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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA**

**M.A.350/00171/2016
(O.A. 3/2013)**

Date 02.09.2016

**Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member**

Union of India & Ors.(Central Excise.)

..... Applicants.

Versus

Manajit Sarkar & Ors.

..... Respondents.

For the Applicants : Mr S.K.Mondal, Mr M. Ganguly, Counsel

For the Respondents : Mr P. Mukherjee, Counsel

ORDER

JUSTICE V.C. GUPTA, JM

The respondents moved this M.A to vacate the interim order granted by this Tribunal on 02.01.2013, which reads as under :

"Grievance of the applicant is that though DOPT OM dated 210.08.2010 has been quashed and set aside by Punjab and Haryana High Court yet respondents are taking certain action in the nature of holding review DPC based on the said O.M. It is further contended that vide communication dated 4.12.2012 of Chief Commissioner requiring Commissioner, Central Excise to defer the review DPC till the matter is considered in depth and analysis made. Our attention was also drawn to para 4(j) of the O.A. wherein it has been stated that the respondent authorities would be holding the review DPC meeting on 3.1.2013.

In view thereof, issue notice to respondents 'DASTI' returnable on 21.1.2013.

Respondents are restrained from declaring result of review DPC, even if held."

2. On perusal of the same it reveals that the interim order was granted in the absence of respondents at the very outset and at the time of issuing notices. In consequence to the aforesaid order dated 02.01.2013 the entire promotion process has been stalled. The respondents sought vacation of this order on the ground that the order of the Punjab and Haryana High Court was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 25.11.2011 put up the matter along with Civil Appeal No.2608/2011, Uttar Pradesh Power Corporation Ltd. Vs. V. Rajesh Kumar & Ors. The matter has been finally disposed of by the Hon'ble Supreme Court and held that promotions cannot be granted giving the benefit of reservation,

3. It was further submitted that the Calcutta High Court in Writ Petition No.261/2008 while passing the order dated 27.08.2010 categorically held that O.M dated 10.08.2010 which have been set aside by the Punjab and Haryana High Court was not stayed and allow to implement the same while making the promotions. It was further contended that the Delhi High Court in Writ Petition No.8986/2011, Union of India & Ors. Vs. All India Income Tax SC/ ST Employees Welfare Federation & Ors. after considering the judgment of Punjab and Haryana High Court in Lachhmi Narain Gupta & Ors. vs. Jarnail Singh & Ors. rendered in CWP No.13218/2009 was considered but the Bombay High Court did not set aside the O.M dated 10.08.2010 and keep it intact and thus implementation was allowed. Against the order of the Bombay High Court an SLP has been filed having No.5859/2012 whereby the letter dated 18.10.2012 issued by the Director(Admn), Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes has been considered at the interim stage and categorically held that there is absolutely no justification for stalling the



promotions of some of the officers of the department and the stay application was rejected, wherein the stay of implementation of letter dated 18.10.2012 was sought. The letter dated 18.12.2012 which was issued considering the impact of the judgment of Punjab & Haryana High Court in Lachhmi Narain Gupta's case.

4. It has been admitted by the applicants of O.A that the judgment of Punjab & Haryana High Court have no binding in the State of Uttar Pradesh in view of the order of the Apex Court passed in Uttar Pradesh Power Corporation case and similarly in Maharashtra the same is also not have any effect in view of the judgment rendered by Bombay High Court mentioned herein above.

5. The learned counsel for the applicants vehemently argued that the Apex Court has not yet decided the SLP filed against the judgment of Punjab and Haryana High Court, rather passed an order on 03.02.2015 to maintain the status quo existing as on today in respect of promotional matters that are covered by the impugned judgment. On the ground it has been argued that the order of Punjab and Haryana High Court has not been set aside, the same is operative and the same is a judgment in rem. Hence none of the department of Central Government can implement the same. It was further submitted that if the interim order is vacated the applicants who have been given promotion earlier with effect from October 2003 will be reverted in the proposed review DPC and will suffer adversely and they may also be subject to recovery of excess payment.

6. On the contrary, the learned counsel for the respondents further pointed out that the review DPC in pursuance of O.M dated 10.08.2010 has been given effect to Kolkata-I Commissionerate and had already implemented on the basis



of O.M dated 10.08.2010 held the review DPC for the promotion to the Grade of Superintendent before the impugned interim order passed by this Tribunal. It was further submitted that the relief has been claimed on the basis of judgment of Punjab and Haryana High Court which is still sub-judice and has not attained finality. The Bombay High Court after considering the judgment of Punjab and Haryana High Court declined to stay the implementation of O.M dated 10.08.2010. The Hon'ble Supreme Court in SLP against that order has not stayed the order of the Hon'ble High Court, rather the Hon'ble Supreme Court permitted to make the promotions. The Calcutta High Court, the jurisdictional Court has not stayed the operation of O.M dated 10.08.2010. Order of Calcutta High Court was passed before the order of the Punjab and Haryana High Court, but at the same time it would be relevant that the orders in the State of West Bengal are being passed in pursuance of the O.M dated 10.08.2010. The O.A is pending and yet to be decided. On account of the interim order the result of review DPC could not be declared. A number of officers are being deprived of their due, who are in the queue of promotion. It might be possible that applicants in review DPC may adversely affected to some extent but on the apprehension of that stalling the entire process of promotion in some part of the same department would not be proper. The applicants have still a right that if any adverse effect will come out from review DPC they may challenge the same but those who are due for promotion if not promoted they have no remedy. Therefore, the balance of convenience is more in favour of those who are waiting their promotions and in view of the above in absence of any order of jurisdictional Court and in view of the order of the Bombay High Court which has not been set aside by the Hon'ble Supreme Court yet and grant permission to

(NHS),

Government to make promotions, and also in view of judgment in U.P. Power Corporation's case, we are of the view that the interim order requires to be modified.

7. In view of the aforesaid discussion and several orders passed by the different Courts as well as by the Hon'ble Supreme Court in this regard, we are of the view that stay of declaring the result of revised DPC should be withdrawn and the interim order thus to the effect is modified. However, we direct that the result of the revised DPC would abide by the final outcome of this O.A.

8. Accordingly the M.A is disposed of. The interim order dated 02.01.2013 is modified accordingly.

(Jaya Das Gupta)
Administrative Member

(Justice V.C.Gupta)
Judicial Member

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