

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

- (1) ORIGINAL APPLICATION NO. 291/243/2019,**
(2) ORIGINAL APPLICATION NO. 291/378/2019
WITH
MISC. APPLICATION NO. 291/103/2020,
(3) ORIGINAL APPLICATION NO. 291/379/2019
WITH
MISC. APPLICATION NO. 291/104/2020
AND
(4) ORIGINAL APPLICATION NO. 291/415/2019
WITH
MISC. APPLICATION NO. 291/102/2020

Order reserved on: 12.03.2020

DATE OF ORDER: 29.05.2020

CORAM

HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MR. A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER

(1) OA No. 291/243/2019

1. Kailash Chand Meena S/o Late Shri Ramdhan Meena, Aged-42 years, By Caste-Meena, R/o 79/III, Income Tax Colony, Calgiri Road, Malviya Nagar, Jaipur. At present posted as Stenographer Grade-I in Office of Dy. CIT, Circle-6, Jaipur.
2. Trilok Lunia S/o Late Shri Ghasi Lal Verma, Aged-40 years, By caste-Balai, R/o C-11, Balai Basti, J.P. Colony, Tonk Phatak, Jaipur-302015. At present posted as Stenographer Grade-I in office of Dy. CIT, Central (Headquarters), Jaipur.
3. Lalit Mohan Meena S/o Shri Bansi Dhar Meena, Aged-40 years, By Caste-Meena, R/o 73/III, Income Tax Colony, Calgiri Road, Malviya Nagar, Jaipur. At present posted as Stenographer Grade-I, in office of Dy. CIT, Circle-1, Jaipur.
4. Prahlad Meena S/o Shri Babu Lal Meena, Aged-29 years, By caste-Mina, R/o 103/III, Income Tax Colony, Calgiri Road, Malviya Nagar, Jaipur. At present posted as Stenographer Grade-I, in office of Income Tax Officer, Ward No. 4(2), Jaipur.

5. Chetan Prakash Meena S/o Shri Ram Sahai Meena, Aged-43 years, by caste-Meena, R/o A-25, Behind Geejgarh House, Bais Godam, Jaipur. At present posted as Office Superintendent in the Office of Principal CIT-II, Jaipur.
6. Santosh Kumar Meena S/o Shri Ram Narayan Meena, Aged-35 years, by caste-Mina R/o Village Jaisingh Nagar, Post Chandawa Ji, Tehsil-Amer, Jaipur. A present posted as Office Superintendent in the Office of Principal CIT, Ajmer.
7. Denesh Kumar Meena S/o Shri Chiranji Lal Meena, Aged 39 years, by caste-Meena, R/o Plot No. 124, K-5-C Scheme, Khatipura, Jaipur. At present posted as Office Superintendent in the Office of Deputy CIT, Circle-1, Jaipur.
8. Prashant Kumar S/o Shri Pati Ram Meena, aged-42 years, by caste-Mina, R/o 45/III, Income Tax Colony, Calgiri Road, Malviya Nagar, Jaipur. At present posted as Office Superintendent in the office of ITO, Ward No. 6(3), Jaipur.
9. Yad Ram Verma S/o Shri Padam Chand Verma, Aged-38 years, by caste-Raiger, R/o A-486, Malviya Nagar, Jaipur. At present Posted as Senior Tax Assistant in the office of ITO Ward No. 2 Exemption, Jaipur.
10. Rajendra Kumar Gangwal S/o Ramji Lal Verma, Aged-41 years, by caste-Raiger, R/o C-363, Mahesh Nagar, Jaipur. At present posted as Stenographer Grade-I, at office of Additional CIT, Range-Chittor, Rajasthan.

....Applicants

Shri Punit Singhvi, counsel for applicants.

VERSUS

1. Union of India through its Principal Secretary, Department of Personnel and Training, Government of India, North Block, New Delhi.
2. Principal Chief Commissioner of Income Tax, Income Tax Department, Near Statue Circle, Jaipur.
3. Joint Chief Commissioner of Income Tax (Headquarters and TPS), Income Tax Department, Near Statue Circle, Jaipur.
4. Kishore Kumar Udhwani S/o Late Shri Pradeep Kumar Udhwani, Age-30 years, R/o Flat-501, Forest view Residency, Model Town, Jaipur, presently working as Income Tax Inspector in the office of ITO, Ward-2(3), Ajmer. M-9530400394. Group-C service.
5. Shashank Jain S/o Shri Kushal Chand Jain, aged about 31 years, R/o 50-A, Saraswati Nagar, Behind Hotel Lalit Jaipur, presently working as Income Tax Inspector in the office of ITO, Ward-2(2), Ajmer. M-8559873730. Group-C Service.

6. Rohit Kumar Sharma S/o Shri Shiv Kumar Sharma, Age 29 years, R/o 178, Income Tax Colony, Calgary Road, Malviya Nagar, Jaipur, presently working as Income Tax Inspector O/o DCIT (HQ), Pr. CCIT, Jaipur. Mobile No. 9530400232 Group C Service.
7. Mukesh Kumar Bansal S/o Shri Niranjana Lal Agarwal, Age 35 years, R/o 115, Janta Colony, Ajitgarh, Sikar, presently working as Income Tax Inspector O/o CCIT, Udaipur. M-9530400195. Group-C Service.
8. Chandan Kumar S/o Shri Aniruddh Prasad, Age 33 years, R/o 177/II, Income Tax Colony, Malviya Nagar, Jaipur, presently working as Income Tax Inspector O/o ITO, (T&J), Pr. CIT-1, Jaipur. M-9530401240. Group-C Service.
9. Jagdish Prasad Menaria S/o Shri Kalu Lal Menaria, Age 43 years, R/o Village Post Chirwa, Udaipur, presently working as Income Tax Inspector O/o ITO, Rajsamand. M-9530401372. Group-C Service.
10. Kamlesh Kumar Sharma S/o Shri Ram Narayan Sharma, Age 38 years R/o 43/3, Parasram Nagar, Dher Ke Balaji, Sikar Road, Jaipur, presently working as Income Tax Inspector O/o ITO Ward 2(1), Ajmer. M-9530401329. Group-C Service.
11. Shyam Singh Rathore S/o Shri Ashok Singh Rathore, Age 40 years R/o Plot No. 18, Umrao Vihar, Gokulpura, Jhotwara, Jaipur, presently working as Income Tax Inspector O/o DCIT, Central Circle, Ajmer. M-9530401092. Group-C Service.
12. Rajeev Roshan S/o Shri Prabhu Chand Sah, Age 36 years, R/o 3/II, Income Tax Colony, CAD Circle, Dadabari, Kota, presently working as Income Tax Inspector, O/o ITO, TDS, Kota. M-9530401457. Group-C Service.
13. Dinesh Kumar S/o Shri Mohan Lal, Age 33 years, R/o 60/116, Heera Path, Mansarovar, Jaipur, presently working as Income Tax Inspector O/o JCIT, Range Sikar, M-9530401804. Group-C Service.
14. Ashvini Motwani S/o Late Shri Mool Chand, Age 29 years, R/o House No. 2603A, Jaat Ke Kuwe Ka Rasta, 4th Cross, Chandpole Bazar, Jaipur, presently working as Income Tax Inspector O/o ACIT, Circle-2, Ajmer, M-9530401811. Group-C Service.
15. Devendra Singh S/o Shri Anand Singh, Age 31 years, R/o House No. 30, Ram Nagar, Bhatiyu Ka Jav, Bodiwala Bera, Mata Ka Than, Magra Punjala, Jodhpur, presently working as Income Tax Inspector O/o ACIT, Circle Pali, M-9530401844. Group-C Service.
16. Jabra Ram S/o Shri Hasti Mal, Age 35 years, R/o House No. 142, Roop Nagar, Street No. 10, BJS Colony, Paota 'C' Road, Jodhpur, presently working as Income Tax Inspector O/o ITO Ward-4, Pali, M-9530401837. Group-C Service.

....Respondents

Shri Rajendra Vaish, ACGSC and

Shri Gaurav Jain, Advocate, for respondents No. 1 to 3, assisted by

Shri T.R. Murlidharan, Income Tax Officer.

Shri Shobhit Tiwari, counsel for respondents No. 4 to 16.

(2) OA No. 291/378/2019 with MA No. 291/103/2020

1. Ram Kumar Gupta S/o Shri Manohar Lal Gupta, aged about 51 years, R/o B-21, Dev Nagar, Near Arihant Diagnostic Centre, Tonk Road, Jaipur, presently working as Income Tax Officer in the office of ITO (OSD) O/o PCIT-2, Jaipur, M-9530400448. Group-B Service.
2. Kalu Ram Lakhera S/o Late Shri Rameshwar Lal, Age 54 years, R/o 264, Engineers Colony, Sirsi Road, Jaipur, presently working as ITO (OSD) O/o CIT (TDS), Jaipur. M-9530400525. Group-B Service.
3. Nand Lal Jhamnani S/o Shri Passumal Jhamnani, Age 52 years, R/o 169, Sector-14, J Block, Hiran Magri, Udaipur, presently working as ITO (OSD) O/o PCIT, Udaipur. M-9530400557. Group-B Service.
4. Chela Ram Tulsani S/o Late Shri Shankar Das, Age 52 years, R/o C-18, Jhulelal Colony, Ajay Nagar, Ajmer, presently working ITO (OSD), O/o PCIT, Ajmer. M-9530400561. Group-B Service.
5. Moti Lal Verma S/o Shri Kanhaiya Lal, Age 48 years, R/o J-1, Model Town, UIT Road, Sri Ganganagar, presently working as ITO (OSD), Hanumangarh, M-9530400549. Group-B Service.
6. Anil Kumar Bhambhani S/o Shri Laxman Das Bhambhani, Age 49 years, R/o 94/96 Madhubhan, Mansarovar, Near Agarwal Farm, Maharana Pratap Park, Jaipur-302020, presently working as ITO (OSD) Central, Udaipur. M-9530400686. Group-B Service.
7. Ram Sahai Jat S/o Late Shri Ladu Ram, Age 52 years R/o 83 Brij Mandal Colony, Kalwar Road, Jhotwara presently working as ITO (OSD) O/o PCIT-2, Jaipur. M-9530400572. Group-B Service.
8. Nawal Kishore Tiwari S/o Shri M.L. Tiwari, Age 45 years, R/o 173/179 Sector-17, Kumbha Marg, Near NRI Circle, Pratap Nagar, Sanganer, Jaipur, presently working as ITO, Ward-7(3), Jaipur. M-9530400308. Group-B Service.
9. Poonam Jha W/o Shri Sudarshan Anand, Age 49 years, R/o E-177, Sushant City, Kalwar Road, Jaipur, presently working as ITO (OSD), O/o CIT (Audit), Jaipur, Ajmer. M-9530400531. Group-B Service.

10. Rajalakshmi Gopalan W/o Shri T.M. Gopalan, Age 54 years, R/o C-211, Panchsheel Nagar, Ajmer-305004 presently working as ITO (OSD) O/o PCIT, Ajmer. M-9530400571. Group-B Service.

....Applicants

Shri Shobhit Tiwari, counsel for applicants.

VERSUS

1. Union of India through Secretary, Ministry of Finance, Department of Revenue, Government of India, North Block, New Delhi – 110 001.
2. Central Board of Direct Taxes through its Chairman, North Block, New Delhi – 110 001.
3. Principal Chief Commissioner of Income Tax, Rajasthan Region, NCR Building, Bhagwan Das Road, Statue Circle, Jaipur-302 006.
4. Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi – 110 001.

....Respondents

Shri Rajendra Vaish, ACGSC and

Shri Gaurav Jain, Advocate, for respondents No. 1 to 4, assisted by
Shri T.R. Murlidharan, Income Tax Officer.

(3) OA No. 291/379/2019 with MA No. 291/104/2020

1. Shashank Jain S/o Shri Kushal Chand Jain, aged about 31 years, R/o 50-A Saraswati Nagar, Behind Hotel Lalit, Jaipur, Presently working as Income Tax Inspector in the office of ITO Ward-2(2), Ajmer. M-8559873730. Group-C Service.
2. Kishore Kumar Udhwani S/o Late Shri Pradeep Kumar Udhwani, age 30 years, R/o Flat-501, Forest view Residency, Model Town Jaipur, presently working as Income Tax Inspector in the office of ITO, Ward-2(3), Ajmer, M-9530400394. Group-C Service.
3. Rohit Kumar Sharma S/o Shri Shiv Kumar Sharma, age 29 years, R/o 178 Income Tax Colony, Calgary road, Malviya Nagar, Jaipur, Presently working as Income Tax Inspector O/o DCIT (HQ) Pr. CCIT, Jaipur, Mobile No. 9530400232 Group C service.
4. Mukesh Kumar Bansal S/o Shri Niranjana Lal Agarwal, age 35 years, R/o 115, Janta Colony, Ajitgarh Sikar, Presently

- working as Income Tax Inspector O/o CCIT Udaipur. M-9530400195. Group-C Service.
5. Chandan Kumar S/o Shri Aniruddh Prasad Age 33 years, R/o 177/II Income Tax Colony, Malviya Nagar, Jaipur, Presently working as Income Tax Inspector, O/o ITO, (T&J), Pr. CTI-1, Jaipur. M-9530401240. Group-C service.
 6. Jagdish Prasad Menaria S/o Shri Kalu Lal Menaria, Age 43 years R/o Village Post Chirwa, Udaipur, presently working as Income Tax Inspector O/o ITO, Rajsamand. M-9530401372. Group-C Service.
 7. Kamlesh Kumar Sharma S/o Shri Narayan Sharma, Age 38 years R/o 43/3, Parasram Nagar, Dher Ke Balaji, Sikar road, Jaipur, presently working as Income Tax Inspector O/o ITO Ward 2(1), Ajmer M-9530401329. Group-C service.
 8. Shaym Singh Rathore S/o Shri Ashok Singh Rathore, Age 40 years, R/o Plot No. 18, Umrao Vihar, Gokulpura, Jhotwara, Jaipur, presently working as Income Tax Inspector O/o DCIT, Central Circle, Ajmer. M-9530401092. Group-C Service.
 9. Rajeev Roshan S/o Shri Prabhu Chand Sah, Age 36 years R/o 3/II Income Tax Colony CAD Circle, Dadabari, Kota, presently working as Income Tax Inspector O/o ITO, TDS, Kota. M-9530401457. Group-C Service.
 10. Dinesh Kumar S/o Shri Mohan Lal, Age 33 years, R/o 60/116, Heera Path, Mansarover Jaipur presently working as Income Tax Inspector, O/o JCIT Range Sikar, M-9530401804/ Group-C Service.
 11. Ashvini Motwani S/o late Shri Mool Chand, Age 29 years R/o house No. 2603A, Jaat Ke Kuwe Ka Rasta, 4th Cross Chandpol Bazar, Jaipur, presently working as Income Tax Inspector O/o ACIT, Circle-2, Ajmer. M-9530401811. Group-C Service.
 12. Devendra Singh S/o Shri Anand Singh, Age 31 years, R/o House No. 30, Ram Nagar Bhatiyu Ka Jav, Bodiwala Bera, Mata Ka Than, Marga Punjala, Jodhpur, presently working as Income Tax Inspector O/o ACIT, Circle Pali. M-9530401844. Group-C Service.
 13. Jabra Ram S/o Shri Hasti Mal, Age 35 years R/o House No. 142, Roop Nagar, Street No. 10, BJS Colony, Poata C Road Jodhpur, presently working as Income Tax Inspector O/o ITO Ward-4, Pali. M-9530401837. Group-C Service.

