

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR.

ORIGINAL APPLICATION NO.209/2019

Dated : 10th July 2019

CORAM: HON'BLE R.VIJAYKUMAR, MEMBER (A),
HON'BLE RAVINDER KAUR, MEMBER (J).

1. The Income Tax SC/ST/OBC Employees' Welfare Association Having addresses at: 16, Ground Floor, Aayakar Bhawan, M.K.Road, Churchgate, Mumbai-400020. Through its office-bearer Mr.Rupesh B.Ukey Working as Income-Tax Officer Under Cadre Controlling Authority In the Office of Principal Chief Commissioner of Income-Tax, 3rd floor, Aayakar Bhavan, M.K.Road, Mumbai-400020.

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. Res: 402, Haridar Tower, Shri Anand Bharti Marg, Chandani Koliwada, Thane-400603.

3. Ms.Archana Kaklpak Koli, 30 years, Income tax Officer (HQ) (Tech)-29, Room No.304, C-10, 3rd Floor, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400051. Res:203, Ekveera Ashish CHSL Shastri Nagar, Koper K Road, Dombivali-400603.

(By Advocate Ms.(Dr.)Jayshree Patil with Shri(Dr.) Gunratan Sadavarte)

...Applicants

vs.

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, Aayakar Bhavan, M.K.Road, Mumbai-

400020.

4. Sanjit Kumar Upadhyay Son of Late Shri Jyotindra Upadhyay Date of birth: 2.1.1971 (age 48 years 1 month), Working as : Income Tax Inspector (Group 'C' Post) in the office Additional CIT Range 11(3), Mumbai and residing at: B-303, Prerna Building No.3, Agashi Road, Virar (West), District-Palghar 401303 State of Maharashtra.

5. Sanjeev Kumar Son of S.D.P.Singh, Date of birth: 20.04.1971 (Age 47 years 10 months) Working as : Income Tax Officer (OSD) (Group "B" post) in the office of the Additional CIT Central Range 4, Air India Building, Nariman Point, Mumbai-400021, and residing at F-22/01 Income Tax Colony, Sector 21/22, CBD Belapur, Navi Mumbai-400614, State of Maharashtra.

(By Advocate Shri R.R.Shetty for respondents and Shri R.G.Walia for intervenors and Contempt Petitioner)

...Respondents

Reserved on :- 25/06/2019

Pronounced on:- 10/07/2019

O R D E R

R. Vijaykumar, Member (A)

This application has been filed on 22.3.2019 under section 19 of the Administrative Tribunals Act, 1985 seeking 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 peased to quash and set aside the impugned circular along with the revise/Truncated Seniority list of inspectors pursuents giving effect to the decision Hon'ble CAT Mumbai in Contempt Petition No.18/2018 in O.A. No.623/2016 order dated 06/02/2019 for the year 2013-

2014 to 2018, issued i.e. **(Annexure-A-5)** which is contrary to the legislative intent that is Office Memorandum issued by the Government of India Ministry of Personnel 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) Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same, hold and declare the Order dated 11.03.2019, 22/03/2019 Annexure-A-1: colly as illegal and quash and set aside the same as being illegal, arbitrary and opposed to principles of natural justice and being violate of Articles 14, 16(1) and 311 of the Constitution of India, impugned Communication/order dated 11/3/2019 issued by the respondent authority without the reasoned order as per the Hon'ble CAT Mumbai Order dated 11/3/2019 order in OA no.167/2019 also in violation of natural justice without providing hearing opportunity by non-following the Jarnail Singh And Ors V/s Lachhimi Narayan Gupta (2018) SCC Online 635, and Para 1 and constitution Bench Judgment passed by the Hon'ble Apex Court Jarnail Singh And Ors V/s Lachhimi Narayan Gupta,

d) The Tribunal may further be to restrain the respondents from reverting the applicant from the post of Income Tax Officer,

e) That this Hon'ble Tribunal may kindly be please to issue the direction to the respondent authority to follow in full spirit the Office Memorandum issued by the Government of India Ministry of Personnel Public Grievances and Pensions Department 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 Ors V/s Lachhimi Narayan Gupta and Others (2018) SCC OnLine SC 635,

f) 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 V/s Lachhimi 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 V/s Lachhimi Narayan Gupta and Ors. Special Leave to Appeal (C) No.30621 of 2011 [i.e. (2018) SCC SC 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 OA No.394 of 2018 by Judgment dated 6/11/2018, para-16 & 17 further the matter travelled 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.**

g) 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.30621 of 2011[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.

h) Cost of the application is provided for.

j) Any other and further order as this Tribunal deems fit in the nature and circumstances of the case be passed".

2. An M.A. No.158/2019 for joint application was also filed and the same has been allowed for

the reasons stated therein.

