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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

02.05.2012

OA No. 63/2011

Mr. G.D. Rastogi, Counsel for applicant.

Mr. Gaurav Jain, Counsel for respondent nos. 1, 2, & 4.

Mr. Mukesh Agarwal, Counsel for respondent no. 3.

Mr. Nand Kishore, Counsel for respondent nos. 5 & 6.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore

(Justice K.S. Rathore)
Member (J)

anq

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 2nd day of May, 2012

ORIGINAL APPLICATION No.63/2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

1. G.P.Sharma s/o Shri Gopi Lal Sharma, a/a 38 years, r/o 53, Pratap Nagar-II, Tonk Phatak, Jaipur
2. Himansu Tiwari s/o Shri D.K.Tiwari, a/a 43 years, r/o 64, Raghu Vihar, Maharani Farm, Durgapura, Jaipur
3. M.P. Singh s/o Shri Mahipal Singh. a/a 42 years, r/o Type IV/S, Income Tax Colony, Near CAD, Maidan, Kota.
4. Surendra Yadav s/o Shri Chiranji Lal, a/a 40 years, r/o 24/IV, Income Tax Colony, Jyoti Nagar, Jaipur
5. Rajesh Gupta s/o Shri O.P. Gupta, a/a 39 years, r/o 1025, Barkat Nagar, Tonk Phatak, Jaipur
6. Ram Niwas s/o Late Attar Singh, a/a 41 years, r/o 18/IV, Income Tax Colony, Jyoti Nagar, Jaipur

(All are working under the respondent no.2 at Jaipur except petitioner no.3 and 6 who are working at Kota and Kishangarh respectively.)

... Applicants

(By Advocate: Shri R.D.Rastogi)

Versus

1. Union of India through Secretary, Ministry of Finance, Department of Revenue, Central Board of Direct Tax, North Block, New Delhi.
2. Chief Commissioner of Income Tax (CCA), NCR Building, Statue Circle, Jaipur.
3. Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pension, North Block, New Delhi.
4. Chairman, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi.
5. Amar Pal Meena, Income Tax Officer, Ward-2, Income Tax Office, Fort Road, Chittorgarh.
6. Ramesh Chandra Meena, Income tax Officer (IAP-1), New Central Revenue Building, Statue Circle, Jaipur

... Respondents

(By Advocate : Shri Gaurav Jain for resp. 1, 2 and 4, Shri Mukesh Agarwal for resp. No.3 and Shri Nand Kishore for resp. No. 5 and 6)

ORDER (ORAL)

The present OA is filed by the applicants claiming the following reliefs:-

- a) That this Hon'ble Tribunal may graciously be pleased to allow this O.A. and may further be pleased to quash and set aside the word promotion used for SC & ST candidates in O.M. dated 11.7.02 and may be pleased to declare that the true interpretation of word "Own Merit" is that if a candidate belonging to reserved category is appointed by way of direct recruitment on the feeder post on the basis of his or her own merit i.e. without taking any relaxation or benefits of reserved category candidates and only such candidates can be considered against the general category posts in the matter of promotion on higher post.



- b) All such promotions with effect from 11.7.02 until date given to the incumbents of reserved category against the unreserved post in cadre of ITO as well as Assistant Commissioner along with the order of promotion dated 23.07.03 & dated 01.10.08 in respect of promotion of co-respondent no. 5&6 as Income Tax Officer (Annexure A-14&15) should be treated as cancelled and posts likely to be vacated would be given to the incumbents of General Category with effect from the dates, posts were occupied by the reserved category, if they falls within a normal zone of consideration at given point of time and be declared fit otherwise by Departmental Promotinal Committee.
- c) Further this Tribunal may graciously be pleased to struck down the clause (ii) of O.M. dated 11.07.02 (Annexure A-1) to the extent it provides promotion to the incumbents of reserved category (falls within normal zone of consideration based on seniority in feeder cadre) against unreserved post by treating General to those who were not recruited on "Own Merit".
- d) Further this Hon'ble Tribunal may be pleased to quash and set aside the OM dated 10.8.10 (Annexure A-2) by which respondents have intended to give retrospective effect to the OM dated 11.07.02 from 02.07.97.
- e) Any other order, which this Hon'ble Tribunal may deem fit and proper as per the facts and circumstances of the case be passed."