....Applicants

Shri Shobhit Tiwari, counsel for applicants.

VERSUS

1. Union of India through Secretary, Ministry of Finance, Department of Revenue, Government of India, North Block, New Delhi - 110001.
2. Central Board of Direct Taxes through its Chairman, North Block, New Delhi-110001.
3. Principal Chief Commissioner of Income Tax, Rajasthan Region, NCR Building, Bhagwan Das Road, Statue Circle, Jaipur-302006.
4. Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievance and Pension, North Block, New Delhi - 110001.
5. Trilok Lunia S/o Late Shri Ghasi Lal Verma, Aged-40 years, By caste-Balai, R/o C-11, Balai Basti, J.P. Colony, Tonk Phatak, Jaipur-302015. At present posted as Stenographer Grade-I in Office of Dy. CIT, Central (Headquarters), Jaipur.
6. Prashant Kumar S/o Shri Pati Ram Meena, Aged -42 years, By caste-Mina, R/o 45/III, Income Tax Colony, Calgiri Road, Malviya Nagar, Jaipur. At present posted as Office Superintendent in the office of ITO, Ward No. 6(3), Jaipur.

....Respondents

Shri Rajendra Vaish, ACGSC and

Shri Gaurav Jain, Advocate, for respondents No. 1 to 4, assisted by
Shri T.R. Murlidharan, Income Tax Officer.

Shri Punit Singhvi, counsel for respondents No. 5 and 6.

(4) OA No. 291/415/2019 with MA No. 291/102/2020

Surjeet Singh S/o Shri Ishwar Singh Taneja, aged about 50 years R/o 267/547, Sector-26, Pratap Nagar, Sanganer, Jaipur-302033 (Raj.), presently working as Income Tax Officer in the Department of Income Tax, Jaipur.

....Applicant

Shri Amit Mathur, counsel for applicant.

VERSUS

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.

2. Central Board of Direct Taxes through its Chairman, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110001.
3. Principal Chief Commissioner of Income Tax, Department of Income Tax, NCR Building, Statue Circle, Janpath, Jaipur-302005 (Raj.).
4. The Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, North Block, Central Secretariat, New Delhi, Delhi – 110001.
5. Madan Prakash Kundara S/o late Shri Chetram, aged 55 years, resident of 22, Ganga Vihar Colony, Near Mahesh Nagar, Jaipur, presently posted as Inspector, O/o PCIT (III), Jaipur.
6. Mukesh Mehra S/o late Shri Ramdhan Mehra, aged about 48 years, R/o Q. No. 61/III, I.T. Colony, Malviya Nagar, Jaipur, posted as Inspector, O/o PCIT (I), Jaipur.
7. Mohan Lal Bairwa S/o late Shri Lekhraj, aged 51 years, R/o 46, Ambedkar Nagar, Near Kartarpura Phatak, Jaipur, posted as Inspector, O/o JCIT (R-7), Jaipur.
8. Laxmi Narain Banshiwal S/o Shri Nathulal Banshiwal, aged 43 years, R/o 156/7, IT Colony, Malviya Nagar, Jaipur, posted as Inspector, O/o DGIT (Inv.), Jaipur.
9. Sitaram Meena S/o late Shri Ramchandra, aged 46 years, R/o 65/III, I.T. Colony, Malviya Nagar, Jaipur, posted as Inspector, O/o PCCIT, Raj., Jaipur.
10. Ramrispal Meena S/o late Shri Hatturam Meena, aged 44 years, R/o Jagatpura, Jaipur, presently posted as Inspector, O/o CIT (Exemption), Jaipur.
11. Suwalal Meena S/o Shri Ramlal Meena, aged 42 years, R/o Quarter No. III/12, IT Colony, Near CAD Circle, Kota, posted as Inspector O/o PCIT, Kota.
12. Murarilal Meena S/o Shri Ramkishan Meena, aged 44 years, R/o T-4/11, Income Tax Colony, Near CAD Circle, Kota, posted as Inspector, PCIT, Kota.
13. Ramjilal Bairwa S/o late Shri Seema Lal Bairwa, aged 49 years, R/o Vivekanand Nagar, Kota, posted as Inspector, PCIT, Kota.

....Respondents

Shri Rajendra Vaish, ACGSC and

Shri Gaurav Jain, Advocate, for respondents No. 1 to 4, assisted by
Shri T.R. Murlidharan, Income Tax Officer.

None present for respondents No. 5 to 13.

ORDER

Per: Suresh Kumar Monga, Judicial Member

With the consent of learned counsels for the parties, OA No. 291/243/2019 (Kailash Chand Meena & Ors. Vs. UOI & Ors.), OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) are taken up together for disposal as a common question of law and facts is involved in all these cases.

2. The factual matrix emanating from record of the case is that the applicants in OA No. 291/379/2019 (Shashank Jain & Ors. Vs. Union of India & Ors.) were promoted as Income Tax Inspectors on adhoc basic vide order dated 31.01.2019. Aggrieved by the said order, one of the applicants namely Kailash Chand Meena in OA No. 291/243/2019 submitted a representation dated 13.02.2019 before the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur. The said representation was followed by one more representation dated 19.03.2019. Both those representations were, however, rejected by the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur vide order dated 03.04.2019.

3. Without laying a specific challenge to order dated 03.04.2019, Kailash Chand Meena and 09 others preferred OA No. 291/243/2019 before this Tribunal seeking a declaration to the effect that the departmental promotion committee's decision dated 31.01.2019 (erroneously typed as 30.01.2019) is bad in law. They further sought a direction to respondents to convene a review DPC for Recruitment Year 2018 and earlier years as well for the purposes of adhoc promotions on the posts of Income Tax Inspectors; and while considering their candidatures promote them as Income Tax Inspectors with all consequential benefits.

4. It has been pleaded by the applicants in OA No. 291/243/2019 (Kailash Chand Meena & Ors. vs. UOI & Ors.) that they have qualified the departmental examination for promotion on the post of Income Tax Inspectors and as per the recruitment rules, they are eligible for appointment as Income Tax Inspectors. It has further been pleaded that the Department of Personnel and Training issued Office Memorandum (OM) dated 30.09.2016 wherein on the basis of the advice of learned Solicitor General, it has been stated that the promotions of reserved category candidates shall not be made against the unreserved posts. However, the said OM has not visualised the situation wherein a reserved category candidate is getting promotion on his 'own merit' and 'seniority'. While referring to OM dated 10.08.2010,

it has further been averred by the applicants that the general guidelines in respect of reservation in promotion states that the SC/ST candidates appointed by promotion on their 'own merit' and owing to reservation will be adjusted against the unreserved points of the reservation roster and not against the reserved points. It has further been pleaded that the issue with regard to reservation in promotion is pending before the Hon'ble Supreme Court and the respondent department is carrying out adhoc promotions across the country on the basis of seniority. The Department of Personnel and Training issued another OM dated 15.06.2018 stating therein that the Hon'ble Supreme Court vide its order dated 15.11.2017 in SLP (C) No. 28306/2017 has decided to make a reference to a Constitution Bench to examine whether its earlier decision in the case of **M. Nagraj and others vs. Union of India and Ors.** 2006 (8) SCC 212 requires reconsideration or not, inter alia, on the issue as to whether test of backwardness would, at all, apply in the case of SC and ST. The cadre controlling authorities of the Central Government departments were directed to carry out promotions based on existing seniority / select list. It has further been averred that the Hon'ble Supreme Court has passed an interim order dated 15.04.2019 in the pending litigation and a direction has been issued to maintain status quo with regard to promotion matters. The applicants have further averred that confusion has been prevailing over the manner in which the promotions are to be

carried out and all the regions of the respondent department are making promotions on adhoc basis. The guidelines issued for making adhoc promotions stipulate that those promotions shall be made on the basis of existing seniority. This has been stated by the applicants while referring OM dated 30.03.1988. The applicants have further averred that CCIT Mumbai has issued a promotion order dated 31.07.2018 wherein no benefit of jumping of seniority has been given to unreserved candidates and reserved category candidates are promoted against unreserved posts. Similarly, by referring the promotions made in Bangalore Region, it has been submitted that in the said Region also, the promotions have been carried out by the CCIT on the basis of seniority in terms of OM dated 30.03.1988. It has been alleged that the Rajasthan Region has overlooked the Office Memorandum of the Department of Personnel and Training and the guidelines in respect of adhoc promotions and the promotions have been carried out in violation of those OMs and guidelines. Seniority of the candidates is being ignored and the junior persons are being promoted on the posts of Income Tax Inspectors. The representations submitted by the applicants have been rejected vide order dated 03.04.2019. With all these assertions, the applicants sought a direction to respondents to convene a review DPC for recruitment year 2018 and also for the earlier years for the purposes of adhoc promotions on the posts of Income Tax Inspectors, besides a declaration that the

departmental promotion committee's decision dated 31.01.2019 (erroneously typed as 30.01.2019), whereby the adhoc promotions have been made ignoring the general seniority, be declared as bad in law.

5. The official respondents No. 1 to 3 while filing a joint reply have joined the defence and opposed the applicants' claim. It has been averred that the respondent No. 2 had conducted Departmental Promotion Committee meeting for adhoc promotion to the posts of Income Tax Inspectors on 31.01.2019 as per the extant DOPT OM's and instructions and as a consequence thereof, the promotion orders were made on 31.01.2019 itself. In the said promotion orders, it has been clearly spelt out that the promotions made, are on adhoc basis and those are subject to review, if any directions or office memorandum is issued by the Department of Personnel and Training/Central Board of Direct Taxes. It has further been averred that subsequently, the Central Board of Direct Taxes, New Delhi vide letter dated 17.06.2019 intimated that it would be appropriate if the said adhoc promotions are reviewed by applying principle of general seniority as per DOPT OM dated 30.03.1988. Meanwhile, the respondents received a legal notice stating therein that in view of 'status quo' order passed by the Hon'ble Supreme Court on 15.04.2019 in the matter of **Jarnail Singh & Ors. vs. Lachhami Narain Gupta and Ors.** [SLP

(Civil) 30621/2011), holding the review DPC will be contempt of court. Therefore, the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur sought directions from the Central Board of Direct Taxes as to whether the DPC of 31.01.2019 can be reviewed in view of the aforesaid order of the Hon'ble Supreme Court. The Central Board of Direct Taxes vide letter dated 02.08.2019 has informed that the clarification / opinion in the matter has been sought from the Department of Personnel and Training and till such time, clarification is received, the matter may be kept on hold. It has further been averred that no clarification or opinion from the Central Board of Direct Taxes / Department of Personnel and Training has so far been received in the matter. The official respondents have further pleaded that the issues involved in the present Original Application relate to 'reservation in promotion', 'own merit' and 'general seniority and these issues are pending adjudication before the Hon'ble Supreme Court in **Jarnail Singh's** case (supra). The Hon'ble Supreme Court vide order dated 15.04.2019 had ordered 'status quo' in the matter until further orders. It has further been averred that the promotions to the posts of Income Tax Inspectors have been made as per recruitment rules and instructions/OMs issued by the Department of Personnel and Training from time to time. It has further been averred that the DOPT OM dated 30.09.2016 clearly states that till such time, SLPs (including SLP (C) No. 30621/2011) are decided by the Hon'ble

Supreme Court, the DOPT OM dated 10.08.2010 and Railway Board Circular dated 14.09.2010 are not to be relied upon while considering the cases for promotions. Since no final order has been passed by the Hon'ble Supreme Court, therefore, the official respondents have refrained themselves from commenting upon the issues pointed out by the applicants in paragraph 4.3 of their Original Application. It has further been averred that the DPC meeting dated 31.01.2019 has been conducted strictly in accordance with the OM dated 15.06.2018 wherein it has been stated that the pendency of the Special Leave Petition shall not stand in the way of the Union of India while taking steps for the purposes of promotions from 'reserved to reserved' and 'unreserved to unreserved' and also in the matter of promotion on merits. While dealing with the assertions with regard to applicability of DOPT OM dated 30.03.1988, it has been submitted that the DPC has been convened by the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur in accordance with the DOPT OM dated 30.09.2016 and 15.06.2018 and as to whether the DOPT OM dated 30.03.1988 overrides the DOPT OM dated 30.09.2016; and the OM dated 30.03.1988 which was issued prior to post based reservation is operational after issuance of subsequent DOPT OM are the issues, which are to be decided by the Department of Personnel and Training and, therefore, a clarification has been sought, which is still awaited from the Department of Personnel and Training/Central Board of

Direct Taxes. With all these assertions, the official respondents have prayed for dismissal of the Original Application. The respondents No. 4 to 16, who were ordered to be impleaded as party respondents on 14.08.2019, did not opt to file any reply and they relied upon the reply filed by the official respondents No. 1 to 3.

6. It requires to be noticed here that on 31.01.2019, two separate meetings of departmental promotion committee were convened for granting promotions on the posts of Income Tax Inspectors and Income Tax Officers. As a consequence of those meetings, two separate orders were issued by the official respondents on 31.01.2019 making promotions on the posts of Income Tax Inspectors and Income Tax Officers on adhoc basis. In OA No. 291/243/2019 (Kailash Chand Meena & Ors. vs. Union of India & Ors.), the applicants are aggrieved by the adhoc promotion orders of Income Tax Inspectors only. So far as the promotions made by the official respondents on the posts of Income Tax Officers on adhoc basis vide order dated 31.01.2019, no challenge was laid by any of the candidates from reserved category.

7. Hearing in OA No. 291/243/2019 (Kailash Chand Meena and Ors. vs. Union of India & Ors.) was yet to commence before this Tribunal and a letter dated 17.06.2019 addressed to the Principal

Chief Commissioner of Income Tax, Rajasthan, Jaipur came to be issued by the Central Board of Direct Taxes. In the said letter, it was stated that whenever the route of adhoc promotions is resorted to, the DOPT OM dated 30.03.1988 on adhoc appointment / promotions is adopted by applying principle of general seniority leaving aside the DOPT OMs for regular promotions. The promotions dated 31.01.2019 were purely on adhoc basis. However, the DOPT OM dated 15.06.2018 for regular promotions was followed by the Rajasthan Region. It has further been stated in the said letter that it would be appropriate if the adhoc promotions dated 31.01.2019 are reviewed and the OM dated 30.03.1988 is given effect to by applying principle of general seniority.

8. After issuance of letter dated 17.06.2019 by the Central Board of Direct Taxes, the persons who were promoted as Income Tax Inspectors and Income Tax Officers vide orders dated 31.01.2019 apprehended their reversions. Therefore, the applicants Shashank Jain and others, who were promoted as Income Tax Inspectors on adhoc basis filed OA No. 291/379/2019 seeking therein a direction to the respondents to not to undertake an exercise of review DPC for the post of Income Tax Inspectors in terms of Central Board of Direct Taxes letter dated 17.06.2019. Similarly, Ram Kumar Gupta & Ors. and Surjeet Singh, who were

promoted as Income Tax Officers vide order dated 31.01.2019 also preferred OA No. 291/378/2019 and OA No. 291/415/2019, respectively, before this Tribunal.

