Tax, Office of the Income Tax Oficer, Jamshedpur.
12. Sunanda Kumar, wife of Sri Bimal Kumar, Inspector of Income Tax, Office of the CIT/ Exemption, Patna.
13. Sanjay Kumar Sinha, son of Late C.P. Verma, Inspector of Income Tax, Office of the Principal Chief Commissioner of Income Tax, Patna- 800 001 (Bihar).
14. Kundan Kumar Pandey, son of Sri Nirmal Kumar Pandey, Inspector of Income Tax, Office of the Income Tax Officer, Ranchi.
15. Om Prakash Madhukar, son of Sri Y.B. Paswan, Inspector of Income Tax, Intelligence and Criminal Investigation, Bhagalpur (Bihar).
16. Satish Chandra Roy, son of Late P.C. Roy, Inspector of Income Tax, Muzaffarpur (Bihar).

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha
Advocate
Mr. Bal Krishna Mishra
Advocate
Mr. Pranay Kumar Jha
Advocate

For the Union of India : Mr. S. D. Sanjay
Addl. S. G.
Mr. Akshay Bahadur Mathur
CGC

For the Respondents 4-16: Mr. M. P. Dixit
Advocate
Mr. S. K. Dixit
Advocate
Mr. Sanjay Kumar Choubey

Advocate
Ms. Swastika
Advocate
Mr. Sunil Kumar
Advocate
Mr. Shailendra Kumar
Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 06-02-2018

Two O.A.s, numbered as 223 of 2017 and 356 of 2017, came to be filed before the Central Administrative Tribunal, Patna Bench, Patna by a set of promotee Income Tax Inspectors of the recruitment year 2009-2010, whose seniority came to be upset by the direct recruit Inspectors of Income Tax by a seniority list, dated 29.07.2016. The seniority list, dated 29.07.2016, became the reason for filing the two O.A.s, wherein the following reliefs were prayed for:

> ***"8.1 That your Lordships may graciously be pleased to quash and set aside the impugned seniority list dated 29.07.2016 as contained in Annexure – A/3 whereunder the respondents no. 6 to 15 have been placed above the applicant against the Recruitment Year 2009-2010 instead of in the Recruitment Year 2010-2011 as shown in annexure – A/1 & A/2.***
>
> ***8.2 That your Lordships may be further be pleased to hold and declare the seniority***

> ***list dated 05/06.11.2015 and 18.01.2016 as contained in annexure – A/1 & A/2 are legal and valid which requires no interference.***
>
> ***8.3 That your Lordships may further be pleased to direct / command the respondents to grant all consequential benefits in favour of the applicant without any further delay.***
>
> ***8.4 Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant."***

Since the O.A.s came to be allowed, restoring the seniority of the promotee Income Tax Inspectors for the reasons provided in the impugned order, dated 10.10.2017, the direct recruits are before the High Court, assailing the order, dated 10.10.2017, of the CAT Bench, Patna.

There are primarily two submissions, which have been made on behalf of the petitioners. First, that a factual error has been committed by the Central Administrative Tribunal by recording a finding that the examination for the recruitment year 2009-2010 got canceled and, therefore, no examination for recruitment for the said year was held. There was only one examination, which was pertaining to the year 2010-2011.

During the course of arguments, counsel for the respondents as well as the Union of India agreed that the cancellation of the examination for the year 2009-2010 is not factually correct. Their stand is that only one common examination was held by the Staff

Selection Commission for the year 2010. Counsel for the private-respondent tried to expand and explain the 2010 examination by stating that since there was only one examination held in the year 2010, therefore, the vacancy years / the recruitment years was 2010-2011 and it cannot be said to be an examination for recruitment for the year 2009-2010. This aspect of the matter will be further dealt with in the subsequent part of the order.

The second submission made on behalf of the petitioners is that the Tribunal has totally misread the judgement rendered by the Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. N. R. Parmar & Ors., reported in (2012) 13 SCC 340***.