2. Brief facts of the case are that the applicants joined the services as Inspectors on different dates between 1989 to 1995 and presently working as Income Tax Officer in substantive capacity. The grievance of the applicants is that the respondents by impugned



Office Memorandum (OM, for short) have interpreted the OM dated 2.7.1997 issued by the Department of Personnel and Training in respect of post based reservation to Scheduled Caste (SC) and Schedules Tribe (ST) candidates in the cadre beyond its intent to provide promotion to them against the posts meant for General category by treating them promoted on their own merit.

3. The learned Senior counsel Shri R.D.Rastogi submits that the word and expression 'Own Merit' has been misconceived and misinterpreted by the respondents and resultantly, posts in cadres are occupied by the incumbents of reserved category in excess of their quota, which otherwise, ought to have been filled up by the incumbents of General category as per their slot.

4. Shri Rastogi referred the case of R.K.Sabharwal vs. State of Punjab reported in SLJ 1995 (3) 227 wherein the Hon'ble Supreme Court had enunciated the principle of 'Post Based Roster' to fill up the post in particular cadre to its sanction strength and as and when there is vacancy, permanent or temporary, in particular cadre, the same should be filled up from the category to which the post belongs in the roster. In the light of the above judgment, the Department of Personnel and Training (DOP&T) vide its OM dated 2.7.1997 had introduced post based roster system to fill up any post in particular cadre. In Para-11 of the note in the said OM dated 2.7.1997, it has been mentioned that 'while operating the roster,



persons belonging to communities for whom reservation has been made, but who are appointed on merit and not owing to reservation, should not be shown against reserved points. They will occupy the unreserved posts'.

5. The learned counsel Shri Rastogi further submits that the respondents have misinterpreted the words 'Own Merit' and 'Normal Zone of Consideration' beyond the intent and spirit of OM dated 11.7.2002 to fill up the posts meant for unreserved category, by treating them General and to their promotion on 'Own Merit'. As such, the incumbents of reserved categories have occupied many posts belonging to General category, in addition to the posts meant for their slot as per the policy of post based reservation and resultantly, strength of incumbents of General category in their own slot has been reduced in their cadre. The term 'Own Merit' has subsequently been elucidated by the CBDT vide letter dated 1.8.2007 and extract of DOP&T letter dated 24.7.2007 wherein it has been laid down that unreserved vacancies are open for all categories of persons including SC/ST/OBC. However, while making appointment/promotion to unreserved vacancies, no relaxation/concession is permissible for any category of candidates as per letter of clarification issued by the Central Board of Direct Taxes (CBDT) and Department of Personnel and Training (DOP&T) dated 1.8.2007 and 24.7.2007 (Ann.A/5 and A/6).



6. It is also contended that in fact, the policy framed for post based reservation vide OM dated 2.7.1997 has not used the term 'Own Merit' in respect of promotion, but only in respect of 'recruitment' nor in any manner, whatsoever, it suggests for its implementation at the time of promotion. The word 'Promotion on Own Merit' was not included in the OM dated 2.7.1997 but the DOP&T in its OM dated 11.7.2002 has, beyond its necessity, included the word 'Promotion' to extend the benefit in the matter of promotion, which is contrary to the spirit of the judgment rendered in R.K. Sabharwal (supra).


7. Further averred that in view of wrong interpretation, which is contrary to the ratio decided by the Hon'ble Supreme Court in the case of R.K. Sabharwal, the applicants along with other incumbents of the General category are not only suffering in the matter of promotion in time and in seniority in their present cadre of ITO but have also suffered in their promotion as Assistant Commissioner.