9. The official respondents were put to notice in all these three Original Applications i.e. OA No. 291/379/2019 (Shashank Jain & Ors. vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh vs. UOI & Ors.) and they filed their joint replies opposing the prayers made therein.

10. Trilok Lunia and Prashant Kumar (the reserved category candidates, who are also applicants No. 2 and 8, respectively, in OA No. 291/243/2019) filed a Misc. Application No. 291/726/2019 for getting themselves impleaded as party respondents in OA No. 291/379/2019 (Shashank Jain & Ors. vs. UOI & Ors.). Prayer made in the said Misc. Application was not opposed by Shri Shobhit Tiwari, learned counsel for the original applicants in O.A. No. 291/379/2019 and, accordingly, Misc. Application was allowed on 03.12.2019 and Trilok Lunia and Prashant Kumar were ordered to be impleaded as party respondents No. 5 and 6 in OA No. 291/379/2019. Similarly, in OA No. 291/415/2019 (Surjeet Singh vs. UOI & Ors.), a Misc. Application No. 291/727/2019 was filed by Madan Prakash Kundara, Mukesh Mehra, Mohan Lal Bairwa, Laxmi Narain

Banshiwal, Sitaram Meena, Ramrispal Meena, Suwalal Meena, Murarilal Meena, Ramjilal Bairwa and while allowing the said Misc. Application on 03.12.2019, they were ordered to be impleaded as party respondents No. 5 to 13 in the said Original Application.

11. In OA No. 291/379/2019 (Shashank Jain & Ors. vs. UOI & Ors.), by way of providing a detailed description of all the applicants in a tabular form, it has been pointed out that all of them had qualified the departmental examination for promotions to the posts of Income Tax Inspectors for the years 2013, 2014, 2015, 2016 and 2017 and pursuant to orders dated 31.01.2019, they have joined on promotional posts on different dates. It has been averred that Department of Personnel and Training had issued OM dated 30.03.1988 on the subject of adhoc appointments and in para 4 (iii) of the said OM, it has been specified that where adhoc appointment is by promotion of the officer in feeder grade, it may be done on the basis of seniority cum fitness. It also specified that claims of SC/ST in adhoc promotions shall be considered in accordance with the DOPT OM dated 30.04.1983 and 30.09.1983. The Department of Personnel and Training also issued an OM dated 10.08.2010, whereby the concept of 'own merit' has been introduced, which stipulates that if a reserved SC/ST candidate is available on account of his 'own merit', then he can be promoted on unreserved roster point. However, the said OM has been set aside by the Hon'ble High

Court of Punjab and Haryana vide its judgment and order dated 15.07.2011 passed in the case of **Lacchmi Narain Gupta vs. Jarnail Singh**. The said judgment has been challenged before the Hon'ble Supreme Court in SLP No. 30621/2011 in which status quo in respect of promotional matters was ordered by the Hon'ble Supreme Court on 03.02.2015. It has further been averred that on account of violation of interim order dated 03.02.2015, Civil Contempt Petition No. 314/2016 was filed and the said petition was listed before the Hon'ble Supreme Court on 30.09.2016 when the learned Solicitor General of India had made a statement that no promotions, in contrast to directions issued by the Hon'ble High Court and the Hon'ble Supreme Court, will be made. Thereafter, the Department of Personnel and Training issued OM dated 30.09.2016 directing therein that no promotion of reserved category candidate on unreserved seats will be made. It has further been stated that the official respondents have failed to ponder in correct spirit of the judgment passed by the Hon'ble High Court of Punjab and Haryana and have also failed to understand the Office Memorandums of Department of Personnel and Training, Government of India. It has further been averred that the Hon'ble Supreme Court has further passed interim order dated 17.05.2018 and directed that the pendency of Special Leave Petition shall not stand in the way of Union of India taking steps for the purposes of promotion from 'reserved to reserved' and 'unreserved to unreserved' and also in the matter of

promotion on merits. It has further been averred that Original Application No. 594/2018 (Satyaveer Singh Yadav and Ors. vs. UOI & Ors.) was preferred before this Tribunal and the said Original Application was disposed of vide order dated 27.11.2018 directing the respondents to take a decision over the representation in accordance with law. While deciding the representation pursuant to said direction, the respondents have stated that the matter of 'own merit' in promotion is sub judice before the Hon'ble Supreme Court and the promotion on merit as mentioned in OM dated 15.06.2018 will be decided on the basis of extant OMs issued by the Department of Personnel and Training and the clarifications issued by the Central Board of Direct Taxes. Thereafter, the Departmental Promotion Committees were convened in the cadre of Income Tax Officers and Income Tax Inspectors on 31.01.2019 for recruitment year 2018 and the respondent department undertook the exercise of promotions in accordance with OM dated 15.06.2018. It has further been averred that the letter dated 17.06.2019 has been issued by the Central Board of Direct Taxes without consulting Department of Personnel and Training and it reveals that the Central Board of Direct Taxes is of the opinion that adhoc promotions are governed by OM dated 30.03.1988 and those promotions were not to be made in the light of DOPT OM dated 15.06.2018 and the respondent department is now bent upon to proceed with the review DPC. It has further been averred that in

the case of **M. Nagraj and Jarnail Singh**, it has been categorically stated that reservation shall not cross its ceiling limit. In the present case, considering the available representation in SC/ST cadre of Income Tax Inspectors, it reveals that SC/ST candidates are oversubscribed and if review DPC is convened as per letter dated 17.06.2019, it will further violate the ceiling limit and will also be in violation of DOPT OM dated 15.06.2018. With all these assertions, the applicants have made a prayer for restraining the respondents to undertake an exercise of review DPC for the posts of Income Tax Inspectors in terms of Central Board of Direct Taxes letter dated 17.06.2019.

12. The applicants in OA 378/2019 (Ram Kumar Gupta vs. UOI & Ors.) are the persons who were promoted as Income Tax Officers on adhoc basis vide order dated 31.01.2019. Apprehending their reversions pursuant to CBDT letter dated 17.06.2019, they have also sought a direction to restrain the respondents from undertaking an exercise of review DPC for Recruitment Year 2018 on the posts of Income Tax Officers. Almost similar pleadings have been made as have been made in OA 379/2019 (Shashank Jain and Ors. vs. UOI & Ors.). In para 4(25) of the Original Application, while pleading that considering the available representation of SC/ST in the cadre of Income Tax Officers, it has revealed that SC/ST candidates are oversubscribed and while doing so, the strength of Income Tax

Officers in Rajasthan Region has been enumerated in a tabular form, which is reproduced here as under:

"Total strength of ITOs in Rajasthan Region:

Before DPC dated 31.01.2019:-

Category	UR	SC	ST
Required strength	186	36	18
Working Strength	152	36	20
Excess Representation	-34	0	+2

After DPC dated 31.01.2019:-

Category	UR	SC	ST
Required strength	186	36	18
Working Strength	171	43	25
Excess Representation	-15	+7	+7

Proposed after DPC, if completed in the manner CBDT proposes:

Category	UR	SC	ST
Required strength	186	36	18
Working Strength	155	53	32
Excess Representation	-31	+17	+14

13. The applicant in OA No. 291/415/2019 (Surjeet Singh vs. UOI & Ors.) is also one of those persons who were promoted as Income Tax Officers on adhoc basis vide order dated 31.01.2019. Apart from making a prayer for quashing of order dated 21.06.2019 and the communication dated 17.06.2019, he has also prayed for issuance of a direction to respondents to allow him to continue on the post of Income Tax Officer till the regular promotions are made.

14. The official respondents while filing their joint replies in all the afore-stated three Original Applications i.e. OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) have maintained an identical stand to oppose the applicants' prayer made therein. It has been submitted that the department has not conducted any review DPC in terms of letter dated 17.06.2019 issued by the Central Board of Direct Taxes. On the contrary, clarifications of the Central Board of Direct Taxes in the matter have been sought, for conducting review DPC on the basis of letter dated 17.06.2019. The Central Board of Direct Taxes vide letter dated 02.08.2019 has informed that the clarification / opinion in the matter has been sought from the Department of Personnel and Training and till such time the clarification is received from the said department, the matter may be kept on hold. It has further been pleaded that no clarification / opinion from Central Board of Direct Taxes / Department of Personnel and Training has been received in the matter so far. It has still further been averred that the issues involved in these Original Applications relate to 'reservation in promotion', 'own merit' and 'general seniority' and all these issues are pending adjudication before the Hon'ble Supreme Court in the case of **Jarnail Singh and Ors. vs. Lachhmi Narain Gupta** [SLP (Civil) No.

30621/2011]. The Hon'ble Supreme Court, vide order dated 15.04.2019 has ordered 'status quo' in the matter until further orders. Promotions of the applicants were on adhoc basis and such promotions will not confer any right for regular promotions as mentioned in the orders dated 31.01.2019. It has further been averred that in the promotion orders, it has been clearly spelt out that the applicants' promotions are subject to review, if any direction or OM is issued by the Department of Personnel and Training / Central Board of Direct Taxes necessitating a review DPC. It has further been pleaded that the respondents have a right to review the DPC held for adhoc promotions and, therefore, the prayer made by the applicants to restrain them from conducting review DPC is totally unjustified. While replying the assertions with regard to applicability of judgment of the Hon'ble Supreme Court in the case of **N. R. Parmar** and a judgment of the Hon'ble High Court of Delhi in the case of **Veena Kothawala vs. UOI and Ors.**, it has been submitted by the respondents that the matter regarding implementation of the judgment in **N.R. Parmar's** case prospectively w.e.f. 27.11.2012 in view of the directions issued by the Central Board of Direct Taxes as per letter dated 27.05.2019 is under active consideration in the department and further directions and clarification in the matter have also been sought from Central Board of Direct Taxes. It has further been stated that the judgment in **N.R. Parmar's** case has now been overruled by the Hon'ble Supreme Court in a latest

judgment dated 19.11.2019 in the matter of **K. Meghachandra Singh and Ors. vs. Ningam Sior & Ors.** The respondents have further averred that the DPC dated 31.01.2019 and review of said DPC pursuant to CBDT letter dated 17.06.2019 are the main issues involved in these Original Applications. The respondent No. 3 had sought the clarification from Central Board of Direct Taxes and the Board vide letter dated 02.08.2019 has informed that clarification / opinion in the matter has been sought from Department of Personnel and Training and till such time the clarification is received from the said Department, the matter may be kept on hold. While commenting upon the OM dated 30.03.1988, it has been submitted that the said OM states for adoption of criteria of general seniority for making adhoc promotions. The respondent No. 3 had convened the DPC in accordance with the DOPT OMs dated 30.09.2016 and 15.06.2018 and as to whether the DOPT OM dated 30.03.1988 overrides DOPT OM dated 30.09.2016 and the OM dated 30.03.1988 issued prior to post based reservation is operational after issuance of subsequent OMs, are the issues to be decided by the Department of Personnel and Training and it is for these reasons, the directions have been sought by respondent No. 3 in the matter for conducting the review DPC. It has further been averred that the clarification/opinion in the matter has not yet been received from Department of Personnel and Training / Central Board of Direct Taxes. With all these assertions, the

respondents have prayed for dismissal of all the afore-stated three Original Applications as well.

15. Before the hearing could commence in the aforesaid Original Applications, the respondent No. 3 undertook an exercise of review DPC and vide orders dated 30.01.2020 ordered the reversions of the applicants in OA No. 291/379/2019, OA No. 291/378/2019 and OA No. 291/415/2019. Faced with this situation, the applicants in these Original Applications, filed MA No. 291/104/2020, MA No. 291/103/2020 and MA No. 291/102/2020, respectively, seeking therein a stay against their reversion orders.

16. The official respondents by way of filing identical replies in all the afore-stated three Misc. Applications, opposed the applicants' prayer made therein. It has been pleaded by the respondents that the DPC for adhoc promotions for the post of Income Tax Inspectors and Income Tax Officers for recruitment year 2018 was held on 31.01.2019 on the basis of DOPT OM dated 15.06.2018. Subsequently, the Central Board of Direct Taxes vide letter dated 17.06.2019 directed the Principal Chief Commissioner of Income Tax Rajasthan, Jaipur to review the adhoc promotions in the light of DOPT OM dated 31.03.1988. It has further been submitted that on a clarification sought by the Principal Chief Commissioner of Income Tax Rajasthan, Jaipur,

the Central Board of Direct Taxes issued a direction vide letter dated 02.08.2019 to keep the matter on hold and, therefore, all the proceedings of review DPC were kept on hold. Thereafter, it was learnt that Delhi and Gujarat Regions have conducted DPC in January, 2020 even after the aforesaid order dated 15.04.2019 passed by the Hon'ble Supreme Court. In this context, a clarification was sought from Central Board of Direct Taxes as to whether the DPC could be convened and in response thereto, the Central Board of Direct Taxes vide its letter dated 20.01.2020 has informed that the Department of Personnel and Training is not in a position to give any clarification / opinion in this matter and, therefore, the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur being the cadre controlling authority may take cognizance of this and take appropriate action in the matter accordingly. It has further been averred that looking towards these facts, review DPC has been held on 29.01.2020 in compliance of CBDT letter dated 17.06.2019. With these pleadings, the official respondents have justified the action of review DPC and consequent reversions of applicants in OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.).

17. Heard learned counsels for the parties.

18. Shri Amit Mathur, learned counsel representing the applicant Surjeet Singh in OA No. 291/415/2019 submitted that after holding a meeting of Departmental Promotion Committee on 31.01.2019, the applicant was promoted as Income Tax Officer on adhoc basis. He drew our attention towards the conditions stipulated in the promotion order dated 31.01.2019 and submitted that no review DPC could have been convened by the Principal Chief Commissioner of Income Tax, Rajasthan in view of Clause 2 (c) of the said promotion order as it stipulated that the applicant can be reverted if after a review of vacancies, it is found that his promotion/appointment is in excess of vacancies available. Since no such exercise of reviewing the vacancies has been undertaken by the respondents, therefore, there was no occasion with the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur to conduct a review DPC.