3. The application was mentioned on 22.3.2019 before a Single Bench and was heard by this Bench on 26.3.2019 for admission and for grant of interim relief for which the applicants had also given advance notice to the respondents and their learned Senior Standing Counsel, Shri R.R.Shetty who appeared in the matter. After hearing both parties, the following orders were passed:

"7. It is quite apparent that the impugned orders are not final orders and are made subject to a variety of judgments. It is also not apparent, prima facie, that these interim orders would directly affect the applicants (present intervenors in M.A. No.161/2019) who had succeeded in OA No.623/2016. However, it is also true that the applicants in the present OA have remained in the promoted position for nearly five years. Further, in OA No.167/2019 decided on 11.03.2019, the respondents were directed to consider the representation of the applicants and pass a reasoned and speaking order after the matter was reserved on 28.02.2019. However, it appears by reference to orders dt. 11.03.2019 (Annexure A-2) that no reasoned and speaking order has been issued in the matter. In the circumstances, shall issue notice to official respondents to file a reply within four weeks".

4. Shri R.G.Walia, learned counsel for intervenors was heard on intervention application No.161/2019 on 8.4.2019 and for reason of no

objection by the applicants and in view of the settled law in relation to inclusion of necessary parties, the Intervention Application No.161/2019 was allowed.

5. Previous to filing this OA, the applicants had filed OA No.167/2019 which was decided on 11.3.2019, directing the respondents to consider the representation filed by the applicants on 25.2.2019 and to pass a reasoned and speaking order within twelve weeks. In their reply, the respondents have enclosed a copy of the orders issued in reference No.Addl.CIT(HQ) Pers./ITO Rev. Truncated Elig.List/Rep./2019 dated 4.4.2019 and communicated to the applicants. They have emphasised that the orders and circulars issued by them were a consequence of the implementation of the orders of this Tribunal in OA No.623/2016 filed by Shri Sanjeev Kumar & Ors. which was challenged by the same present applicants in WP No.848/2018 and was dismissed by the Hon'ble High Court of Bombay and has become final, followed by the orders passed in Contempt Petition No.18/2018 on 6.2.2019. They have underscored the fact that the orders of this Tribunal on the Contempt

Petition were passed, based on the binding precedent and rulings of the Hon'ble Apex Court in the case of **Jarnail Singh v. Lachhmi Narayan Gupta** on 26.9.2018. They also mention that this Tribunal had fully considered the OM issued by the DOPT on 15.6.2018, while passing orders on 6.2.2019, now claimed by the applicants as the law in question. Further, they also refer to the orders of the Principal Bench in OA No.3420/2017 passed on 8.1.2019 which directs respondents to follow the judgment of the Hon'ble Apex Court in the case of **Jarnail Singh** supra and the decision of the Hon'ble Apex Court in **M.Nagaraj**. They have also detailed at length, the method they have adopted for implementing the orders of the Hon'ble Apex Court as directed by this Tribunal in its said orders. By reference to their letter dt. 11.3.2019 (A-1 colly) and the impugned orders dt. 22/3/2019 (A-1 colly), they affirm that many of the contents of these orders and movements thereof had already taken place by 26.3.2019 when interim orders were passed by this Tribunal. In any case, the representations of applicants dt 15/2/2019 had been disposed of on 6.4.2019. On this basis, the

respondents requested withdrawal of the orders granting interim relief.

6. The intervenors have also filed their reply arguing that the OA was basically an example of a frivolous litigation and it is not maintainable on the principle of res judicata in view of the extant orders of this Tribunal which has attained finality and of the Hon'ble Apex Court. When the matter was heard again on 8.4.2019, the reply on interim relief by official respondents and reply of intervenors was taken on record after service on applicants. The applicants submitted that they did not wish to file any rejoinder and the matter was accordingly listed for final hearing on 1.5.2019. On this date, the learned counsel for the applicants now sought four weeks time to file rejoinder and this time was accordingly granted. The case eventually came up for final hearing on 25.6.2019 by which time, the respondents had filed their reply on the main OA on 24.6.2019 and upon the submission made by arguing counsel for applicants that they do not wish to file any rejoinder and were ready for arguments, the learned counsel for applicant,

Ms(Dr) Jayshree Patil, and learned counsels respondents were heard at length on the matter. At this stage, learned counsel for the respondents submitted that the present applicants who were also applicants in the OA had also filed a Writ Petition in the Hon'ble High Court of Bombay against the orders of this Tribunal passed in the O.A. No.623/2016 of **Sanjeev Kumar & Ors.** supra and the said Writ Petition No.848/2018 had been dismissed on 5.3.2018 and had attained finality. This judgment had upheld the orders of this Tribunal by recording the following order:

"17. Taking into consideration the aforesaid position, we see no reason to interfere with the impugned judgment and order made by the CAT, which has merely followed the decisions of the Supreme Court in *B.K.Pavitra* (supra) and *M.Nagaraj* (supra).

18. The petitioner, was undoubtedly, the respondent before the CAT. The petitioner has contested the matter before CAT on merits. At the behest of the petitioner, therefore, there is no reason to entertain any challenge based upon alleged non-compliance with the procedure prescribed under Order 1 Rule 8 of the CPC.

19. For the aforesaid reasons, the petition is liable to be dismissed and is hereby dismissed.

20. Since, we are dismissing the main petition at the threshold, there is no

question of permitting any interventions, though, we have heard Mr. Murtaza Najmi, learned counsel for the intervenors and even considered but not accepted his submission for remand of the matter.

