

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION No.167/2019

Dated this the 11th day of March, 2019

**CORAM: R. VIJAYKUMAR, MEMBER (A)
R.N. SINGH, MEMBER (J)**

1. The Income Tax SC/ST/OBC
Employees' Welfare Association
Having addresses at : 16, Ground
Floor, Aayakar Bhawan, M.K. Road,
Churchage, Mumbai-400 020.
Through its office-bearer
Rupesh B. Ukey
Working as Income Tax Office
under Cadre Controlling Authority
In the Office of Principal Chief
Commissioner of Income Tax
3rd floor, Aaykar Bhaven, M.K. Road,
Mumbai-400 020.
2. Ms.Archana Rahul Chikhalkar,
40 years
(Ms.Archana Govindswami Dara
Income Tax Officer (HQ) Audit-2
Room No.652, Aayakar Bhavan
M.K. Road, Mumbai -400020.
Resident at, 203, Ekveera Ashish CHS
Shastri Nagar, Kopar Cross Road,
Dombivali (West)
3. Ms.Archana Kaklpak Koli,
39 years, Income Tax Officer,
(HQ) Itech)-29,
Room No.304,C-10, 3rd floor,
Pratyakshakar Bhavan,
Bandra Kurla Complex,
Bandra (E), Mumbai-400 051.
Residence at 402, Harider Tower
Shree Anand Bharti Marg,
Chendni Kaliwaccla, Thane (E) 400603.

.....Applicants.

(Advocate Dr. Jayshree Patil)

Versus.

1. The Union of India,
Through-The Secretary,
Ministry of Finance,
Department of Revenue
North Block,
New Delhi-110001.
2. The Department of Personnel
and Training, Lok Nayak Bhavan,
Khan Market, New Delhi-110003.
3. The Principal Chief Commissioner
of Income Tax,
3rd Floor Aaykar Bhavan,
M.K. Road, Mumbai-400 020.

.....Respondents.

(Advocate None.)

Reserved on : 28.02.2019.

Pronounced on : 11.03.2019

ORDER

Per : R.N. Singh, Member (J)

Heard. The present OA has been filed by the Income Tax SC/ST/OBC Employees' Welfare Association (Applicant No.1) and the Applicant No.2 and 3 are the members of the Association and are affected person(s) and by way of MA No.121/2019, they are seeking permission to file the case jointly. Since, the grievance of all the applicants and prayer for grant of reliefs are common in nature, hence, MA/121/2019 for joint petition is allowed.

2. This OA has been filed by the applicants

under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:-

"a). That this Hon'ble Court may kindly be please to call record and proceeding from the Respondent authority.

b). That the Hon'ble Tribunal may kindly be please to quash and set aside the impugned circular along with the rewrite list of inspectors pursuents giving effect to the decision Hon'ble CAT Mumbai in Contempt Petition No.18/ 2018 in OA.No.623/2016 order dated 06/02/2019 for the year 2013-2014 to 2018, issued i.e. (Annexure-A-11 which is contrary to the legislative intent that is Office Memorandum issued by the Government of India Ministry of Personal Public Grievances and pensions Dept. of Personal and Training Establishment (Reservation-I) Section Dated 15/06/2018, which is still in existence also the said circular failed to follow the Hon'ble Central Administrative Tribunal Principal Bench in OA No.3420/2017 was to passed Judgment on dated 8th January 2019.

c). That this Hon'ble Tribunal may kindly be please to issue the direction to the respondent authority to follow in full sprit the Office Memorandum issued by the Government of India Ministry of Personal Public Grievances and pensions Dept. of Personal and Training Establishment (Reservation-I) Section Dated 15/06/2018, which is slowly issued referring the Hon'ble Apex Court authority Jarnail Singh and Others V/s Lachhmi Narain Gupta and Others (2018) SCC OnLine SC 635,

d). That this Hon'ble Court may kindly be pleased to issue direction to the Respondent authorities, to follow the Hon'ble Apex Court order dated 17/05/2018 passed in the matter of Jarnail Singh and Ors. Vs. Lachhmi Narayan Gupta and Ors. Special Leave to Appeal (C) No.30621 of 2011,[2018 SCC Online SC 635, Para-1] and Constitution Bench Judgment passed by Hon'ble Apex Court in the matter of Jarnail Singh and Ors. Vs. Lachhmi Narayan Gupta and Ors. Special Leave to Appeal(C)No.30621 of 2011 [i.e.(2018)SCC 396,Para-36] and in all connected matters

of reservation in promotion, on the said bases the Hon'ble Central Administrative Tribunal Principal Bench in OA No.3420/2017 was please to passed Judgment on dated 8th January 2019 in Para-8 and 9 directed the Authority that to reconsider the issue of application of rule of reservation in promotions by duly keeping in view the law laid down by the Hon'ble Apex Court in M.Nagaraj (supra) and Jarnail Singh and Others(supra), The similar view is been observed by the Hon'ble Maharashtra Administrative Tribunal, Mumbai in OANo.394 of 2018 by Judgment dated 6/11/2018, para-16 & 17 further the matter traveled to the Hon'ble Bombay High Court bearing Civil WRIT PETITION NO.13227 OF 2018 Santosh Bapurao Rathod and Ors. V/s. The State of Maharashtra and Ors., the Hon'ble High Court not grant any ad-interim relief to the order passed by MAT.