19. Learned counsel further submitted that Clause 2 (g) of the aforesaid promotion order stipulated that the promotion of the applicant is further subject to review, if any specific direction or OM is issued by the Department of Personnel and Training / Central Board of Direct Taxes in future necessitating a review of the recommendation of the Departmental Promotion Committee. Since no such direction or OM has been issued by the Department

of Personnel and Training / Central Board of Direct Taxes, therefore, again there was no reason with the Principal Chief Commissioner of Income Tax, Rajasthan to convene a review DPC and take a decision to revert the applicant. Learned counsel further submitted that the applicant's promotion order was subject to further orders which may be passed by the Hon'ble Supreme Court as stipulated in DOPT OM dated 15.06.2018 and since no further order has been passed by the Hon'ble Supreme Court and even an application seeking clarification from the Hon'ble Supreme Court with regard to interim order is pending consideration, therefore, no review DPC could have taken place till such time the Hon'ble Supreme Court decides the interim application filed by the Union of India through Department of Personnel and Training. Shri Mathur further submitted that while convening the meeting on 31.01.2019, the Departmental Promotion Committee followed the recruitment rules as well as the existing seniority list. He, thus, submitted that even for making adhoc promotions, the DPC followed the procedure for making regular promotions. Learned counsel, thus, submitted that in such like a situation, the action of the Principal Chief Commissioner of Income Tax, Rajasthan to replace adhoc employees with another set of adhoc employees cannot be sustained being violative of Articles 14 and 16 of the Constitution of India. In support of his arguments, Shri Mathur, relied upon a judgment of the Hon'ble Supreme Court in the matter of

Hargurpratap Singh vs. State of Punjab 2007 (13) SCC 292 and a judgment of the Hon'ble High Court of Jharkhand in the matter of **Dr. Rajni Kant Tirkey vs. State of Jharkhand** 2016 (3) JLJR 349 : 2017 (1) J.C.R. 202. Shri Mathur further submitted that after issuance of CBDT letter dated 17.06.2019 when the Principal Chief Commissioner of Income Tax, Rajasthan while referring to the Hon'ble Supreme Court's status quo order dated 15.04.2019 sought a clarification, the letter dated 02.08.2019 was issued by the Central Board of Direct Taxes directing the Principal Chief Commissioner of Income Tax, Rajasthan to keep whole of the proceedings on hold. It is the contention of learned counsel for the applicant that in view of those categorical directions, there was no occasion with the Principal Chief Commissioner of Income Tax, Rajasthan to seek further clarification into the matter. The letter dated 20.01.2020 which has been issued by the Central Board of Direct Taxes nowhere gave any direction to the Principal Chief Commissioner of Income Tax, Rajasthan to undertake an exercise of review DPC and, therefore, no such review DPC could have been convened on 29.01.2020.

20. Shri Mathur further submitted that the Original Application filed by the applicant was pending before this Tribunal and the Principal Chief Commissioner of Income Tax, Rajasthan entertained the representation of some of the incumbents of

reserved category and opted to undertake an exercise of review DPC. The said action is contrary to the provisions of Section 19 (4) of the Administrative Tribunals Act, 1985 (hereinafter called as 'the Act') and all subsequent proceedings during pendency of these Original Applications are nullity and those are liable to be ignored. In support of his contention, learned counsel relied upon a judgment of this Tribunal in the case of **Shivkumar B. Nair vs. Union of India and Ors.** 2005 (3) SLJ 210 CAT.

21. Toeing almost the similar line of arguments, Shri Shobhit Tiwari, learned counsel representing the applicants in OA No. 291/378/2019 (Ram Kumar Gupta & Ors. vs. UOI & Ors.), OA No. 291/379/2019 (Shashank Jain & Ors. vs. UOI & Ors.) and respondents No. 4 to 16 in O.A. No. 291/243/2019 (Kailash Chand Meena & Ors. vs. UOI & Ors.) submitted that the OM dated 13.08.1997 making therein a provision for reservation in promotion to SCs/STs has been quashed by the Hon'ble High Court of Delhi vide judgment dated 23.08.2017. He further submitted that the OM dated 10.08.2010 making therein a provision for promotions to SCs/STs on their 'own merit' has also been quashed by the Hon'ble High Court of Punjab and Haryana vide its judgment dated 15.07.2011. While striking down OM dated 10.08.2010 and 13.08.1997, the Hon'ble High Courts have relied upon the judgment rendered by the Hon'ble Supreme Court in **M. Nagraj** (supra). The aforesaid judgments rendered by the

Hon'ble High Courts are under challenge in Special Leave Petitions (Civil) No. 30621/2011 and 31288/2017. Learned counsel further submitted that on 03.02.2015 when the SLP No. 30621/2011 came up for hearing before the Hon'ble Supreme Court, an interim order was passed and the respondents were directed to maintain status quo as it existed on that day in respect of promotion matters. However, alleging violation of the said order, a Contempt Petition (Civil) No. 314/2016 was filed by **Samta Andolan Samiti**. During course of hearing of the said contempt petition on 29.09.2016, the learned Solicitor General of India had made a statement that till such time the main matter along with the contempt petition is decided, no further promotions of reserved category persons to unreserved posts will be made relying upon the DOPT OM dated 10.08.2010. On the next very day i.e. 30th September, 2016, the Department of Personnel and Training, New Delhi also issued a notification incorporating therein the said statement made by the learned Solicitor General of India. Learned counsel further submitted that the Hon'ble Supreme Court further passed an order dated 17.05.2018 directing therein that the pendency of SLP shall not stand in the way of the Union of India taking steps for the purposes of promotion from 'reserved to reserved' and 'unreserved to unreserved' and also in the matter of promotions on merits. Similarly, in SLP (C) No. 31288/2017, the Hon'ble Supreme Court passed an order on 05.06.2018 directing therein

that the Union of India is not debarred from making promotions in accordance with law subject to further orders. In order to implement the orders dated 17.05.2018 and 05.06.2018 passed by the Hon'ble Supreme Court, an OM dated 15.06.2018 was issued by the Department of Personnel and Training directing therein all the cadre controlling authorities of the Central Government Ministries, Departments and Union Territories to carry out promotions in accordance with the directions issued by the Hon'ble Supreme Court. Learned counsel further submitted that the Special Leave Petitions (SLPs) again came up for hearing before the Hon'ble Supreme Court on 15.04.2019 and an interim order was passed to the effect that until further orders, status quo, as it existed on that day, shall be maintained. Shri Tiwari further submitted that after the status quo order of 15.04.2019, the Union of India which was being represented through the Department of Personnel and Training was in a confused state of mind and, therefore, an IA was filed before the Hon'ble Supreme Court in SLP No. 30621/2011 seeking clarification as to whether the Union of India can continue to make promotions in terms of directions and orders dated 17.05.2018 and 05.06.2018. Learned counsel, thus, submitted that so long as the clarification is awaited from the Hon'ble Supreme Court, no review DPC could be convened by the Principal Chief Commissioner of Income Tax, Rajasthan. Learned counsel also drew our attention towards specific pleadings made by the Union of India in paragraph 9 of

the said IA stating therein that the adhoc promotions were given to the eligible officers to fill up large number of vacancies subject to outcome of the pending SLPs. Learned counsel submitted that while granting adhoc promotions on 31.01.2019 to original applicants in OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) a specific condition was also incorporated to this effect. Learned counsel, thus, argued that since it is the stand of the Union of India before the Hon'ble Supreme Court, therefore, no review DPC could have been convened by the Principal Chief Commissioner of Income Tax so long as the SLPs are pending consideration.

22. Shri Tiwari further submitted that the action of the Principal Chief Commissioner of Income Tax, Rajasthan while holding Review DPC on 29.01.2020 is also discriminatory as the said exercise has been undertaken for the Recruitment Year 2018 only. Whereas, no such exercise of Review DPC for the Recruitment Year 2017-18 has been undertaken. Learned counsel further submitted that like Recruitment Year 2018, the DPC for the Recruitment Year 2017-18 relied upon the DOPT OM dated 30.09.2016 and decided to not to implement the OM dated 10.08.2010. He, thus, submitted that the applicants have been discriminated and, therefore, Review DPC held on 29.01.2020

and consequential orders of reversion cannot be sustained being discriminatory.

23. Per contra, Shri Rajendra Vaish, learned Additional Central Government Standing Counsel assisted by Shri Gaurav Jain, Advocate, representing the official respondents in all the afore-stated four Original Applications submitted that the Review DPC on 29.01.2020 was not convened to replace the adhoc employees by way of another set of adhoc employees. It was merely a rectification of an error which had taken place while holding the DPC meeting on 31.01.2019 as while convening the said DPC, the OM dated 30.03.1988 could not be considered. Learned counsel further submitted that following the directions issued by the Central Board of Direct Taxes vide letter dated 17.06.2019, the Principal Chief Commissioner of Income Tax, Rajasthan conducted the review DPC on 29.01.2020. Since it was merely a rectification of an error, therefore, nothing wrong can be found with the same. Shri Vaish further submitted that the applicants in OA No. 291/378/2019, OA No. 291/379/2019 and OA No. 291/415/2019 have been reverted back in terms of their promotion orders dated 31.01.2019. Adhoc promotions vide order dated 31.01.2019 do not confer any right upon them and, therefore, the official respondents have rightly withdrawn the said adhoc promotion orders. In support of his arguments, Shri Vaish placed reliance upon the judgments in **Keshav Chandra**

Joshi and Ors. vs. Union of India and Ors. AIR 1991 Supreme Court 284 and **Ashok Gulati and Ors. vs. B. S. Jain and Ors.** AIR 1987 Supreme Court 424.

24. Shri Vaish further submitted that certain representations were received and, therefore, the respondents came to know about the aforesaid error while convening the DPC on 31.01.2019. Since there was no pleadings with regard to those representations, therefore, Shri Vaish was asked to produce those representations and the decision taken on them by the official respondents. Faced with the situation, Shri Vaish opted to withdraw his said argument.

25. Shri Vaish while referring to OM dated 30.03.1988 still further submitted that since the seniority of the officers is in dispute, therefore, the Principal Chief Commissioner of Income Tax, Rajasthan after receipt of letter dated 20.01.2020 from CBDT was well within her rights to convene the review DPC on 29.01.2020.

26. Shri Punit Singhvi, learned counsel representing the applicants in OA No. 291/243/2019 (Kailash Chand Meena & Ors. vs. UOI & Ors.) and respondents No. 5 and 6 in OA No. 291/379/2019 (Shashank Jain & Ors. vs. UOI & Ors.), while

adopting the same line of arguments submitted that the applicants in OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.) were promoted on adhoc basis with a rider that the said promotions will not confer any right upon them and, therefore, they have been rightly reverted by the official respondents after holding review DPC on 29.01.2020. Learned counsel further submitted that the promotions made in contravention of statutory rules can always be reviewed. Learned counsel in order to strengthen his argument relied upon a Supreme Court judgment in the case of **Mahmood Hasan and Ors. vs. State of U.P. and Ors.** (1997) 3 SCC 138.

27. Shri Singhvi while referring to a judgment of the Hon'ble High Court of Punjab and Haryana in the case of **Ram Krishan Singh & Ors. vs. Union of India & Ors.**, (CWP No. 15782/2015 decided on 18.01.2017) further submitted that the Hon'ble High Court while noticing the factum of pendency of SLP before the Hon'ble Supreme Court against the judgment in **Lacchmi Narain Gupta and Others vs. Jarnail Singh and Others** (CWP No. 13218/2009 decided on July 15, 2011) permitted the respondent railways to act upon a circular dated 12.01.2017 which stipulated that adhoc promotions are to be done as per general seniority. Shri Singhvi, thus, argued that the Principal Chief Commissioner of Income Tax, Rajasthan has adopted the same line of action

and has undertaken the exercise of review DPC on 29.01.2020 as per general seniority.

28. While expanding his arguments further Shri Singhvi submitted that the provisions of Section 19 (4) of 'the Act', cannot be invoked in the present case as the Original Application was never admitted by this Tribunal. In support of his argument, learned counsel relied upon a judgment of the Hon'ble Supreme Court in the case of **Union of India and Ors. vs. Dipak Mali** (2010) 2 SCC 222. Shri Singhvi still further submitted that this Tribunal cannot travel beyond the pleadings for granting any relief to applicants in OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.). To strengthen his argument, learned counsel placed reliance upon the judgments in **State of Uttarakhand and Ors. Vs. Mandir Sri Laxman Sidh Maharaj** (2017) 9 SCC 579 and **Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi & Ors.** (2010) 1 SCC 234. Learned counsel argued that with regard to review DPC and consequent promotions and reversions, the pleadings are silent. Neither any amendment has been sought in the Original Applications.

29. We have thoughtfully considered the arguments of learned counsels for the parties and have perused the record made available to this Tribunal.

30. The vexed questions of 'reservation in promotion', promotions to SCs/STs on their 'own merit' and 'general seniority', etc. have been confronting the Courts and this Tribunal for a long time. Initially, Jarnail Singh, Balbir Singh and Som Prakash, Income Tax Inspectors belonging to reserved category of Scheduled Caste had filed OA No. 519-PB-2007 before the Chandigarh Bench of this Tribunal with a prayer for quashing the circular / order dated 05.07.2007 vide which an eligibility list of Income Tax Inspectors was circulated for promotion to the cadre of Income Tax Officers for the relevant year 2007-08. While referring to OM No. 36028/17/2001 Estt (Res.) dated 11.07.2002, the applicants therein agitated before the Chandigarh Bench of this Tribunal that they had to be adjusted against unreserved roster points belonging to general category posts and then the roster points meant for reserved category candidates are required to be filled up from amongst the candidates belonging to reserved categories. The concept of 'own merit' was introduced through OM dated 11.07.2002 and thereafter a clarificatory OM dated 31.01.2005 was issued stating therein that the OM dated 11.07.2002 will be effective from the date of its issue. On 11.12.2008, Chandigarh Bench of this

Tribunal allowed the aforesaid OA No. 519-PB-2007 holding therein that the OM dated 02.07.1997 was modified by OM dated 11.07.2002 which is clarificatory in nature and, therefore, it will relate back to the date of its issuance i.e. 02.07.1997. On that basis, Chandigarh Bench of this Tribunal held that all members of the reserved category are required to be promoted with effect from 02.07.1997 whether on 'reserved roster point' or on their 'own merit' which would consume the vacancies of general category candidates.

31. Aggrieved by the aforesaid order passed by the Chandigarh Bench of this Tribunal, Civil Writ Petition No. 13218/2009 was filed by **Lacchmi Narain Gupta and Others** before the Hon'ble High Court of Punjab and Haryana at Chandigarh. Challenge therein was that OM dated 11.07.2002 was issued by the respondents without any basis and the same is against the mandate of law as incorporated by Article 16 (4A) and interpreted by a Constitution Bench of the Hon'ble Supreme Court in the case of **M. Nagaraj** (supra). Judgment in the said Writ Petition was reserved by the Hon'ble High Court of Punjab and Haryana on 20.07.2010 and before it could be pronounced, an OM dated 10.08.2010 came to be issued as Madras Bench of this Tribunal had set aside the OM dated 31.01.2005 in OA No. 900/2005 (S. Kalugasalamoorthy vs. Union of India & Ors.). The OM dated

10.08.2010 clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against unreserved points of roster, irrespective of the fact whether the promotion is made by selection method or non-selection method. The orders were given effect from 02.07.1997, i.e. a date on which post based reservation was introduced. The OM dated 10.08.2010 was brought on record before the Hon'ble High Court of Punjab and Haryana in Civil Writ Petition No. 13218/2009 and after re-hearing the case, the Hon'ble High Court vide judgment dated 15.07.2011 came to a conclusion that the notifications dated 11.07.2002, 31.01.2005, 21.01.2009 and 10.08.2010 cannot be sustained as no exercise in terms of judgments passed in **M. Nagaraj** (supra) and **Suraj Bhan Meena vs. State of Rajasthan** (2011) 1 SCC 467 was carried out to assess the inadequacy of representation of SCs/STs in the services under the Government of India before issue of instructions dated 31.01.2005 and those notifications were held to be violative of provisions of Articles 16 (4A), 16 (4B) read with Article 335 of the Constitution of India. Resultantly, it was held that no reservation in promotion could be made in pursuance of OM dated 02.07.1997. The OM dated 10.08.2010 was quashed being in direct conflict with the view taken by the Constitution Bench of the Hon'ble Supreme Court in **M. Nagaraj** (supra) and **Suraj Bhan Meena** (supra).