21. For the aforesaid reasons, this petition and civil application are dismissed. There shall be no order as to costs".

7. The arguments of learned counsels for applicants, respondents and intervenors have been carefully considered and the pleadings on record have been carefully perused. When this application came to be filed, the applicants had contended that the respondents were bound by a DOPT O.M. dt. 15.6.2018 which had followed the interim orders of the Hon'ble Apex Court and took the plea that these orders and DOPT OM were subsequent to the orders in OA No.623/2016 and judgment in WP No.848/2018. However, it was quite clear that subsequently, the Hon'ble Apex Court passed orders in **Jarnail Singh** supra and it was on this basis, that the rulings of the Hon'ble Apex Court were adopted while passing orders in CP No.18/2018 on 11/2/2019, in addition to precedent judgments and orders of this Tribunal. However, this Tribunal considered these submissions and on the consideration that the respondents had not yet

passed a reasoned and speaking order on the representations dated 15/2/2019 and 25/2/2019 of the applicants who had been employed in the promoted position for nearly five years from 2014, this Tribunal granted an interim stay to enable the respondents to pass orders on the representation and to file their reply.

8. However, as subsequently explained by the respondents and intervenors in their reply, the respondents have also passed a reasoned and speaking order in relation to the representation filed by the applicants. They have further explained that they are engaged in attempting to implement the orders of this Tribunal as upheld by the Hon'ble High Court along with its consequential effects in regard to the promotion of various categories of staff in their department so as to be in strict compliance with the orders of the Hon'ble Apex Court. On the other hand, the applicants seek to prevent them from obeying the final orders of this Tribunal. In these circumstances, the continuation of the interim orders of stay or to consider any relief to the applicants by revisiting the very basis of the

orders of the Hon'ble Apex Court as followed in the orders of this Tribunal in OA No.623/2016 as upheld in WP No.848/2018 would be in gross violation of the principles of judicial discipline. Not only has this Tribunal become functus officio in this matter but the same position in this and other departments has been reiterated by this Tribunal in OA No.727/2013 etc dt.29.11.2018 (Annexure-R-5), by the Principal Bench in OA No.3420/2017 dt. 8.1.2019 and also recently, by the Hyderabad Bench in OA No.1162/2013 etc dt.11.1.2019. Therefore, the interim orders deserve to be withdrawn. Further, on the same basis, the O.A. itself ceases to be maintainable and as argued by the intervenors, the principle of res judicata squarely applies to the pleadings of the applicants.

9. In the aforesaid circumstances, this O.A. is not maintainable. On the other hand, in view of the orders passed in OA No.167/2019 on 11.3.2019 with directions to the respondents, the correct approach to seeking legal remedies would have been to approach this Tribunal for directions to expedite a reply but applicants apparently

wanted to revisit previous orders in a disguised manner. Therefore, the present OA is undoubtedly a frivolous and malicious abuse of the process of this Tribunal and of law and is dismissed.

10. It is also a matter of great regret that during the final hearing, when patient hearing was being granted to all the learned counsels including Ms.(Dr.)Jayshree Patil who was arguing on behalf of the applicants with the secretarial/factual assistance of Shri(Dr.)Gunratan Sadavarte, towards the conclusion of the proceedings when learned Senior Standing Counsel for respondents, Shri R.R.Shetty, began to make supplementary submissions, the assisting counsel Shri(Dr.) Gunratan Sadavarte, intervened and commenced shouting and making wild, unsubstantiated, and irrelevant allegations against one of the Members of this Bench. Since hearing had been completed, the ruckus that he sought to create was controlled by ending the proceedings and orders have now been passed accordingly. This behaviour of the assisting counsel of the applicants needs to be considered along with the improper and frivolous application filed with the only objective being to

subvert law as contained in orders/judgments of this Tribunal and Courts that had become final and to disrupt the personnel management and operations of the respondents. Notably, during the dismissal of the Writ Petition No.848/2018 filed by these very applicants before the Hon'ble High Court against orders in OA No.623/2016, remand of the case to the Tribunal was also declined. By this application, the applicants sought what the Hon'ble High Court itself had declined and if applicants had felt any grievance, they had suitable legal remedies as options but not illegal ones. The learned counsels for the applicant have, in their court behaviour and manner of pleadings, not only displayed an arrogant defiance of the law and court decorum but also an unwillingness to maintain forthrightness in providing basic and correct information to the Court while initiating legal proceedings. In these circumstances, it is necessary that applicants shall bear the costs of their bogus pleadings and for the lack of decorum and misconduct of their counsels in Court. For this reason, costs of Rs.25,000/- by applicant No.1 and Rs.5,000/- by each of the applicants

Nos.2 and 3 shall be paid to the CAT Bar Association for library purposes. The respondent Department shall ensure that payment is made within two weeks and shall have the liberty to proceed against the applicants in accordance with Rules governing the conduct of Applicant No.1 and of employees listed as Applicant Nos.2-3, in case of default.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

B.

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10/7/19