

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00288/2011

Jabalpur, this Wednesday, the 03rd day of January, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Praduman Kumar Mishra, S/o Late Shri Ram Shankar Mishra,
 Aged about 41 years, Inspector of Income Tax, R/o G-16,
 Empire Residency, Near Agrawal Pulic School, Pipaliahana,
 Indore-452016 (MP) **-Applicant**

(By Advocate –Shri S.K. Nandy)

V e r s u s

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

2. Union of India, through its Secretary,
 Ministry of Personnel Public Grievance & Pensions,
 (Department of Personnel & Training),
 North Block, New Delhi-110001

3. Director (Reservation), (Department of Personnel & Training),
 North Block, New Delhi-110001

4. Chairman, Central Board of Direct Taxes,
 North Block, New Delhi-110001

5. The Chief Commissioner of Income Tax,
 (Cadre Controlling Authority), Aayakar Bhawan,
 Hoshangabad Road, Opposite Maida Mill,
 Bhopal (M.P.)-462001 **- Respondents**

(By Advocate –Shri A.P. Khare)

(Date of reserving the order:-26.10.2017)

ORDER

By Ramesh Singh Thakur, JM:-

The applicant is calling in question the constitutionality of Department of Personnel & Training Instructions dated 05.10.1981 (Annexure A-1) whereby en-bloc reservation is provided to Scheduled Caste & Scheduled Tribes (SC & ST). He is also challenging the order dated 01.02.2011 (Annexure A-2) & 10.08.2010 (Annexure A-3), whereby all the Chief Commissioners of Income Tax (Cadre Controlling Authority) have been directed to implement the reservation policy in promotion as per the minutes of the meeting of the Officers of Income Tax Department and Director (Reservation) of Department of Personnel & Training on 05.1.2011 (Annexure A-4).

2. The applicant has sought for the following reliefs in this Original Application:

“8(i) Summon the entire relevant record from the respondents for its kind perusal.

(ii) The minutes of meeting dated 05.01.2011 (Annexure A-4), O.M. dated 10.08.2010 (Annexure A-3) and O.M. dated 05.10.1981 (Annexure A-1) prescribing reservation be declared ultra vires/unconstitutional and accordingly it be struck down.

(iii) Command the respondents to provide all consequential benefits to the applicant as if the impugned orders are never passed.

(iv) Any other order/direction may also be passed.

(v) Award cost of the litigation to the applicant.”

3. Briefly the facts of the case are that the applicant was appointed as Upper Division Clerk in the respondent Income Tax Department on 04.01.1994. Thereafter he was promoted as Inspector of Income Tax on 01.04.2008. The applicant belongs to the general category. He alongwith other colleagues got previous promotion by virtue of Seniority-cum-merit amongst the general category candidate. However, the persons belonging to SC & ST categories were promoted against reserved category posts. The promotion in Income Tax Department is subject to qualifying departmental examination conducted for various cadres every year. The qualifying marks for passing the departmental examination for general candidates are higher than the qualifying marks fixed for SC & ST candidates because of aforesaid relaxed standard, the reserved category candidates were getting benefits and securing marched over and above the general category candidates in the ladder of promotion. The applicant qualified the departmental examination in Income Tax Office. In the year 2007, the Central Board of Direct Taxes issued a circular directing the cadre controlling Chief Commissioners of Income Tax to grant promotion to SC & ST candidates against the roaster point

earmarked for the general category if he is within the zone of consideration as per his general seniority. The Chief Commissioner of Income Tax Bhopal has passed an order promoting certain SC & ST candidates to the post of Income Tax Officer without any rider with regard to their own merit. However, subsequently, pursuant to a clarification issued by the DoPT, the promotion order passed earlier was reviewed and candidates of SC & ST category promoted earlier were reverted.

4. Recently the DoPT has issued an O.M. dated 10.08.2010 (Annexure A-3) notifying that candidate belonging to SC & ST category are entitled for promotion on their own merits against the roster point meant for general category candidate. The applicant submits that the Income Tax Department followed the formula and procedure as per Annexure A-3 and the persons belonging to SC & ST are to be considered for promotion against the roster point meant for general category in accordance with the seniority irrespective of the fact that they have availed the benefits of reservation at earlier stage.

5. The meeting was convened by the Central Board of Direct Taxes on 05.01.2011 to consider the effect of aforesaid O.M. dated

10.08.2010. On the basis of said meeting, the Central Board of Direct Taxes issued letter to all the Chief Commissioner of Income Tax directing to examine the issue in the light of the clarification contained in the minutes of the meeting held on 05.01.2011.