32. Simultaneously, the Hon'ble High Court of Delhi vide its judgment and order dated 23.08.2017 passed in Writ Petition (Civil) No. 3490/2010 quashed the OM dated 13.08.1997. It requires to be mentioned here that the OM dated 13.08.1997 had made a provision for reservation in promotions to SCs/STs.

33. The judgment and order dated 15.07.2011 passed by the Hon'ble High Court of Punjab and Haryana became the subject matter of challenge in SLP (C) No. 30621/2011 – **Jarnail Singh and Ors. vs. Lachhmi Narain and Ors.** and the judgment and order dated 23.08.2017 passed by the Hon'ble High Court at Delhi has been challenged before the Hon'ble Supreme Court in SLP (C) No. 31288/2017.

34. The SLP (C) No. 30621/2011 came up for hearing before the Hon'ble Supreme Court on 03.02.2015 and a direction was issued to maintain status quo as it existed on that day in respect of the promotion matters. However, alleging violation of the said interim order, a Contempt Petition (Civil) No. 314/2016 was filed by **Samta Andolan Samiti**. During the course of hearing of the said contempt petition, learned Solicitor General had made a statement that no further promotions of reserved category persons to un-reserved posts will be made relying upon the DOPT OM dated 10.08.2010. Thereafter, on the next very day, i.e.

30.09.2016, an OM was issued by the Department of Personnel and Training directing therein to all the Ministries/Departments of Government that till such time the SLPs are decided by the Hon'ble Supreme Court, while considering promotions, the Department of Personnel and Training OM dated 10.08.2010 and Railway Board circular dated 14.09.2010 are not to be relied upon. Thereafter, while dealing with IA No. 25195/2018 and 25199/2018, the Hon'ble Supreme Court on 17.05.2018 ordered that pendency of the SLP shall not stand in the way of the Union of India taking steps for the purposes of promotions from 'reserved to reserved' and 'unreserved to unreserved' and also in the matter of promotion on merits. On 05.06.2018, one more case on the similar issue i.e. SLP (C) No. 31288/2017, came up for hearing before the Hon'ble Supreme Court which was ordered to be tagged with SLP (C) No. 30621/2011 and as an interim measure, it was ordered that the Union of India is not debarred from making promotions in accordance with law, subject to further orders. In the light of interim orders dated 17.05.2018 and 05.06.2018, an OM dated 15.06.2018 was issued by Department of Personnel and Training and the cadre controlling authorities of Central Government Ministries and Departments were directed to carry out promotions in accordance with the directions of the Hon'ble Supreme Court based on existing seniority / select list. A further direction was issued that every promotion order must clearly mention the stipulation that the

promotion shall be subject to further orders which may be passed by the Hon'ble Supreme Court. The OM dated 15.06.2018 became operational and the Ministries and Departments of the Central Government started making promotions and adhoc promotions were given to the eligible officers to fill up large number of vacancies subject to outcome of pending SLPs.

35. The applicant Ram Kumar Gupta in OA No. 291/378/2019 along with one Satyaveer Singh Yadav had earlier filed an OA No. 594/2018 seeking therein a direction to the official respondents to consider their cases for promotion as Income Tax Officers. The said OA was disposed of by this Tribunal on 27.11.2018 with the direction to the Principal Chief Commissioner of Income Tax, Rajasthan to take a decision over pending representations of the applicants therein. Pursuant thereto, an order dated 30.01.2019 was passed by the Principal Chief Commissioner of Income Tax, Rajasthan stating therein that the matter of 'own merit' in promotion is sub judice before the Hon'ble Supreme Court and the matter with regard to promotion on merits as mentioned in OM dated 15.06.2018 will be decided on the basis of extant OMs issued by the Department of Personnel and Training and clarifications issued by the Central Board of Direct Taxes.

36. On the next very date, i.e. 31.01.2019, the meetings of Departmental Promotion Committee were convened for making promotions to the posts of Income Tax Officers and Income Tax Inspectors. The record made available reveals that while considering the cases for promotion, the recruitment rules governing the services and the seniority list as it existed on 01.04.2016 were taken into consideration. The record further reveals that the OM dated 30.09.2016 and 15.06.2018 have been duly considered as eligibility list was prepared as per the seniority list and the same was placed before the committee for its consideration. The crucial date while determining the date of eligibility as 01st April of the vacancy year was determined as per the terms of DOPT OM dated 08.05.2017. Before convening the DPC meeting, a detailed exercise to determine the vacancies was also undertaken. The minutes of meeting produced in original before us reveal that a procedure for making regular promotions was followed in its letter and spirit. However, the actual promotions of Income Tax Inspectors and Income Tax Officers were made vide order dated 31.01.2019 on adhoc basis as a long drawn litigation was pending before the Hon'ble Supreme Court.

37. The orders dated 31.01.2019, while making promotions as Income Tax Officers and Income Tax Inspectors on adhoc basis, contained the similar terms and conditions enumerating therein that these promotions are subject to further orders which may be

passed by the Hon'ble Supreme Court as stipulated in DOPT OM dated 15.06.2018. Clause 2 (g) of the order further stipulated that the promotions would also be subject to review, if any specific directions or OM is issued by the Department of Personnel and Training / Central Board of Direct Taxes in future necessitating a review of the recommendations of the departmental promotion committee. The issue with regard to fixation of seniority was kept pending and a clause of probation for a period of two years was also inserted in the said promotion orders.

38. The net effect of the promotion orders dated 31.01.2019 was thus to clearly establish that these orders were subject to further orders which may be passed by the Hon'ble Supreme Court as stipulated in DOPT OM dated 15.06.2018. The review of the Departmental Promotional Committee was also made subject to further specific directions / Office Memorandum, if any, to be issued by the Department of Personnel and Training / Central Board of Direct Taxes.

39. Against the orders of promotion of Income Tax Officers and Income Tax Inspectors issued on 31.01.2019, nobody felt aggrieved except one Kailash Chand Meena (applicant No. 1 in OA No. 291/243/2019) who submitted a representation dated 19.03.2019 before the Principal Chief Commissioner of Income

Tax, Rajasthan stating therein that the OM dated 30.03.1988 has not been considered while making adhoc promotions. The representation dated 19.03.2019 was also pursued by Kailash Chand Meena through his Union known as All India Income Tax SC/ST Welfare Association, Rajasthan Unit, Jaipur. The said representation was considered by the Principal Chief Commissioner of Income Tax, Rajasthan and the same was rejected vide order dated 03.04.2019.

40. While dealing with the issue raised by Kailash Chand Meena, the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur in her order dated 03.04.2019 specifically and very categorically stated that the OMs dated 30.04.1983 and 30.03.1988 were relevant till issuance of OM dated 02.07.1997. It has further been stated that vide OM dated 02.07.1997, vacancy based reservation was abolished and post based roster has been made applicable. Thereafter, OM dated 30.09.2016 was issued as per an assurance given by the learned Solicitor General of India to the effect that no further promotions of the reserved category persons to unreserved posts will be made by the Government. It has further been stated in the order dated 03.04.2019 that the OMs dated 30.04.1983 and 30.03.1988 do not override OM dated 30.09.2016 which mandatorily needs to be followed in respect of all promotions made by the Government

whether adhoc or regular. Emphasis has further been laid in the order dated 03.04.2019 that the OM dated 30.04.1983 and 30.03.1988 are now not operational. The Departmental Promotion Committee meeting for recruitment year 2018 has been convened strictly in accordance with the OM dated 15.06.2018. The OM dated 11.07.2002 is not operational in view of OM dated 30.09.2016. The applicant Kailash Chand Meena was also advised that in case he is of the view that OM dated 15.06.2018 and 30.09.2016 are discriminatory and harmful to SC/ST category employees, he may take up the matter with the Department of Personnel and Training for reviewing those Office Memorandums. Since Kailash Chand Meena had also been pursuing his representation through his Union, therefore, a copy of the order dated 03.04.2019 was endorsed to General Secretary, All India Income Tax SC/ST Welfare Association, Rajasthan Unit, Jaipur. Nobody including the said Union namely All India Income Tax SC/ST Welfare Association, Rajasthan Unit, Jaipur felt aggrieved against the adhoc promotions of Income Tax Officers and Income Tax Inspectors granted vide order dated 31.01.2019 except Kailash Chand Meena and nine others and, therefore, OA No. 291/243/2019 was filed before this Tribunal on 01.05.2019 making therein a prayer that the departmental promotion committee decision dated 31.01.2019 (erroneously typed as 30.01.2019) whereby adhoc promotions have been made ignoring the general seniority may be declared bad in law

and a direction may be issued to the respondents to convene a review departmental promotion committee for the recruitment year 2018 and also for earlier years for the purposes of adhoc promotions on the posts of Income Tax Inspectors. There is no specific challenge to the order dated 03.04.2019 passed by the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur.

41. In OA No. 291/243/2019, the official respondents were put to notice on 02.05.2019 by this Tribunal. Thereafter an M.A. No. 623/2019 was filed by Kishore Kumar Udhwani, Shashank Jain, Rohit Kumar Sharma, Mukesh Kumar Bansal, Chandan Kumar, Jagdish Prasad Menaria, Kamlesh Kumar Sharma, Shyam Singh Rathore, Rajeev Roshan, Dinesh Kumar, Ashvini Motwani, Devendra Singh and Jabara Ram (general category candidates) for getting themselves impleaded as party respondents in the said OA. The MA was allowed on 14.08.2019 and they were ordered to be impleaded as respondents No. 4 to 16 in O.A. No. 291/243/2019.

42. One more relevant fact, which requires to be noticed here, is that the applicant Kailash Chand Meena and Others also filed a Misc. Application No. 291/695/2019 in pending O.A. No. 291/243/2019 stating therein that the Department of Personnel and Training is the apex body governing both recruitment and promotions and, therefore, they may be permitted to submit a

representation before the said department and a direction be issued to consider and decide the same within a period of three weeks. The respondents No. 1, 2 and 3 (official respondents) by way of filing a joint reply in the said M.A. opposed the prayer made therein. It was stated in the said reply that the Central Board of Direct Taxes vide letter dated 02.08.2019 has informed that clarification / opinion of the Department of Personnel and Training has been sought and till such time the clarification is obtained from the said department, the matter may be kept on hold. In prayer clause of reply to said M.A., it has further been stated that in view of the Board's letter and the order dated 15.04.2019 passed by the Hon'ble Supreme Court in SLP (C) No. 30621/2011, the M.A. may be dismissed.

43. Shri Punit Singhvi, learned counsel for the applicants in O.A. No. 291/243/2019 after getting a copy of reply in the aforesaid M.A. had made a statement on 03.12.2019 that the applicants do not wish to pursue the said M.A. and they wish to withdraw the same. Accordingly, M.A. No. 291/695/2019 in O.A. No. 291/243/2019 was dismissed as withdrawn on 03.12.2019.

44. In the interregnum, a letter dated 17.06.2019 addressed to the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur came to be issued by the Central Board of Direct Taxes stating therein that the promotions made on 31.01.2019 were

purely on adhoc basis and the OM dated 15.06.2018 for regular promotions was followed instead of following the DOPT OM dated 30.03.1988 and it would be appropriate if the said adhoc promotions dated 31.01.2019 are reviewed and the OM dated 30.03.1988 is given effect to by applying principle of general seniority.

45. The candidates of general category, having an apprehension in their mind with regard to their reversions pursuant to letter dated 17.06.2019, filed OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) before this Tribunal. The official respondents by way of filing a joint reply in the said Original Applications maintained an identical stand and submitted that after receipt of letter dated 17.06.2019, the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur further sought directions and clarifications from the Central Board of Direct Tax in the matter of review DPC. In response thereto, the Central Board of Direct Taxes vide its letter dated 02.08.2019 informed the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur that the clarification / opinion in the matter has been sought from the Department of Personnel and Training and it is still awaited and a direction was issued to keep the matter on hold.

46. Though after getting a clear direction from the Central Board of Direct Taxes vide letter dated 02.08.2019, there was no occasion with the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur to seek further directions for conducting the review Departmental Promotion Committee but still this course was resorted to, and pursuant thereto, a letter dated 20.01.2020 was issued by the Central Board of Direct Taxes stating therein that the Department of Personnel and Training is not in a position to give any clarification / advice in the matter till clear directions are received from the Hon'ble Supreme Court and the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur being cadre controlling authority may take cognizance of the said fact and take action in the matter accordingly.

47. Construing the contents of the letter dated 20.01.2020 as a direction to hold review DPC, the Principal Chief Commissioner of Income Tax, Rajasthan Region, Jaipur proceeded with an exercise to convene the review DPC on 29.01.2020 resulting into the orders dated 30.01.2020 reverting the applicants in OA No. 291/378/2019, OA No. 291/379/2019 and OA No. 291/415/2019 from the posts of Income Tax Officers and Income Tax Inspectors, respectively.

48. Immediately after issuance of orders dated 30.01.2020, M.A. No. 291/102/2020 (in OA No. 291/415/2019), M.A. No. 291/103/2020 (in OA No. 291/378/2019) and M.A. No. 291/104/2020 (in OA No. 291/379/2019) were filed by the applicants seeking stay against the said orders. Looking towards the gravity of the matter, this Tribunal after seeking consent of learned counsels for the contesting parties proceeded with the final hearing of the cases on 06.02.2020. Hearing in O.A. No. 291/243/2019 was also preponed to 06.02.2020 on a Misc. Application No. 291/142/2020 filed by the original applicants therein.

49. Admittedly, after the interim order dated 29.09.2016 passed by the Hon'ble Supreme Court, the Department of Personnel and Training had issued an OM dated 30.09.2016 stating therein that till such time the SLPs are decided by the Hon'ble Supreme Court, the DOPT OM dated 10.08.2010 shall not be relied upon while considering promotions. Thereafter, on the basis of subsequent interim orders dated 17.05.2018 and 05.06.2018 passed by the Hon'ble Supreme Court in pending SLPs, the Department of Personnel and Training being nodal agency amongst all the cadre controlling authorities in the Central Government departments issued an OM dated 15.06.2018 directing therein all the cadre controlling authorities of the Central Government Ministries, Departments and Union Territories that they will carry out the

promotions in accordance with directions issued by the Hon'ble Supreme Court i.e. from 'reserved to reserved' and 'unreserved to unreserved' and also in the matter of promotion on merits.