8. During pendency of this OA, the Hon'ble Punjab and Haryana High Court in Writ Petition No.13218/2009 has rendered judgment dated 15th July, 2011 in the case of Lachhmi Narain Gupta and others vs. Jarnail Singh and others. Placing reliance on the judgment rendered by the Punjab and Haryana High Court, the learned counsel appearing for the applicants submits that the controversy involved in the present OA is squarely covered by the



judgment and the Punjab and Haryana High Court has quashed the instructions dated 10.8.2010 as being conflicting to the views taken by the Constitution Bench of the Hon'ble Supreme Court in the case of M.Nagaraj v. Union of India, reported in (2006) 8 SCC 212 and in the case of Suraj Bhan Meena v. State of Rajasthan, reported in (2011) 1 SCC 467 and directed that seniority and promotion of Income Tax Inspectors shall be made without any element of reservation in promotion.

9. The averments made on behalf of the applicants have been strongly controverted by the official as well as the private respondents. The Private respondent No. 6 has raised preliminary objections regarding maintainability of this OA. The learned counsel appearing for the private respondent, Shri Nand Kishore, after referring the relief clause submitted that the relief claimed by the applicants is hit by Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 being plural remedies. Maintainability of the OA is also challenged on the ground of delay and prayed that the OA is to be dismissed being barred by limitation, as the applicants are assailing promotion w.e.f. 11.7.2002 and 23.7.2003. On merit, the learned counsel for the private respondents placed reliance on the judgment rendered by the Bombay High Court in Writ Petition No.8986/2011 on November 8, 2011 in the case of Union of India and ors. vs. All India Income Tax SC/ST Employees Welfare Federation and ors. The said Writ Petition was filed against the



order passed by CAT-Mumbai Bench in OA No.76/2011 on 3.8.2011 and having considered the judgments rendered by the Hon'ble Supreme Court in the cases of K.Manorama vs. Union of India and Ors., reported in 2010 (10) SCALE 304, R.K.Sabharwal, Suraj Bhan Meena and M.Nagaraj (supra), the Hon'ble Bombay High Court upheld the order passed by the CAT-Mumbai Bench.

10. It is not disputed that one of the respondents, Shri Chowalloor Vincent Joseph, filed Writ Petition No.8381 of 2011 before the Bombay High Court and the earlier order passed by the Bombay High Court dated 8.11.2011 is diluted by order dated 9.1.2012 mentioning as under:-

"2. So far as the question of grant of interim relief is concerned, by the order impugned in the petition, the Tribunal has directed implementation of O.M. dated 10.8.2010. As observed above, as on today that O.M. is not in existence, therefore, there is no question of that O.M. being implemented by the Government. However, the Tribunal, as observed above, has also directed the Government of India not to effect the promotions. In our opinion, issuing such direction would be against the public interest because it may result in keeping the posts vacant. It will result in adversely affecting the administration. In this view of the matter, therefore, in our opinion, it would be appropriate to issue ad-interim order in terms of prayer clause (c). However, if any promotions are made during the pendency of the petition, that shall be subject to the result of this petition and the personnel promoted shall be intimated so. The parties shall be at liberty to apply for modification of this order after the



Supreme Court passes order in the proceedings which are pending before the Supreme Court against the Judgment of the Division Bench of the Punjab and Haryana High Court."

11. Further placed reliance on the judgment rendered by Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 1830/2009 with OA No.1836/2009 on 3.1.2011 wherein the CAT-Principal Bench held that all these OM's referred hereinabove issued by the Government of India (DOP&T) are equally applicable for departmental examination. The SC/ST candidates who qualify the departmental examination with relaxed standards would not be eligible for promotion against unreserved vacancies. In support of his submissions also placed reliance on the case of K.H.Siraj reported in 2006 (3) SCT 146 SC.

12. We have made a pertinent query to the respondents that when the Punjab and Haryana High Court has quashed and set-aside the OM dated 10.8.2010 and the order passed by the Punjab and Haryana High court has been assailed before the Hon'ble Supreme Court and the same is pending consideration but no interim relief has been passed by the Hon'ble Supreme Court and since the said OM is not in existence, how the respondents can proceed pursuant to the OM which has been quashed and set-aside by the Punjab and Haryana High Court ?. The respondents are not able to give satisfactory explanation to this effect.