6. Apart from this, by O.M. dated 10.08.2010, it is directed that these orders will take effect from 02.07.1997, the date on which Post Based Reservation was introduced. However, the O.M. dated 10.08.2010 has been issued on the basis of O.M. dated 11.07.2002, which was subsequently clarified by the DoPT O.M. dated 31.01.2005. This clarification was under challenged in Original Application No. 900/2005 before the Madras Bench of this Tribunal and it was held that the order dated 10.08.2010 cannot be given effect from 02.07.1997.

7. The main ground for challenge in this petition are that the representation/reservation of SC/ST candidates in the respondents- Income Tax Department is more than the prescribed percentage of 22.5%. Therefore, it is submitted the impugned order dated 01.02.2011 is arbitrary, unjust, unreasonable, unfair and unsettled the settled things. Moreover, the question of grant of reservation, the method for which it is no more “res-integra”. After a constitutional amendment in Article 16 (4-A) & (4-B), a batch of

petitions were decided by a Constitution Bench of the Hon'ble Apex Court in **M. Nagaraj vs. Union of India & Ors.** reported in 2006 Vol. 8 SCC 212 and in the light of the judicial pronouncements by the Constitution Bench, it is crystal clear that government is under no legal obligation to provide reserved category candidates and if it decides to provide such reservation, it has to be done after undertaking the exercise of gathering "quantifiable data" i.e. collecting data with regard to each service and each category as to whether the category is already adequately represented or not. The reservation only to the extent they are not adequately represented may be permissible that too after undertaking scientific exercise of collecting the quantifiable data.

8. It was submitted that the provision prescribed by the State of Rajasthan was put to test on the touchstone of constitutional validity before the Hon'ble High Court of Rajasthan and the Hon'ble High Court has quashed and set aside the provisions prescribing reservation. Similarly, on the ground that it was admitted before the Bench that no exercise of collecting quantifiable data is undertaken before the prescribing such provisions. Ultimately, the matter came before the Hon'ble Apex

Court in M. Nagraj's case (Supra) and the Hon'ble Apex Court has prescribed the ratio-decidenti in the above said matter.

9. It was further submitted that there is no rationale in prescribing the date of implementation in O.M. dated 10.08.2010 as 02.07.1997 and there is no justification in prescribing such a cut off date. Moreover, the reserved order can not be made applicable retrospectively and the vested right already proved can not be snatched away.

10. The respondents have submitted that the provision of reservation in promotion in Central Government is a matter pertaining to the policy of Government of India to ensure adequate representation of SC/ST and OBC categories in government jobs. For effective implementation of this policy, a post-based roster has been made operative w.e.f. 02.07.1997, on the basis of which, category-wise vacancies are worked out for particular vacancy year and recruitment is done accordingly as per the procedure prevalent in the department, i.e. through direct recruitment or promotion. In the procedure of recruitment, the vacancies earmarked for reserved categories are filled by the reserved candidates only. Hence, the applicant, who belongs to the general category was promoted against the vacancy earmarked for General

category and the persons belonging to the SC/ST categories were promoted against the vacancies earmarked for the respective categories.

11. In regard to implementation of the DoP&T's OM dated 10.08.2010 from 02.07.1997, it has been submitted that the respondent department has sought a clarification from the CBDT vide letter dated 13.05.2011 stating that the DPCs for the current vacancy year may be allowed to be carried on maintaining the status-quo in respect of reservation matter till any clear instructions/guidelines are issued in this regard. Therefore, till the time any clarification is received in this regard, the respondents have decided to maintain the status-quo on this issue. Since as per the instructions, the SC/ST candidates are treated as General candidates, therefore, 22.5% limit is not exceeded as prescribed by the DoP&T.

12. Heard the learned counsel for the respective parties and the documents annexed therewith.

13. The issue of providing reservation in promotions has already been settled by the Hon'ble Apex Court in **M. Nagaraj v. Union of India & Others**, (2006) 8 SCC 212 and the same was followed

and reiterated in various decisions of the Hon'ble Supreme Court and also of this Tribunal. In the said decision, the Hon'ble Apex Court has held that, **“the State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335.”** The respondents, while not denying the fact of declaration of law, as observed above and also that they have not conducted any exercise, as required in terms of the aforesaid decision, however, submits that in terms of the DoP&T's OM dated 10.08.2010, they can provide reservation in promotions.

14. No person or authority can ignore or violate the law of the land on the ground that they have not received any Instructions/Guidelines/Office Memorandums/Circulars from their higher authorities or from any other Ministry to follow the said law and once law was declared by the Hon'ble Apex Court, no person or authority can follow any Order/Circular/Letter, which is against to the law of the land.

15. In the circumstances and for the aforesaid reasons, the O.A is allowed and the action of the respondents to the extent of providing reservation is declared illegal and unsustainable in view of the law as laid down by the Hon'ble Apex Court. However, the respondents are at liberty to proceed with the promotion for the post of ITO, by ignoring the DOP&T's OM dated 10.08.2010, in accordance with law. Other issues, if any, raised in the OA are kept open. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am