50. Relying upon the aforesaid OMs dated 30.09.2016 and 15.06.2018, the Principal Chief Commissioner of Income Tax, Rajasthan had convened the DPC for making promotion to the posts of Income Tax Officers and Income Tax Inspectors on 31.01.2019 and granted promotions to the applicants in OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) vide orders dated 31.01.2019 with a rider that the said promotions shall be subject to review, if any specific direction or OM is issued by the Department of Personnel and Training / Central Board of Direct Taxes. It was also stipulated in the said orders that the promotions are subject to further orders, which may be passed by the Hon'ble Supreme Court as stipulated in OM dated 15.06.2018. Thereafter, because of an order of status quo passed by the Hon'ble Supreme Court on 15.04.2019, a necessity arose to file an I.A. in the pending SLP before the Hon'ble Supreme Court in order to seek a clarification and, accordingly, the interim application has been filed by the Union of India through Department of Personnel and Training for issuance of clarification to the effect that the Union of India may continue to

make promotions in terms of directions / orders dated 17.05.2018 and 05.06.2018 subject to final outcome of the pending SLPs. In the said interim application in paragraph 9, it has been specifically pleaded that because of the interim orders dated 17.05.2018 and 05.06.2018, the Government could tide over the grave situation that had arisen due to non-promotion and chaos. More than 4,000 promotions could be effected and adhoc promotions were given to the eligible officers to fill up large number of vacancies subject to the outcome of the pending SLPs. Meaning thereby, the adhoc promotions were given to applicants in OA No. 291/379/2019, OA No. 291/378/2019 and OA No. 291/415/2019, while implementing the orders dated 17.05.2018 and 05.06.2018 passed by the Hon'ble Supreme Court and the OM dated 15.06.2018.

51. The aforesaid clarification has been sought by the Union of India because of the subsequent status quo order dated 15.04.2019 passed by the Hon'ble Supreme Court. The said clarification is still awaited. Therefore, the Department of Personnel and Training showed its inability to Central Board of Direct Taxes to express any opinion into the matter. The letter dated 02.08.2019 vide which the Central Board of Direct Tax had directed the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur to keep the matter on hold has not been

withdrawn. No specific direction or the Office Memorandum has been issued by the Department of Personnel and Training / Central Board of Direct Taxes for undertaking an exercise of review DPC. The Hon'ble Supreme Court has not passed any further order as stipulated in the DOPT OM dated 15.06.2018.

52. In such like situation, we do not see any reason with the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur to construe the contents of letter dated 20.01.2020 as directions to undertake an exercise of review DPC in terms of letter dated 17.06.2019. The Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur has thus effectively ignored the directions issued by the Central Board of Direct Taxes vide letter dated 02.08.2019 directing therein to keep the matter on hold. In our considered view, after filing an interim application before the Hon'ble Supreme Court by Union of India, the letter dated 20.01.2020 cannot be construed to have granted such a leeway and free play to the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur enabling her to convene the review DPC totally contrary to the terms stipulated in the promotion orders dated 31.01.2019 and the DOPT OM dated 15.06.2018. A plain reading of letter dated 20.01.2020 nowhere gives a direction to the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur to ignore the CBDT's mandate given through its earlier letter dated

02.08.2019 wherein a categorical direction was given to keep the matter on hold. The fact cannot be ignored that while issuing letter dated 20.01.2020, the Central Board of Direct Taxes had also reproduced the communication given by the Department of Personnel and Training to the effect that the said department is not in a position to give any clarification / advice in this matter till clear directions are received from the Hon'ble Supreme Court.

53. A perusal of paragraph 18 of I.A. before the Hon'ble Supreme Court in pending SLPs reveals that after the Hon'ble Supreme Court's interim order dated 15.04.2019, the functionaries of the Department of Personnel and Training considered it appropriate to seek clarification of the said order so that any further action in the matter of promotions do not fall foul of law and the orders passed by the Hon'ble Supreme Court. Paragraph 18 of I.A. is reproduced here as under: -

"18. That in view of the recent interim order, dated 15.04.2019, it has become necessary to file the present application by way of abundant caution seeking guidance and clarification on the Order, dated 15.04.2019, in view of the factual position that exists as on date, as also in view of various orders passed earlier by this Hon'ble Court from time to time in the present case(s), as set out herein above, so that any action taken by the Union of India in terms of the 'status quo' order, passed by this Hon'ble Court on 15.04.2019, in the matter of promotion of its employees, do not fall foul of law/order(s) passed by this Hon'ble Court. Further guidance of this Hon'ble Court is also desirable so that the various other Courts and Tribunals are able to uniformly appreciate the extant legal position in the matter of reservation in promotion."

54. Admittedly, the clarification as sought for by the Union of India in the aforesaid I.A. is still awaited and vide CBDT letter

dated 02.08.2019, the Principal Chief Commissioner of Income Tax, Rajasthan was directed to keep the matter on hold, but surprisingly, the Principal Chief Commissioner of Income Tax, Rajasthan in her own wisdom thought that convening the Review DPC will not fall foul of law and the orders dated 15.04.2019 passed by the Hon'ble Supreme Court.

55. The record produced before us nowhere reveals that what prevailed upon the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur to take such a step in hot haste when a clear mandate from Central Board of Direct Taxes was there to keep the matter on hold and the Union of India had already moved an interim application before the Hon'ble Supreme Court seeking clarification into the matter.

56. The only reason which the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur could refer that since in Delhi and Gujarat Regions, the promotions have been effected while keeping in view the OM dated 30.03.1988, despite the status quo orders passed by the Hon'ble Supreme Court and, therefore, an exercise of review DPC has been undertaken in Rajasthan Region also, does not find favour with us. As admittedly prior to the Hon'ble Supreme Court's order dated 15.04.2019, the official respondents had been making promotions on adhoc basis in terms of the Hon'ble Supreme Court's earlier directions/orders

dated 17.05.2018 and 05.06.2018 and this fact has been pleaded in very categorical terms by the Union of India through Department of Personnel and Training by way of Interim Application in pending SLPs. Contents of para 9 of the said Interim Application are reproduced here as under:

"9. Thus owing to this Hon'ble Court's kind interim directions/orders dated 17.05.2018 and 05.06.2018, the Government could tide over the grave situation that had arisen due to non-promotion and chaos. Following the interim orders dated 17.05.2018 and 05.06.2018, in Central Secretariat Services alone, for which Department of Personnel and Training is the cadre controlling authority, more than 4,000 promotions could be effected. Ad-hoc promotions were given to the eligible officers to fill up large number of vacancies, subject to the outcome of the pending SLPs."

57. A perusal of aforesaid Interim Application further reveals that the said Interim Application was prepared and signed on behalf of the Union of India by the Under Secretary, Department of Personnel and Training on 07.08.2019. The clarification in said Interim Application is still awaited. It appears that the CBDT letter dated 02.08.2019 directing the Principal Chief Commissioner of Income Tax, Rajasthan to keep the whole proceedings on hold, was issued only because of the reason that Department of Personnel and Training was finding it difficult to express any opinion without getting clarification from the Hon'ble Supreme Court. Thus, it is beyond comprehension that on the one hand, the Union of India through Department of Personnel and Training will seek clarification from the Hon'ble Supreme Court in order to avoid foul of law and the order dated 15.04.2019 passed by the Hon'ble Supreme Court and on the other hand, the

Principal Chief Commissioner of Income Tax, Rajasthan will undertake an exercise of Review DPC as in some other Regions, the promotions have been made despite the Hon'ble Supreme Court's order dated 15.04.2019. Such a stand, in any case, cannot be allowed to be maintained more particularly when the Department of Personnel and Training is also a party respondent in all these Original Applications.

58. Projection of an argument by Shri Rajendra Vaish, Additional Central Government Standing Counsel that certain representations were received from reserved category candidates and while deciding those representations, the Principal Chief Commissioner of Income Tax, Rajasthan had taken a view to undertake an exercise of review DPC and withdrawal of said argument, immediately, when he was asked to produce the record in this regard, assumes importance as Shri T.R. Murlidharan, Income Tax Officer, who filed replies in all these Original Applications as well as Misc. Applications on behalf of the official respondents (including the Department of Personnel and Training) and also assisted the learned counsels representing them, while producing the records and an undated note regarding important aspects involved in the matter, asserted therein that representations were received from SC/ST officials stating therein that while conducting DPC for adhoc promotions, the principle of 'general seniority' as per DOPT OM dated

30.03.1988 should have been followed. The divergent stand maintained by the official respondents further lead us to hold that the exercise of review DPC was an action which suffers from the vice of arbitrariness.

59. The scope of Articles 14 and 16 of the Constitution of India has been widened by judicial interpretations to mean not only the right to be not discriminated against but also protection from any arbitrary or irrational act of the State. Arbitrariness is an anathema to the rule of equality. In a democratic set-up of the Government, the respondents cannot be allowed to lay down arbitrary and capricious standards for the choice of persons.

60. The argument of Shri Vaish that the applicants do not have any right to continue on the promotional posts, being adhoc promotees and since they accepted the adhoc promotions with their eyes wide open, therefore, they cannot be allowed to claim further continuation on the promotional posts, also do not find favour with us. The fact cannot be ignored that these promotions were made on adhoc basis on 31.01.2019 because of the pendency of a long drawn litigation, which is now pending before the highest Court of the land. While making these promotions on 31.01.2019, the procedure for convening the meeting of Departmental Promotion Committee for regular promotions was

followed. However, the promotions were given on adhoc basis by putting a rider that these will be subject to further orders passed by the Hon'ble Supreme Court in pending SLPs. A condition with regard to probation of two years was also incorporated in the promotion orders, which generally forms a part of an order made for regular promotions. The issue with regard to seniority was kept pending. In such a situation, when the promotions are made subject to further orders by the Hon'ble Supreme Court; an exercise of conducting a review DPC by the Principal Chief Commissioner of Income Tax, Rajasthan, more particularly when the clarification with regard to interim order from the Hon'ble Supreme Court is awaited, in our considered view, cannot be sustained.

61. In **E.P. Royappa vs. State of Tamil Nadu & Ors.** 1974 (1) SLR 497, a Constitution Bench of the Hon'ble Supreme Court considered the scope of Articles 14 and 16 of the Constitution of India and laid down the following principles:

"82. xxxxx Art 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Art. 14. In other words, Art. 14 is the genus while Art. 16 is a species. Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which there informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle?

It is a founding faith, to use the words of Bose, J, "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment it is also violative of Art. 16. Arts 14 and 16 strike at arbitrariness in state action and ensure fairness and equality of treatment. They require that state action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and out side the area of permissible considerations it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness and different lethal radiations emanating from the same vice; in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16.

83. It is also necessary to point out that the ambit and reach of Arts. 14 and 15 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Arts. 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. It is, therefore, no answer to the charge of infringement of Arts. 14 and 16 to say that the petitioner had no right to the post of Chief Secretary but was merely officiating in that post. That might have some relevant to Art. 311 but not to Arts. 14 and 16. xxxxx"

62. The judgments relied upon by learned counsel for the official respondents in the cases of **Keshav Chandra Joshi** (supra) and **Ashok Gulati** (supra) will not apply in the present set of facts and circumstances, as here-in this case, the promotions were made on 31.01.2019 on adhoc basis because of the interim orders passed by the Hon'ble Supreme Court on 17.05.2018 and 05.06.2018 and a subsequent OM dated 15.06.2018 issued by the Department of Personnel and Training and the question

cropped up; as to whether those promotion orders could be withdrawn by undertaking an exercise of review DPC while ignoring a subsequent order dated 15.04.2019 passed by the Hon'ble Supreme Court in pending SLPs.

63. In the case of **Keshav Chandra Joshi** (supra), the Hon'ble Supreme Court was dealing with an issue where the adhoc appointees were claiming the benefit of the period of their officiation towards seniority and it was held that where the initial appointment is adhoc only and not according to rules and is made as a stop-gap arrangement, the period of officiation in such post cannot be taken into account for reckoning the seniority. Whereas, in the case in hand, the issue with regard to seniority was kept pending while issuing promotion orders and there is no such claim in the Original Applications. A perusal of the record reveals that while convening the DPC on 31.01.2019, the recruitment rules as well as the seniority list prevalent at that time were taken into consideration apart from the subsequent OMs dated 30.09.2016 and 15.06.2018 issued by the Department of Personnel and Training. Even an exercise to work out clear vacancies was also undertaken.

64. In **Ashok Gulati** (supra), the Hon'ble Supreme Court was examining a question whether the benefit of the period of service

rendered on adhoc basis by temporary engineers in the Irrigation Branch of Public Works Department of Haryana Government i.e. prior to their appointment as Assistant Engineers on regular basis, can be extended for the purposes of reckoning their eligibility for promotion to the post of Executive Engineer under the Rules governing that promotion. In our opinion, ratio of the said report cannot be attracted in the peculiar facts and circumstances of the present case.

65. We also do not find any substance in the argument of Shri Punit Singhvi, learned counsel representing the applicants in OA No. 291/243/2019 (Kailash Chand Meena & Ors. vs. UOI & Ors.) and respondents No. 5 and 6 in OA No. 291/379/2019 (Shashank Jain & Ors. vs. UOI & Ors.), when he submitted that the promotions made in contravention to statutory rules can always be reviewed. To substantiate his said argument, learned counsel submitted that while convening DPC on 31.01.2019, the OM dated 30.03.1988 was not taken into consideration and, therefore, there is no error in the exercise of review DPC convened on 29.01.2020. Learned counsel placed reliance upon **Mahmood Hasan** (supra) to further strengthen his argument.

66. The argument raised by Shri Singhvi fails when the order dated 03.04.2019 (Annexure A/13 in OA No. 291/243/2019) passed by the Principal Chief Commissioner of Income Tax,

Rajasthan, Jaipur on a representation filed by Kailash Chand Meena, is put to a close scrutiny. While passing the said order, the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur stated that the OM dated 30.04.1983 and 30.03.1988 were relevant till issuance of OM dated 02.07.1997 and by OM dated 02.07.1997 vacancy based reservation was abolished and post based roster has been made applicable. It has further been stated in the said order that thereafter OM dated 30.09.2016 was issued in terms of assurance given by the learned Solicitor General of India that no further promotions of the reserved category persons to unreserved posts will be made by the Government. The order dated 03.04.2019 further stated that the OMs dated 30.04.1983 and 30.03.1988 do not override OM dated 30.09.2016 which mandatorily needs to be followed in respect of all promotions made by the Government whether adhoc or regular.

67. Shri Singhvi when confronted with the aforesaid order dated 03.04.2019 passed by the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur submitted that the said stand has been wrongly maintained by the respondents. However, we do not see any reason with the respondents to maintain a wrong stand; more particularly when the Union of India while filing an Interim Application before the Hon'ble Supreme Court seeking clarification with regard to interim order dated 15.04.2019 very

categorically stated in paragraph 9 of the said application that the Government could tide over the grave situation because of the interim directions and the orders dated 17.05.2018 and 05.06.2018 and adhoc promotions were given to eligible officers to fill up large number of vacancies subject to the outcome of the pending SLPs. In the given facts and circumstances, the judgment of the Hon'ble Supreme Court in the case of **Mahmood Hasan** (supra) will be of no assistance to Shri Singhvi.