13. It is stated at Bar by the learned counsel appearing for the official respondents and also mentioned in their reply that since several representations were received from unreserved category candidates, therefore, clarification was sought from the CDBT. In response to that a letter dated 16.6.2011 has been received from the Board mentioning that the matter of K.Manorama vs. UOI and Ors. is under examination with the DOPT as in the case of K.Manorama the Hon'ble Supreme Court held that the principle of 'Own Merit' will apply only in regard to recruitment by open competition and not to the promotion effected on the basis of seniority cum suitability.

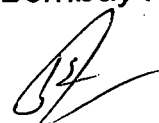
Therefore, in view of CDBT letter dated 16.6.2011, it reveals that the matter is under active consideration with the DOP&T, meaning thereby that decision/clarification has not been issued by the DOP&T so far and in view of this fact, the respondents cannot proceed further pursuant to the OM dated 10.8.2010 which has already been quashed and set aside in the case of Lachhmi Narain Gupta (supra) by Hon'ble Punjab and Haryana High Court.

Further, the judgment rendered by the Punjab and Haryana High Court is sub-judice before the Hon'ble Supreme Court and all such appointments/promotion shall remain subject to the final decision of the Hon'ble Supreme Court.



14. The learned counsel appearing for the official respondents Shri Gaurav Jain submitted that by OM dated 2.7.1997 clarification was issued that appointments of candidates belonging to SC/ST/OBC which were made on merit and not due to reservation are not to be counted towards reservation so far as direct recruitment is concerned and they are to be treated as General category appointments. Further submitted that none of the SC/ST candidates in the cadre of Inspector/UDC in Rajasthan was appointed on 'Own Merit' but in view of OM dated 11.7.2002, SC/ST candidates falling in the zone of consideration cannot be denied promotion on the plea that no post is reserved for them and SC/ST candidates falling in the consideration zone should be considered for promotion along with other candidates treating them as if they belong to General category.

15. In rejoinder to the reply filed by the official respondents as well as private respondents, the learned counsel appearing for the applicants submits that the judgment of the Bombay High Court relied upon by the private respondents is not applicable to the present case, as the case before the CAT-Mumbai Bench and in the Writ Petition filed before the Hon'ble Bombay High Court was with regard to implementation of the OM dated 10.8.2010 and no validity of the OM, in question, has been challenged before the CAT-Mumbai Bench as well before the Hon'ble Bombay High Court. On the contrary, the judgment rendered by the Bombay High Court has



been tone down by the Bombay High Court itself vide order dated 9.1.2012 passed in Writ Petition No. 8381/2011 in the case of Shri Chowalloor Vincent Joseph vs. All Indian Income Tax SC/ST Employees Welfare Federation and others. This order has been assailed by the All India Income Tax SC/ST Employees Federation before the Hon'ble Supreme Court and the same was dismissed by the Hon'ble Supreme Court.

16. At the outset, the learned counsel appearing for the applicants submitted that the present controversy is squarely covered by the judgment rendered by the Punjab and Haryana High Court in the case of Lachhmi Narain Gupta (supra) and reiterated that this Tribunal has also passed order in OA No. 323/2007 in the case of Abdul Salam Khan vs Union of India and ors. on 18.7.2011.

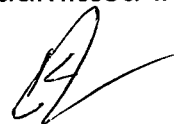
17. We have carefully perused the judgment rendered by the Punjab and Haryana High Court and upon perusal of the judgment, it reveals that the Hon'ble Punjab and Haryana High Court has considered the judgment rendered by 5-Judge Bench of the Hon'ble Supreme Court in the case of R.K.Sabharwal (supra) as well as the mandate of law as incorporated by Article 16(4A) and also as interpreted by the Constitution Bench of the Hon'ble Supreme Court in the case of M.Nagaraj (supra) and the judgment



rendered by the Hon'ble Supreme Court in the case of Suraj Bhan Meena (supra) and in para 35 and 38 observed as under:-