A very firm stand has been taken on behalf of the petitioners that since the process of recruitment had been initiated during the recruitment year itself, i.e., 2009-2010, mere delay in the conduct of the examination or even declaration of result, in no manner alters the year of recruitment, especially when the Central Board of Direct Taxes sent requisition for 482 vacancies for the year 2009-2010 on 21.01.2010 to the Staff Selection Commission (Annexure – 5-A to the writ application), which included 10 vacancies for the Patna CCA Office, which has become the bone of contention. The said requisition for the year 2009-2010 was sent within the recruitment year, which ends on 31st of March of the year in question.

Not only this, on 30th of January, 2010, the Staff Selection Commission issued an advertisement for the reported vacancies, dated 21.01.2010, which forms part of the writ application as Annexure – 6. On the above factual position and taking cue from the Apex Court decision in N.R. Parmar's case (supra), the argument is that merely because the Staff Selection Commission held the preliminary examination on 16.05.2010 and the mains examination on 01.08.2010, followed by declaration of result on 07.01.2011, it will make no difference, so far as the recruitment year in question is concerned.

Court's attention has been drawn to the significant paragraph of N.R. Parmar's case (supra), which is paragraph 34.1 and 34.2, which is reproduced hereinbelow:

> ***"34.1. If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held), and the selected candidates joined in a further later year (than the one in which the result was declared), the selected candidates will be entitled to be assigned seniority, with***

reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion (expressed in the OM dated 02.02.2000) is, if the process of direct recruitment is initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection.

34.2. The words "initiation of action for recruitment", and the words "initiation of recruitment process", were explained to mean, the date of sending the requisition to the recruiting authority."

The argument further expanded on behalf of the petitioners is that merely because some more vacancies came to be notified subsequently, which arose during the period, the exercise for recruitment was being carried out by the Staff Selection Commission, it will have no reflection on the claim of these petitioners, the direct recruits, because the vacancies for the year 2009-2010 was sent on 21.01.2010, which is within the recruitment year and even an advertisement was issued by the Staff Selection Commission on 30th of January, 2010, indicating the vacancy position as per requisition, dated 21.01.2010, which are before 31.03.2010, the date the recruitment year ends.

If this be so, then on the basis of conduct and declaration of results by including more vacancies, which may have arisen across the county, does not in any manner cast any doubt or raises any question mark with regard to the recruitment for the year 2009-2010.

N.R. Parmar's case has made this position very clear in paragraph 34.1 and 34.2 of the decision. The ratio enunciated in the above-noted paragraphs are further fortified and expand in the concluding paragraphs of the judgement, which are paragraph 52 and 53. Since those paragraphs have significance for the adjudication of the present case, they too are reproduced hereinbelow:

> ***"52. Having interpreted the effect of the OMs dated 07.02.1986 and 03.07.1986 (in paras 25 to 29 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by 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 07.02.1986, and the compilation of the instructions pertaining to seniority in the OM dated 03.07.1986, 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 inter-spaced with promotees of the same recruitment year.

53. 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."

It is further urged on behalf of the petitioners that the Central Administrative Tribunal somehow got carried away by the arguments of the promottee Inspectors that since the examination was held in the later part of the year 2010 and results declared thereafter, therefore, the direct recruits need to be treated as having been considered and recommended for the year 2010-2011 and not 2009-2010. The stand taken by the applicants before the CAT, who are respondents now, was that nobody can be appointed or given benefit of seniority even before being borne on the cadre. The logic of the respondents is that since the direct recruits results were declared in the year 2011 after the recruitment year, therefore, they cannot be treated to have been recommended or appointed in the year 2009-2010. Reading of paragraph 17 of the order of the Tribunal gives reflection on the mind set, which prevailed upon the Tribunal to interfere with the seniority list in favour of the promotees.