68. The judgment of the Hon'ble High Court of Punjab and Haryana in the case of **Ram Krishan Singh** (supra) as relied upon by Shri Singhvi can also not be pressed into service as in the said judgment, a direction was given to the railway authorities to implement the orders passed by this Tribunal subject to the terms and conditions contained in a letter/circular dated 12.01.2017 issued by the Railways. The judgment was rendered by the Hon'ble High Court of Punjab and Haryana on 18.01.2017. Whereas, the Hon'ble Supreme Court while dealing with Interim Applications No. 25195/2018 and 25199/2018 has passed an interim order dated 17.05.2018 directing the respondents that the pendency of Special Leave Petition shall not stand in the way of the Union of India taking steps for the purposes of promotions from 'reserved to reserved' and 'unreserved to unreserved' and also in the matter of promotion

on merits. Thereafter, the OM dated 15.06.2018 was issued by the Department of Personnel and Training and following the said OM, these promotions were made on adhoc basis on 31.01.2019.

69. In the facts and circumstances of the case, replacement of adhoc by another set of adhoc, in our considered view, will also be contrary to the view taken by the Hon'ble Supreme Court in the case of **Hargurpratap Singh** (supra) wherein it has been held that the course adopted by the Hon'ble High Court to displace one adhoc arrangement by another adhoc arrangement, is not at all appropriate for those persons, who have gained experience which will be more beneficial and useful to the establishment concerned rather than to appoint persons afresh on adhoc basis. The same view has been taken by the Hon'ble High Court of Jharkhand in the case of **Dr. Rajni Kant Tirkey** (supra) while relying upon the observations made in the case of **Hargurpratap Singh** (supra) and **State of Haryana and Ors. vs. Piara Singh and Ors.** (1992) 4 SCC 118.

70. In **Piara Singh's** case (supra), the Hon'ble Supreme Court also observed that the normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made and in such a situation, effort should

always be to replace such an adhoc / temporary employee by a regularly selected employee as early as possible. Adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only by a regularly selected employee.

71. Keeping in view the aforesaid principles laid down by the Hon'ble Supreme Court, in the given set of facts and circumstances, the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur ought not to have proceeded with the review Departmental Promotion Committee to replace a set of adhoc employees by another set of adhoc employees; more particularly when the adhoc promotions were made on 31.01.2019 while following the due process of making regular promotions.

72. Another question which arises for consideration in these Original Applications is as to what is the implication of provisions of Section 19 (4) of 'the Act' in the given facts and circumstances of the case.

73. Section 19 (1) of 'the Act' provides that an aggrieved person can file an application before this Tribunal for redressal of his grievance. On receipt of such an application, the Tribunal, if satisfied and find that the application is a fit case for adjudication,

may 'admit' the same, instead of rejecting the same summarily; this is so mandated by the provisions of Section 19 (3) of 'the Act'. Section 19(4) of 'the Act' further mandates that where an application has been admitted by the Tribunal under Sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate, meaning thereby, that all the proceedings pending before the authorities against whom the Original Application is filed are nullified and entirely over thrown. However, if a direction is sought for from the Tribunal during pendency of the Original Application, the authority can still proceed with those proceedings if leave is accorded by the Tribunal to do so. Section 19 (4) further makes a provision that no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

74. The Ernakulam Bench of this Tribunal in the case of **Shibu M. Job vs. Union of India and Ors.** (O.A. No. 383/2010 decided on 19.07.2011) had an occasion to examine the implication of the provisions of Section 19 (4) of 'the Act'. It was a case where the applicant was working as Director, Postal Services and was superseded by his juniors in the matter of promotion to Senior Administrative Grade for the vacancies of recruitment year 2009-10. Aggrieved by the said action, the

applicant preferred an Original Application, which was admitted on 19.05.2010 and a review DPC was convened on 28.05.2010 by the respondents. It was held that after admission of the Original Application, the exercise of review DPC, except at the direction of this Tribunal, is non-est as abated in view of Section 19 (4) of 'the Act'. The relevant observations from paragraph 8 of the said judgment reads thus: -

"8. xxxxx The DPC meeting held on 27.10.2009 had considered the applicant 'fit' for promotion to the SAG as per rules. On seeking a clarification, the UPSC suo moto decided to review its earlier recommendation in regard to the applicant. It was not correction of a minor mistake that took place in the review DPC meeting held on 28.05.2010, nine days after the admission of this O.A. It turned upside down the recommendation of the applicant as 'fit' for promotion, and graded him as 'unfit' for promotion resulting in serious adverse civil consequences to him. The normal career progression of an officer has been abruptly stopped. The UPSC is an advisory body set up under Article 315 of the Constitution with the obligation to ensure that all selections made for appointments to the services/posts of the Union of India as falling under its purview are made strictly in accordance with the statutory rules and relevant instructions issued by the Government of India from time to time. The mistake that is claimed to have occurred in transporting the assessment of the applicant to the assessment sheet in no way enhances the confidence of the stake holders in the UPSC as the highest constitutional body in the country to conduct selection to crucial posts in the Government. What the Appointments Committee of the Cabinet sought was a clarification, not a relook at the case of the applicant for promotion. But a relook was done in the review DPC meeting held after the admission of this O.A. filed by the applicant for his promotion. Any proceeding for consideration of, or, relook at the promotion of the applicant with adverse consequences to him after the admission of this O.A. except at the direction of this Tribunal is non est as abated in view of Section 19 (4) of the Administrative Tribunals Act, 1985. Therefore, we hold that the review meeting of the DPC held on 28.05.2010 to the extent it relates to the applicant is not sustainable in law."

75. A Division Bench of this Tribunal in the case of **Prem Baboo vs. Union of India** (1987) 4 ATC 727, had also considered the effect of disposal of the appeal by an appellate authority after

admission of the Original Application. It was held that in view of Section 19 (4) of 'the Act', after admission of the Original Application by this Tribunal, the pending appeal before the appellate authority abates.

76. While placing reliance upon the judgment in the case of **Prem Baboo** (supra), Ahmedabad Bench of this Tribunal in the case of **Shivkumar B. Nair** (supra) enumerated four principles in paragraph 13 of the said judgment, which are reproduced here as under: -

“ 13. The following principles emerge from the aforesaid decisions: -

- (i) That the provision of appeal must be exhausted.
- (ii) There cannot be two simultaneous proceedings in the case of disciplinary enquiry.
- (iii) That the appeal abates on admission of the matter.
- (iv) That any order of Appellate Authority passed after admission of O.A. in non-est.”

77. The argument of Shri Punit Singhvi, learned counsel representing the applicants in OA No. 291/243/2019 (Kailash Chand Meena & Ors. vs. UOI & Ors.) and respondents No. 5 and 6 in OA No. 291/379/2019 (Shashank Jain & Ors. vs. UOI & Ors.), while placing reliance upon the Hon'ble Supreme Court's judgment in the case of **Dipak Mali** (supra) that since the Original Application was not admitted and, therefore, there was no restraint upon the official respondents to proceed further with review DPC in view of Section 19 (4) of 'the Act', do not find favour with us.

78. In the case in hand, the Principal Chief Commissioner of Income Tax, Rajasthan had undertaken an exercise of convening DPC on 31.01.2019 for making promotions to the posts of Income Tax Officers and Income Tax Inspectors. While holding the said DPC, OMs dated 30.09.2016 and 15.06.2018 and the interim orders dated 17.05.2018 and 05.06.2018 passed by the Hon'ble Supreme Court in SLP (Civil) No. 30621/2011 and SLP (Civil) No. 31288/2017 were kept in view. Consequent thereto, the respondents No. 4 to 16 in O.A. No. 291/243/2019 (Kailash Chand Meena & Ors. vs. UOI & Ors.) and the applicants in OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) were promoted as Income Tax Inspectors and Income Tax Officers, respectively, on adhoc basis vide orders dated 31.01.2019. Aggrieved by the said order dated 31.01.2019, Kailash Chand Meena (applicant No. 1 in OA No. 291/243/2019) had submitted a representation before the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur and requested for holding a review DPC for adhoc promotions. The said representation was declined by the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur vide order dated 03.04.2019. Instead of laying down a specific challenge to order dated 03.04.2019, Kailash Chand Meena and nine others filed O.A. No. 291/243/2019 seeking therein a

direction to respondents to convene a review Departmental Promotion Committee for recruitment year 2018 and earlier years for the purposes of adhoc promotions on the posts of Income Tax Inspectors. The said Original Application came up for hearing before this Tribunal on 02.05.2019 and finding substance therein, it was not rejected 'summarily' by this Tribunal. The respondents were put to notices and the Standing Counsel of the respondent department, who was present in the court, was directed to accept notices and file reply with an advance copy to learned counsel for the applicants. After filing of reply by the official respondents, the matter was taken up for hearing on 06.02.2020. Learned counsels for the parties addressed extensive arguments on various dates and finally the judgment was reserved on 12.03.2020.

79. Merely word 'admission' was not incorporated in any of the orders, in our considered view, will not give any advantage to the official respondents to proceed with the further representations and take a decision over them, just to frustrate the pending Original Application. In our opinion, if an Original Application is not 'summarily' rejected by this Tribunal by recording the reasons and the proceedings commenced further, it will not make any difference if the word 'admission' is not mentioned in any of the subsequent orders.

80. Giving a relook to the facts and circumstances of the case, we find that the representation dated 19.03.2019 filed by Kailash Chand Meena (applicant No. 1 in O.A. No. 291/243/2019) had already been rejected on 03.04.2019 by the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur. The Original Application filed by Kailash Chand Meena and nine others was not 'summarily' rejected and was awaiting a detailed hearing. Therefore, in view of the specific embargo enunciated in Section 19 (4) of 'the Act', the respondents could not have entertained any other representation. As has been noticed in the earlier part of this judgment, an argument was raised on behalf of the official respondents that after receipt of various representations, the review Departmental Promotion Committee was convened. However, the said argument was immediately withdrawn summarily when the learned counsel for the official respondents was directed to produce those representations and decisions taken thereon. Probably, the learned counsel realised the official respondents' limitation in entertaining any such representation in view of the specific embargo mandated in Section 19 (4) of 'the Act'.

81. Though learned counsel representing the official respondents withdrew the aforesaid argument with regard to those representations, which were entertained during pendency of O.A.

No. 291/243/2019 but Shri T.R. Murlidharan, Income Tax Officer, being totally unmindful of the said withdrawal of argument by learned counsel, while producing the record and an undated note regarding important aspects, still asserted that after issuance of adhoc promotion orders dated 31.01.2019 on the basis of recommendations of Departmental Promotion Committee, representations were received from SC/ST officials stating therein that while conducting DPC for adhoc promotions, the principle of general seniority as per DOPT OM dated 30.03.1988 should have been followed and, accordingly, the matter was then referred to the Central Board of Direct Taxes and, therefore, letter dated 17.06.2019 came to be issued.

82. Such a contrary stand reveals a total sense of irresponsibility and an utter disregard for veracity. The argument which was projected and withdrawn later on by learned counsel for the official respondents, it appears that the said recourse was adopted just to defeat the decision making process, as withdrawal of said argument at that juncture deprived this Tribunal from viewing the contents of those representations and decisions taken thereon during pendency of the Original Application. In any case, it is reprehensible and totally unworthy of the spokesman of the official respondents and most unflattering to official respondents on whose behalf he spoke.

83. Even the applicants to whom Shri Punit Singhvi represented, were fully aware of the provisions of Section 19 (4) of 'the Act'. They while filing Misc. Application M.A. No. 291/695/2019 in O.A. No. 291/243/2019 stated that the Department of Personnel and Training is the apex body governing the recruitment and promotions and, therefore, they may be permitted to submit a representation before respondent No. 1 and a direction may be issued to decide the same within a period of three weeks. The said Misc. Application was opposed by the official respondents by way of filing a joint reply stating therein that the department has already received a legal notice in the matter of review DPC and in view of the order dated 15.04.2019 passed by the Hon'ble Supreme Court in SLP (C) No. 30621/2011, a clarification has been sought from the Central Board of Direct Taxes and in turn the Central Board of Direct Taxes vide letter dated 02.08.2019 has informed that clarification / opinion of the Department of Personnel and Training has been sought and till such time the clarification is obtained from the said department, the matter may be kept on hold. While making all these assertions, it was further stated that no DPC/review DPC is being conducted. Prayer for dismissal of Misc. Application was made in the wake of order dated 03.04.2019 rejecting the aforesaid representation dated 19.03.2019.

84. After getting a copy of reply in the aforesaid Misc. Application, Shri Punit Singhvi, learned counsel for the applicants in O.A. No. 291/243/2019 had made a statement on 03.12.2019 that the applicants do not wish to pursue the said Misc. Application and they may be permitted to withdraw the same. Accordingly, M.A. No. 291/695/2019 was dismissed as withdrawn on 03.12.2019.

85. In view of the clear provisions of Section 19(4) of 'the Act', putting an embargo upon the official respondents to entertain any appeal or representation, all the proceedings pursuant to letter dated 17.06.2019 including the exercise of review DPC and consequential orders of promotions and reversions on 30.01.2020 are held to be nonest and those cannot be acted upon and are liable to be ignored.

86. The laudable object which one can see behind the provisions of Section 19 (4) of 'the Act' is that; a restraint to entertain an appeal or a representation has been put upon the authority so that the pending proceedings before the Tribunal are not frustrated, multiplicity of litigation is avoided, third party rights are not created, other complexities of civil laws like amendment of pleadings etc. are not attracted and the Tribunal is able to settle the issues by following the principles of natural justice while

keeping in view the provisions of Section 22 of 'the Act'. In this view of the matter, the argument of Shri Punit Singhvi that no relief can be granted to applicants in OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) because the pleadings are silent with regard to review DPC and consequent promotions and reversions, cannot be accepted and deserves to be repelled as all the proceedings pursuant to CBDT letter dated 19.04.2019 have already been held to be nonest having been undertaken while ignoring the mandate of Section 19 (4) of 'the Act'. The ratio of the judgments in **Mandir Sri Laxman Sidh Maharaj** (supra) and **Bharat Amratlal Kothari** (supra) as referred to by Shri Singhvi, in our considered view, cannot be applied in the present set of facts and circumstances of the case.

87. The record produced before this Tribunal revealed that for Recruitment Year 2017-18, a meeting of Departmental Promotion Committee was convened on 17.08.2017 and while following the mandate of DOPT OM dated 30.09.2016, it was decided by the Departmental Promotion Committee to not to implement the OM dated 10.08.2010 and as a consequence thereof, no reserved category candidate was considered for promotion against unreserved post. Similar exercise was undertaken by the Departmental Promotion Committee while holding the meeting

on 31.01.2019 and no reserved category candidate was considered for promotion against unreserved post. However, the Principal Chief Commissioner of Income Tax, Rajasthan after receipt of CBDT letter dated 20.01.2020 opted to convene the meeting of Review DPC for Recruitment Year 2018 only while the persons who were promoted pursuant to DPC dated 17.08.2017, their term of adhoc promotion has further been extended.

88. We do not see any reason with the Principal Chief Commissioner of Income Tax, Rajasthan to single out the Recruitment Year 2018 for the purposes of Review DPC. If the plea that the Review DPC was undertaken to rectify an error in the DPC of Recruitment Year 2018 is accepted, then the same error was there in the DPC of Recruitment Year 2017-18 for which no exercise of Review DPC has been undertaken. Such a discriminatory action on the part of the Principal Chief Commissioner of Income Tax, Rajasthan cannot be sustained being violative of Article 14 of the Constitution of India.