"35. On the question of necessity of quantifiable data it has been held that reservation is necessary for transcending caste and not for perpetuating it. Reservations has to be used in a limited sense otherwise it will perpetuate casteism in the country. The extent of reservation depends on facts of each case and in this regard the State concerned would have to show in each case the existence of backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. If in a given case Court finds excessive reservation under the State enactment then such an enactment would be liable to be struck down. The need to balance the context specific independent variable requirements of equity, justice and merit/efficiency on the basis of quantifiable data in each case, the conflicting claim of individual rights under Article 16(1) and the preferential treatment given to a Backward Class has to be balanced. Therefore, in each case a contextual case has to be made out depending on different circumstances which may exist Statewise and the problem has to be examined on the facts of each case. What need to be found is a stable equilibrium between justice to the backwards, equity for the forwards and efficiency for the entire system.

38. When the principles laid down in the case of M.Nagaraj (supra) and Suraj Bhan Meena (supra) are applied to the notifications impugned in the present proceedings, namely, 11.7.2002, 31.1.2005 (R-1 and R-2) and further notification dated 21.1.2009 and 10.8.2010, it becomes clear that no survey has been undertaken to find out inadequacy of representation in respect of members of the SC/ST in services. The aforesaid fact has been candidly admitted in the written



statement filed by respondent Nos. 5 and 6. The aforesaid fact has also been conceded by the respondent-Union of India in the communication dated 15.9.2010. In para (iv) of the aforesaid communication it has been stated that no exercise was carried out to assess the inadequacy of representation of SC/STs in the services under the Government of India before issue of instructions dated 31.1.2005. The aforementioned communication has been placed on record along with CM No.14865 of 2010. In the absence of any survey with regard to inadequacy as also concerning the overall requirement of efficiency of the administration where reservation is to be made alongwith backwardness of the class for whom the reservation is required, it is not possible to sustain these notifications. Accordingly, it has to be held that these notifications suffers from violation of the provisions of Articles 16(4A), 16(4B) read with Article 335 of the Constitution as interpreted by the Constitution Bench in M.Nagaraj's case (supra) as well as in Suraj Bhan Meena's case (supra)."

18. Admittedly, this exercise has still not been undertaken by the respondents as is evident by the information furnished by the Chief Commissioner of Income Tax, Jaipur to one Shri Ram Babu Yadav, TA, O/o the Chief Commissioner Income Tax (Central), NCR Building, Jaipur under the RTI Act, 2005 wherein Shri Yadav requested to provide information/details with reference to the judgments of the Hon'ble Supreme Court of India in the case of M.Nagaraj and in the case of Surajbhan Meena. A particular question was asked - 'Whether any exercise has been undertaken by the Income Tax Department, Rajasthan to collect the 'quantifiable data' regarding



backwardness, inadequacy of representation in public employment and overall administrative efficiency in respect of candidates belonging to SC/ST category, in order to allow them reservation in promotion alongwith consequential seniority in the cadre of ITO, Inspector and other down-line cadres' and vide letter dated 21/25 March, 2011 the Chief Commissioner of Income Tax office, Jaipur has furnished information stating 'No exercise has been made as yet'. Shri Yadav also sought copy of such exercise, if undertaken, and the information is 'Not applicable. The matter is still under consideration in Board.' A further information was sought by Shri Yadav - 'Whether the Income Tax Department, Rajasthan has consulted with the Ministry of Law/Ministry of Finance/Central Board of Direct Taxes or any other competent government authority/agency to give effect to the above mentioned judgments of the Hon'ble Supreme Court'. The information given is - 'Yes, this office has sent a letter to the Board for necessary direction/clarification as to the manner in which the Hon'ble Supreme Courts judgement in the case of Surajbhan Meena and Others vs. State of Rajasthan and ors. is to be implemented" and provided copy of the letter sent to the Board.