e). The Respondent Government may kindly be direct to follow the Office Memorandum issued by the Government of India Ministry of Personal Public Grievances and pensions Dept. of Personal and Training Establishment (Reservation-I) Section dated 15/06/2018, regarding to follow the Hon'ble Apex Court Authority, 'Jarnail Singh and ORS. Vs. Lachhmi Narayan Gupta and ORS., Special Leave to Appeal(C)No.30621 of 2011, in Order dated 17/05/2018 passed by Hon'ble Apex Court, to follow the Reservation in Promotion as per the direction of Apex Court and further it is advices in Para 7 of the said memorandum, to take necessary action accordance with the above referred the Hon'ble Apex Court order, hence in furtherance this Hon'ble Central Administrative Tribunal, Mumbai may clarify in OA No.623/2016 order dated 31st October 2017 and Contempt Petition No.18 of 2018 orders may not come in the way of promotion to the SC/ST employees as the OA No.623/2016 order dated 31st October 2017 was passed prior the Hon'ble Apex Court Authority, Jarnail Singh and Ors. Vs. Lachhmi Narayan Gupta and Ors. Special Leave to Appeal (C)No.30621 of 2011,[2018 SCC OnLINE SC 635 Para 1] and Constitution Bench Judgment passed by Hon'ble Apex Court in the matter of Jarnail Singh and Ors. Vs. Lachhmi Narayan Gupta and Ors. Special Leave to Appeal(C)No.30621of2011[i.e.(2018)

SCC 396, Para-36] and to the Office Memorandum issued by the Government of India Ministry of Personal Public Grievances and pensions Dept. of Personal and Training Establishment (Reservation-I) Section dated 15/06/2018 there is no Stay by any of the Constitutional Court of Law.

f). The Respondent Government authority may kindly be direct the Government Respondents to decide the representation submitted by the applicants dated 15/2/2018 and 25/2/2019.

g). That this Hon'ble Tribunal may kindly be pleased to pass any appropriate orders as this Hon'ble Court may deem fit and proper in the interest of natural justice."

3. The brief facts which emerge from the pleadings on behalf of the applicants in the OA are as under:-

The applicants, who belong to SC/ST/OBC category submit that they are going to be adversely effected due to the impugned order dated 22.02.2019 (Annexure A-1) which reads as under:-

"

Circular

Sub: Circulation of Revised truncated list for promotion to the post of Income-tax Officer from the R.Y 2013-14 to Transitional year 2018 in compliance of direction issued by the Hon'ble CAT, Bombay Bench in the Contempt Petition (C.P.18/2018 in O.A.623/2016) in the case of Sanjeev Kumar & Ors vs. Union of Indian & Ors in pursuance to order dated 06.02.2019 reg.

In compliance to the directions issued by the Hon'ble CAT, in the case of Sanjeev Kumar & Ors vs. Union of India & Ors in the Contempt Petition (C.P.18/2018 in O.A.623/2016) a list of the eligible officials for promotion to the post of ITO for the R.Y.2013-14 to T.Y. 2018 is annexed

thereto.

The objections with regards to the revised truncated eligibility list annexed thereto, if any, should be sent directly to the office of DCIT (HQ) (Personnel), Mumbai latest by 26.02.2019.

(NIMESH YADAV I.R.S.)

Addl. Commissioner of Income Tax (HQ)
Personnel, Mumbai"

4. It is stated that Seniority list dated 22.01.2016 (Annexure A-8) has been prepared following the law pertaining to reservation as the law is clear on the subject that reservation in promotion is permissible. The applicants are presently working on the post of Income Tax Officer. It is stated that the next promotion is from the post of Income Tax Inspector to the post of Income Tax Officer and the same is granted on the basis of seniority-cum-fitness. The only additional criteria are to qualify the Departmental Exam which has been cleared by the applicants. The applicants are the office-bearers of the Income Tax SC/ST/OBC Employees Welfare Association, Mumbai i.e. (ITSEWA) and they are likely to suffer because of the above mentioned Circular dated 22.02.2019 (Annexure A-1) as such they have decided to challenge the said circular due to which they have adversely affected. They have also preferred representations dated

25.02.2019 (Annexure A-16 (colly)) which is still pending with the respondents.

5. At this stage, learned counsel for the applicants fairly concedes that applicants would be satisfied if OA is disposed of at this admission stage and a direction is given to the respondents to dispose of their representations dated 25.02.2019 (Annexure A-16 (colly)) within a certain time frame in accordance with law. We are of the view that no prejudice is likely to be caused to the respondents if OA is disposed of and direction is given to the respondents with regard to disposal of the representations filed on behalf of the applicants.

6. In view of the above, we are of the opinion that the ends of justice will be met if the representations of the applicants are considered by the competent authority and a detailed and reasoned order is passed disposing of their representations.

7. In view of the above, the OA is disposed of and the Respondents are directed to pass a reasoned and speaking order on the representations filed by the applicants dated 25.02.2019 (Annexure

A-16 (colly)) within a period of twelve weeks from the date of receipt of a certified copy of this order. We have not gone into the merits of the case.

8. Accordingly, OA disposed of at admission stage. No order as to costs.

(R.N. SINGH)
MEMBER (J)

(R. Vijaykumar)
MEMBER (A)

ak/-

14/03
Jd.