89. Yet another question which arises for consideration of this Tribunal is that as to whether OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) can be termed to be bad because of non-joinder of necessary parties.

90. Shri Rajendra Vaish, learned counsel for the official respondents submitted that these Original Applications cannot be maintained and are liable to be dismissed for non-joinder of necessary parties as the applicants have failed to implead all the persons, who have now been promoted as Income Tax Inspectors and Income Tax Officers pursuant to review DPC held on 29.01.2020. In support of his contention, learned counsel relied upon the judgments of Hon'ble Supreme Court in the matter of **Rajeev Kumar and Anr. vs. Hemraj Singh Chauhan and Ors.** (2010) 4 SCC 554 and **Ranjan Kumar and Ors. vs. State of Bihar and Ors.** (2014) 16 SCC 187 and also a judgment of the Hon'ble High Court of Rajasthan at Jaipur in the matter of **B.L. Gupta and Ors. vs. Central Administrative Tribunal, Jaipur** (D.B. Civil Writ Petition No. 8613/2010 decided on 06.01.2011).

91. While advancing the same argument, Shri Punit Singhvi, learned counsel representing the applicants in OA No. 291/243/2019 (Kailash Chand Meena & Ors. vs. UOI & Ors.) and respondents No. 5 and 6 in OA No. 291/379/2019 (Shashank Jain & Ors. vs. UOI & Ors.) also placed reliance upon a Supreme Court judgment in the matter of **State of Rajasthan vs. Ucchab Lal Chhanwal** (2014) 1 SCC 144.

92. Shri S.S. Hasan, learned counsel representing the respondents No. 5 to 13 in O.A. No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.), who appeared before this Tribunal on 11.03.2020, also submitted that the Original Application cannot be maintained as the applicant has failed to implead all those persons who have now been promoted pursuant to review DPC convened on 29.01.2020.

93. On the other hand, Shri Amit Mathur, learned counsel for the applicants in O.A. No. 291/415/2019 (Surjeet Singh vs. UOI & Ors.) while placing reliance upon a judgment of the Hon'ble Supreme Court in the case of **A. Janardhana vs. Union of India & Ors.** AIR 1983 SC 769 submitted that the Original Application is maintainable even without impleading all the persons who have now been promoted pursuant to review Departmental Promotion Committee. He further submitted that the interests of reserved category candidates have been adequately represented in all these Original Applications. He also placed reliance upon a judgment of the Hon'ble High Court of Delhi in the case of **Baljit Singh Bahmania vs. Union of India & Ors.** [Writ Petition (C) No. 8955/2011 decided on 03.09.2012] and submitted that even if a single person is impleaded as party respondent still the Original Application cannot be termed to be bad for non-joinder of necessary parties.

94. Looking towards the facts and circumstances of the present case, we do not find any substance in the arguments of Shri Rajendra Vaish, Shri Punit Singhvi, and Shri S.S. Hasan, learned counsels representing the official respondents as well as private respondents in the afore-sated Original Applications, respectively.

95. The record reveals that pursuant to OMs dated 30.09.2016 and 15.06.2018 which intended to implement the interim orders dated 29.09.2016, 17.05.2018 and 05.06.2018 passed in the pending Special Leave Petitions and Contempt Petition by the Hon'ble Supreme Court, the Principal Chief Commissioner of Income Tax, Rajasthan, Jaipur proceeded to convene the meeting of DPC on 31.01.2019 and consequent thereto, promotions on the posts of Income Tax Officers and Income Tax Inspectors were made on 31.01.2019 itself. As noticed in the earlier paragraphs of this judgment, Kailash Chand Meena (applicant no. 1 in O.A. No. 291/243/2019) felt aggrieved against the adhoc promotions granted on the posts of Income Tax Inspectors and, therefore, he submitted a representation before the Principal Chief Commissioner of Income Tax, Rajasthan on 19.03.2019. The said representation was also pursued by Kailash Chand Meena through his union, i.e. All India Income Tax SC/ST Welfare Association, Rajasthan Unit, Jaipur. The representation

submitted by Kailash Chand Meena was rejected by the Principal Chief Commissioner of Income Tax, Rajasthan Unit, Jaipur on 03.04.2019 stating therein that the OM's dated 30.04.1983 and 30.03.1988 were relevant till issuance of OM dated 02.07.1997. Thereafter, OM dated 30.09.2016 was issued. The order dated 03.04.2019 states that the OM dated 30.04.1983 and 30.03.1988 do not override the OM dated 30.09.2016 and those OM's are now not operational. A copy of the order dated 03.04.2019 was also endorsed to the General Secretary, All India Income Tax SC/ST Welfare Association, Rajasthan Unit, Jaipur.

96. Without laying a specific challenge to order dated 03.04.2019, Kailash Chand Meena along with 09 others filed O.A. No. 291/243/2019 making therein a prayer that adhoc promotion dated 31.01.2019 ignoring the principle of general seniority may be declared bad in law and a direction may be issued to official respondents to convene review DPC for the recruitment year 2018 and earlier years as well for the purposes of adhoc promotions on the posts of Income Tax Inspectors. Apart from these 10 persons, nobody else including the All India Income Tax SC/ST Welfare Association, Rajasthan Unit, Jaipur came forward to lay a challenge to adhoc promotions of Income Tax Inspectors. Kailash Chand Meena and Ors. even did not implead those persons as party respondents who were promoted on adhoc basis

vide order dated 31.01.2019. It was, later on, that an M.A. No. 291/623/2019 was filed by some of the promoted candidates who were impleaded as party respondents No. 4 to 16 in O.A. No. 291/243/2019.

97. So far as the adhoc promotions granted to general category candidates on the posts of Income Tax Officers vide order dated 31.01.2019 are concerned, neither All India Income Tax SC/ST Welfare Association, Rajasthan Unit, Jaipur nor anybody else from reserved category aspiring for adhoc promotions came forward to lay a challenge to said order. The issues with regard to 'reservation in promotion', promotions to reserved category candidates on their 'own merit', applicability of OM dated 30.03.1988 and the implication of DOPT OM's dated 30.09.2016 and 15.06.2018 issued pursuant to Hon'ble Supreme Court's interim orders, is in contest in O.A. No. 291/243/2019 where the interests of general as well as reserved category candidates are duly watched and represented adequately. It is only when the letter dated 17.06.2019 was issued by the Central Board of Direct Taxes, an apprehension of reversion cropped up in the minds of those candidates who were promoted as Income Tax Inspectors and Income Tax Officers vide orders dated 31.01.2019 and OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) came

to be filed seeking a direction to official respondents restraining them from undertaking an exercise of review DPC.

98. It requires to be noticed here that O.A. No. 291/379/2019 (Shashank Jain & Ors. vs. UOI & Ors.) has been filed by those Income Tax Inspectors who were promoted on adhoc basis vide order dated 31.01.2019. Though in O.A. No. 291/243/2019, Kailash Chand Meena and 09 others had challenged the adhoc promotions made on 31.01.2019 but out of those 10 applicants, only 02 applicants namely Trilok Lunia and Prashant Kumar came forward to get themselves impleaded as party respondents in O.A. No. 291/379/2019. Meaning thereby, out of 10 applicants in O.A. No. 291/243/2019 either only 02 applicants namely Trilok Lunia and Prashant Kumar opted to defend themselves and remaining 08 applicants did not even feel appropriate to defend themselves in O.A. No. 291/379/2019 or all the 10 applicants in O.A. No. 291/243/2019 considered it appropriate that their interests will be looked after adequately by impleading those 02 candidates only in O.A. No. 291/379/2019. So far as the other Original Applications No. 291/378/2019 and 291/415/2019 dealing with the promotions of Income Tax Officers are concerned, only in O.A. No. 291/415/2019, 09 candidates came forward to get themselves impleaded as party respondents.

99. In the afore-stated facts and circumstances of the case, where the interests of both the categories i.e. general category and reserved category, are adequately represented, the judgments relied upon by Shri Rajendra Vaish and Shri Punit Singhvi are of no assistance to hold that the Original Applications are bad for non-joinder of necessary parties.

100. In **Rajeev Kumar** (supra), the Hon'ble Supreme Court had an occasion to examine a case where the appellants before the Hon'ble Supreme Court were not the party respondents before the Tribunal but the Hon'ble High Court of Delhi while dealing with an application to implead them as respondents in the Writ Petition, allowed them to intervene and further allowed them to make submissions at the time of hearing of the case and considered the question of their locus standi to participate in the controversy at the stage when the matter was before the Hon'ble High Court. The plea of the appellants that they were not made party in proceedings before the Tribunal was turned down by the Hon'ble Supreme Court by observing that they were aware of pendency of the proceedings before the Tribunal and, therefore, they cannot approach the Hon'ble High Court in view of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in the case of **L. Chandra Kumar vs. Union of India** (1997) 3 SCC 261. The relevant para 14 of the judgment in the case of **Rajeev Kumar** (supra) reads thus: -

“14. The grievances of the appellants in this appeal are that they were not made parties in proceedings before the Tribunal. But in the impleadment application filed before the High Court it was not averred by them that they were not aware of the pendency of the proceedings before the Tribunal. Rather from the averments made in the impleadment petition it appears that they were aware of the pendency of the proceedings before the Tribunal. It was, therefore, open for them to approach the Tribunal with their grievances. Not having done so, they cannot, in view of the clear law laid down by the Constitution Bench of this Court in *L. Chandra Kumar*, approach the High Court and treat it as the court of first instance in respect of their grievances by “overlooking the jurisdiction of the Tribunal. xxxxx”

101. While placing reliance upon the judgment in the case of **Rajeev Kumar** (supra), Hon’ble High Court of Rajasthan at Jaipur in the case of **B.L. Gupta** (supra) also advised the petitioners therein to prefer a Review Petition before the Tribunal as they were not impleaded as party respondents before the Tribunal and the writ petition was disposed of with a direction to file a Review Petition before the Tribunal.

102. In **Ranjan Kumar** (supra), the Hon’ble Supreme Court was examining a case where the persons who were selected and appointed as Medical Laboratory Technicians were not impleaded as party respondents by the candidates, who participated and failed in the selection process. While setting aside the judgment and order passed by the Hon’ble High Court of Patna, the Hon’ble Supreme Court arrived at a conclusion that the case where all the appointees are not impleaded, the Writ Petition was defective

and, hence, no relief could have been granted to the writ petitioners.

103. Here in the case in hand, facts and circumstances are entirely different as earlier the candidates of reserved category, who felt aggrieved against the adhoc promotions of general category candidates filed Original Application and whosoever considered appropriate out of the general category candidates, got themselves impleaded as party respondents in O.A. No. 291/243/2019. Before the said Original Application could be decided by this Tribunal, letter dated 17.06.2019 was issued by the Central Board of Direct Taxes which led the general category candidates to file OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) In those three Original Applications even some of the candidates from reserved category, who felt it appropriate, got themselves impleaded as party respondents. In our considered view, the interests of both the categories are adequately represented in whole of the litigation. Even the judgment of the Hon'ble Supreme Court in the case of **Ucchab Lal Chhanwal** (supra) cited by Shri Punit Singhvi, learned counsel representing the applicants in O.A. No. 291/243/2019 and respondents No. 5 and 6 in O.A. No. 291/379/2019, is of no assistance to hold that the Original Applications are bad for non-

joinder of necessary parities. The dispute in the said case before the Hon'ble Supreme Court was with regard to promotion which would have impact on inter se seniority and it was held that an adverse order cannot be passed when the juniors who were promoted earlier have not been impleaded as party respondents.

104. The principle enunciated by the Hon'ble Supreme Court in **A. Janardhana** (supra), in our considered opinion, will apply in the present case in all fours. In the said case, validity and legality of a revised seniority was challenged by the writ petitioner and a mandate was sought directing the respondents to give effect to the 1963 seniority list drawn-up on the principle of length of service and continuous officiation as set out in the notification / memorandum dated March 11, 1965. The criteria adopted for preparing revised seniority list of June 1974 was questioned on diverse grounds based on the ratio of the decision in the case of **Bachan Singh and Anr. vs. Union of India & Ors.** (1972) II LLJ 44 SC. The plea for non-joinder of party respondents was negated by the Hon'ble Supreme Court with the observations that the seniority over a particular individual is not being claimed. It was the contention that criteria adopted by the Union Government in drawing-up the impugned seniority list is invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. The

relevant observations from paragraph 36 of the report are reproduced here as under: -

"36. It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as respondents, no relief can be given to the appellants. In the writ petition filed in the High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest presumably must be those shown senior to the appellants. By an order made by the High Court, the names of respondents 3 to 418 were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions. However, it clearly appears that some direct recruits led by Mr. Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the directs recruits. Further any application was made to this Court by 9 direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr. P.R. Mridul, learned senior counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negated on the short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing-up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to *General Manager, South Central Rly., Secundrabad v. A.V.R. Sidhanti* (1974) 3 SCR 207 at p. 212 : (AIR 1974 SC 1755 at p. 1759). Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this Court observed that the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Arts. 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating to seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negated"

105. Since the interests of both the categories i.e. general and reserved have been adequately represented in whole of the litigation; we, therefore, hold that the Original Applications are maintainable and those cannot be rejected as bad for non-joinder of necessary parties.

106. In the conspectus of discussions made in the foregoing paragraphs, we hold that all subsequent actions pursuant to CBDT letter dated 17.06.2019, including the action of review DPC held on 29.01.2020 and consequential orders of promotions and reversions passed on 30.01.2020 are not only arbitrary and discriminatory but are also contrary to the provisions of Section 19 (4) of 'the Act', and, therefore, being nonest, those are liable to be ignored.

107. Accordingly, OA No. 291/243/2019 (Kailash Chand Meena & Ors. Vs. UOI & Ors.), is hereby dismissed and OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) are allowed with a direction to official respondents to permit and allow the applicants in those three Original Applications to continue on the promotional posts of Income Tax Inspectors and Income Tax Officers, respectively, pursuant to their promotion orders dated 31.01.2019. The Principal Chief Commissioner of Income Tax,

Rajasthan, Jaipur shall, however, be at liberty to convene a meeting of review DPC pursuant to any clarification or direction given by the Hon'ble Supreme Court in the interim application filed by the Union of India in pending SLP (Civil) No. 30621/2011 and the guidelines issued by the Department of Personnel and Training as a consequence thereof.

108. Since OA No. 291/379/2019 (Shashank Jain & Ors. Vs. UOI & Ors.), OA No. 291/378/2019 (Ram Kumar Gupta & Ors. Vs. UOI & Ors.) and OA No. 291/415/2019 (Surjeet Singh Vs. UOI & Ors.) have been allowed, therefore, MA No. 291/104/2020, MA No. 291/103/2020 and MA No. 291/102/2020 for grant of interim relief are rendered infructuous and those are disposed of accordingly.

109. There shall be no order as to costs.

(A. MUKHOPADHAYA)
ADMINISTRATIVE MEMBER

(SURESH KUMAR MONGA)
JUDICIAL MEMBER