19. Even otherwise, the learned counsel appearing for the official respondents has submitted in the reply that necessary direction/clarification is sought from the CBDT/DOP&T and still no direction or clarification has been received by the respondents. Thus, holding DPC vide Ann.A/8 for promotion to the post of Income Tax



Officer from the cadre of Income Tax Inspectors for the vacancies arising in the recruitment year 2003-2004 held on 14.7.2003 in the office of Chief Commissioner of Income Tax, Jaipur was in clear violation of the mandate given by the Hon'ble Supreme Court in the case of M.Nagaraj and Surajbhan Meena (supra) as prior to holding the DPC, the Income Tax Department has not undertaken exercise to collect the quantifiable data regarding backwardness, inadequacy of representation and overall administrative efficiency of the SC/ST communities in order to allow them reservation in promotion alongwith consequential seniority in the cadre of Income Tax Officer.

20. Further, the Division Bench of the Punjab and Haryana High Court in the case of Lachhmi Narain Gupta (supra) has taken into consideration the principle laid down by the Hon'ble Supreme Court in the cases of M.Nagaraj and Surajbhan Meena and observed that the ratio decided by the Hon'ble Supreme Court, if applied to the notification impugned in the present proceedings, namely 11.7.2002, 31.1.2005 and further notification dated 21.1.2009 and 10.8.2010, no survey has been undertaken to find out inadequate representation in respect of member of the SC/ST communities in service, as has been admitted by the official respondents in the present proceedings, and held that it is not possible to sustain these notifications which suffers from violation of provisions of Article 16(4A) and 16(4B) read with Article 335 of the Constitution as



interpreted by the Constitution Bench in the case of M.Nagaraj (supra) as well as in the case of Surajbhan Meena (supra.) and finally arrived at the conclusion that :-

"40. As a sequel to the above discussion, the judgment of the Tribunal is set-aside. The instruction dated 31.1.2005 (R-2) stands withdrawn on 10.8.2010 (P-10). Therefore, no order is required to be passed in respect of those instructions dealing with the subject of reservation in promotion and the treatment of SC/ST candidates promoted on their own merit. Likewise, the instructions dated 10.8.2010 (P-16) are hereby quashed because they are in direct conflict with the view taken by the Constitution Bench in M.Nagaraj's case (supra) and Suraj Bhan Meena's case (supra). It is further directed that the seniority and promotion of the Income Tax Inspectors shall be made without any element of reservation in promotion."

21. Now considering the facts under the circumstances the DPC was held, it is evident that the DPC was held in hasty manner, as the respondents themselves admitted that pursuant to the judgment rendered by the Hon'ble Supreme Court in the case of K. Manorama (supra) they have asked for direction/clarification and still such direction or clarification has not been communicated by the CBDT/DOPT, but without seeking direction or clarification held the DPC, which is absolutely in contravention of the mandate given by the Hon'ble Supreme Court in the case of M.Nagaraj and Surajbhan Meena (supra). At the most, instead of holding of such DPC, the



respondents ought to have waited till the direction/clarification received from the CBDT/DOP&T/Ministry of Law on the issue.

22. It is also not disputed that the judgment rendered by the Punjab and Haryana High Court is challenged by filing SLP before the Hon'ble Supreme Court and the same is pending consideration and admittedly, the Hon'ble Supreme Court has not granted any interim order. Since during the pendency of the present OA, the Punjab and Haryana High Court has rendered judgment dated 15.7.2011 by which the impugned OM dated 10.8.2010 has been quashed and set-aside, meaning thereby this notification is not in existence, until and unless the order/direction passed by the Hon'ble Supreme Court in the SLP, pending consideration against the judgment of the Punjab and Haryana High Court.


23. Regarding the judgment of the Bombay High Court referred to by learned counsel for private respondents, Shri Nand Kishore, it is not disputed that the above case was filed by the All India Income Tax SC/ST Employees Welfare Federation and others, for seeking direction from the CAT-Mumbai Bench to implement the DOP&T OM dated 10.8.2010. The order passed by the CAT-Mumbai Bench was assailed by the Union of India and others before the Bombay High Court in Writ Petition No.8986/2011. The Bombay High Court upheld the order passed by the CAT-Mumbai Bench. Subsequently in Writ Petition No.8381/2011 filed by one Shri Chowalloor Vincent



Joseph and considering the statement made by the petitioner that the decision dated 15.7.2011 of the Punjab and Haryana High Court is sub-judice before the Hon'ble Supreme Court, the interim order dated 8.11.2011 has been modified vide order dated 9.1.2012, which has already been reproduced in para-10 of this order.