Based on the ratio of the decision of N.R. Parmar's case (supra), the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Government of India issued an office memorandum, dated 4th of March, 2014. The said OM is Annexure – 11 to the writ application. The Court gets tempted to reproduce the relevant part of the OM, because the Ministry of Personnel has in a very pointed manner explained the essence of the N.R. Parmar's judgement. Paragraph 5 of the OM, dated 04.03.2014 is reproduced for ready reference.

> ***"5. The matter has been examined in pursuance of Hon'ble Supreme Court Judgement on 27.11.2012, in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar vs. UOI & 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 promotees would be as under:

a) DoPT OM No. 20011/1/2006-Estt. (D) dated 03.03.2008 is treated as non-existent/withdrawn ab 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 07.02.1986 / 03.07.1986, 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. (emphasis supplied)

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 Judgement in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar Vs. UOI & Ors.

I) The cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in DoPT O.M. dated 07.02.1986/03.07.1986 may not be reopened."

After having heard learned counsel for the petitioners, the private-respondents, i.e., the promotee officers, as well as the learned Additional Solicitor General, representing the Union of India, so far as the factual aspect is concerned, there does not seem to be much of confusion that there was only an examination held by Staff Selection Commission that was the examination in the year 2010. But it is also established that there was no cancellation of the examination for the recruitment year 2009-2010. No doubt, for certain reasons, the examination for the year 2009-2010 could not be held in the recruitment year, i.e., till 31st of March of the year, but that makes no difference so far as the recruitment year is concerned and in this case 2009-2010, because the requisition for the 10 vacancies for the Patna region was already sent on 21.01.2010 and even and advertisement in this regard was issued on 30th of January, 2010.

If that is so, then in terms of N.R. Parmar's case (supra), it makes no difference as to when the examination was held or when the result was declared.

We are satisfied that the process of recruitment by sending the requisition for filling up the posts for the year 2009-2010 was initiated in the recruitment year 2009-2010 and mere delay in conduct of the examination or declaration of results cannot wish away or wipe off the recruitment year 2009-2010. It makes no difference as to when the examination was held or when the results were declared and recommendation made. It has to relate back to the recruitment year 2009-2010, especially when the requisition was sent on 21.01.2010 and even the advertisement was issued by the Staff Selection Commission on 30.01.2010.

For the purposes of records, it is further certified that merely because more vacancies were notified subsequently and the Staff Selection Commission conducted the examination in the second half of the year 2010, the recruitment of the direct recruits, will not become year 2010-2011, but will remain recruits of the year 2009-2010.

To sum up, the Tribunal seems to be in error and this error was caused because they somehow conjured that the examination for the recruitment year 2009-2010 was canceled and that examination was held for the year 2010-2011. A fact not established either from records or pleadings. Because of the above factual finding, the Tribunal made further mistake by reaching a conclusion that no process for initiation of recruitment for the year 2009-2010 was taken and since examination was held in the second half of 2010, therefore, the direct recruits cannot be given the benefit of appointment or seniority for the year 2009-2010.

We are sorry to record that even though in paragraph 17, the Tribunal has taken note of the essence of N.R. Parmar’s case (supra), especially what had been declared by the Hon'ble Apex Court in paragraph 34.1 and 34.2, but still the Tribunal proceeded on a wrong factual premise and reached a totally erroneous conclusion.

There was no occasion, therefore, to interfere with the seniority list dated 29.07.2016, where seniority was given to the direct recruits of 2009-2010 and which was the correct decision to take by the department, keeping in mind the N.R. Parmar’s case (supra), the Office Memorandum, dated 04.03.2014 and even the departmental clarification issued earlier. But, obviously, effort was made to misrepresent the facts and then take advantage of the same, especially by the promotee officers.

The writ application, therefore, stands allowed. The impugned order, dated 10.10.2017, passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 223 of 2017 and 356 of 2017, stands quashed. Consequence thereof, the seniority list, dated 29.07.2016, stands restored.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	06.02.2018
Transmission Date	