24. By bare perusal of the interim order dated 9.1.2012 passed in the petition moved on behalf of Shri Chowalloor Vincent Joseph, it reveals that the Bombay High Court has given liberty to the parties to apply for modification of the order after the Hon'ble Supreme Court passes order in the proceedings which are pending before the Supreme Court against the judgment of the Division Bench of the Punjab and Haryana High Court. It is not disputed that the impugned petition is still pending before the Bombay High Court.

25. Considering the interim direction passed by the Bombay High Court, it is evident that the Bombay High Court has given liberty to the parties for modification of the order, after the Supreme Court passes order in the proceedings which are pending against the judgment of the Punjab and Haryana High Court, meaning thereby in these circumstances, the respondents have no option but to wait for the verdict of Hon'ble Supreme Court against the judgment of the Punjab and Haryana High Court or the clarification/direction issued by the CBDT/DOPT/Ministry of Law. The respondents could not have proceeded pursuant to the notification which is not in




existence. Further, without due consideration of the mandate issued by the Hon'ble Supreme Court in the case of M.Nagaraj and Surajbhan Meena (supra) holding of any DPC pursuant to OM dated 10.8.2010 is contrary to the mandate and also a futile exercise without the final verdict of the Hon'ble Supreme Court in the SLP pending against the judgment of the Punjab and Haryana High Court.

26. The present OA has been filed by the applicants, admittedly prior to the judgment rendered by the Punjab and Haryana High Court in the case of Lachhmi Narain Gupta (supra), mainly for interpretation of the word 'Own Merit. The Hon'ble Supreme Court in the case of K.Manorama, observed that the Tribunal did not realize that the third respondent had in fact got marks lesser than the fourth respondent, and his selection was basically because he was a Scheduled Caste candidate. In view of this position, there is no occasion to apply the instructions contained in Railway Board's letter dated 29.7.1993 nor the propositions in R.K.Sabharwal's judgment to the present case. Even otherwise, the principle that when a member belonging to a Schedules Caste gets selected in the open competition filed on the basis of his own merit, he will not be counted against the quota reserved for Scheduled Castes, but will be treated as an open candidate, will apply only in regard to recruitment by open competition and not to the promotions effected on the basis of seniority.



27. We have considered the rival submissions of the respective parties and perused the material available on record as well as the judgments referred to by the respective parties. The learned counsel appearing for the applicants heavily relied upon the judgments rendered by the Hon'ble Supreme Court in the case of Ajit Singh Januja vs. State of Punjab, reported in (1996) 2 SLR 71 and in the cases of K.Manorama, R.K.Sabharwal, M.Nagraj, Suraj Bhan Meena, (supra), Union of India vs. Virpal Singh Chauhan reported in (1995) 6 SCC 684 and the judgment rendered by the Hon'ble Punjab and Haryana High Court in the case of Lachhmi Narain Gupta and ors. (supra) and the recent judgment rendered by the Hon'ble Supreme Court in Civil Appeal No. 2608/2011 in the case of U.P. Power Corporation Ltd. vs. Rajesh Kumar and Ors. decided on 27th April, 2012. As discussed hereinabove, two things remain – one with regard to judgment rendered by the Punjab and Haryana High Court by which OM dated 10.8.2010 has been quashed and set-aside and other is that the same has been challenged by way of filing SLP before the Hon'ble Supreme Court, which is still pending consideration and no interim direction has been granted against the judgment of the Punjab and Haryana High Court, in such eventuality, the issue challenged in the present proceedings shall be subject to the final outcome of the pending SLP before the Supreme Court.



28. Consequently, in view of above discussions, we are of the view that any exercise undertaken by the respondents, which is subject of challenge in the present proceedings, shall remain subject to the final outcome of the SLP pending before the Hon'ble Supreme Court against the judgment of the Punjab and Haryana High Court and the applicants are at liberty to redress their grievance after the final verdict of the Hon'ble Supreme Court.

29. With these observations, the OA stands disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K.S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/