

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.459/2019

Date of Decision: 10th July, 2019

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

1. Naresh S/o. Shankarrao
 Khapre, Age-51 Years, Occu- Service,
 as Income Tax Officer,
 Income Tax Department, Ayakar
 Bhavan, M.K. Road, Mumbai – 400 022.
 R/o. 'Royal Residency', Building No.2,
 Addharwadi Chowk, Jail Road,
 Kalyan (West), District – Thane
 421 301.
2. Premdas S/o Rejeram Meshram,
 Age – 50 Years, Occu. Service as
 Income Tax Officer, Income Tax
 Department, 805, 8th Floor,
 Smt. K.G. Mittal Aayurvedi Hospital
 Charni Road, Mumbai – 400 002. *Applicant*

(By Advocate Shri Avinash Salve)

Versus

1. The Union of India, Through its Secretary,
 Ministry of Finance,
 Department of Revenue,
 North Block, New Delhi – 110 001.
2. The Secretary,
 Department of Personnel & Training,
 Lok Nayak Bhavan, Khan Market,
 New Delhi – 110 001.
3. The Principle Chief Commissioner of
 Income Tax, 3rd Floor, Aayakar Bhavan,
 Maharshree Karve Road, Mumbai – 400 020.

(Copies for the respondents to be served on
 Presenting Officer, CAT, Mumbai Bench at
 Mumbai.) *Respondents*

(By Advocate Shri R.R. Shetty alongwith Shri P. Khosla)

ORDER (ORAL)

Per : Shri R. Vijaykumar, Member (A)

MA No. 424/2019 filed by the applicants

for Joint Petition is allowed.

2. Heard learned counsel for the applicants. This application has been filed on 05.07.2019 under Section 19 of the Administrative Tribunals Act, 1985 and has been heard at the Admission stage with the Assistance of the Senior Government Standing Counsel for respondents to whom Advance notice was given.

3. The applicants have sought the following reliefs:-

"8 (A) This Original Application may kindly be allowed.

(B) The impugned office order issued by the respondents dated 22/03/2019, kindly be quashed and set aside to the extent of applicants, by considering the recent view adopted by the Apex Court, in its decision dated 10.05.2019 (in BK Pavitra-II's case), in the interest of justice.

(C) In the light of adopted view of Apex Court in its recent decision dated 10.05.2019 (BK Pavitra-II case), by changing its earlier adopted view in its decision dated 09.02.2019 (BK Pavitra-1 case), judgment and orders passed by this Hon'ble Tribunal dated 31.10.2017 in OA No.623/2016 may kindly be recalled

or reconsider suitably, in the interest of justice.

(D) Any other equitable relief, in favour of the applicants, as this Hon'ble Tribunal deem fit, may kindly be awarded in the interest of justice."

3a. The main challenge of the applicants is to the orders passed by respondents in No.MUM/Pr.CCIT/Admin/Gaz./Prom./ITO/2018-19 dated 22.03.2019 based on review DPC that was conducted following the orders of this Tribunal in OA No.623/2016 and subsequent Contempt Petition No.18/2018.

4. Learned counsel for the respondents invites attention to an identical application filed by similarly placed persons who had first been appointed as Stenographers, in OA No.238/2019 decided on 13.05.2019, and in which the respondents were directed to pass a reasoned and speaking order upon receipt of a supplemental representation by applicants and further action is stated to be pending. However, in that OA, the applicants had initially represented on 26.02.2019 on which the respondents had passed a generalised order that did not deal specifically with

all issues raised by applicants.

5. In this application and as argued by learned counsel for the applicants, the main basis for the challenge is that the applicants claim that the respondents have not considered the judgment of the Hon'ble Apex Court in B.K. Pavitra and Others Vs. Union of India and Ors. in Civil Appeal No.2368/2011 decided on 10.05.2019 which records its view of the matter as below:-

“144. For the above reasons, we have come to the conclusion that the challenge to the constitutional validity of the Reservation Act 2018 is lacking in substance. Following the decision in B.K. Pavitra I, the State Government duly carried out the exercise of collating and analysing data on the compelling factors adverted to by the Constitution bench in Nagaraj. The Reservation Act 2018 has cured the deficiency which was noticed by B.K. Pavitra I in respect of the Reservation Act 2002. The Reservation Act 2018 does not amount to a usurpation of judicial power by the state legislature. It is Nagaraj and Jarnail compliant. The Reservation Act, 2018 is a valid exercise of the enabling power conferred by Article 16 (4A) of the Constitution.”

6. Learned counsel for the applicants also contends that the Hon'ble Apex Court has ordered status quo in the case of Jarnail Singh vs. Lachhmi Narain Gupta in its interim order dated 15.04.2019 which is also stated to be coming up for hearing on 15.10.2019. He, therefore, presses for grant of interim

relief by staying the proceedings that have been undertaken by the respondents.

7. Learned counsel for the respondents submits that the order in OA No.623/2016 had earlier been challenged by some similarly placed applicants before the Hon'ble High Court. Their application had been dismissed. However, the respondents have now challenged the orders passed by this Tribunal before the Hon'ble High Court and proceedings are yet to be taken up and is listed for hearing on 18.07.2019. He also points to the fact that any challenge to the orders passed by the respondents as contained in the present OA and grant of any relief will affect other parties who are the beneficiaries of the said order and therefore, some of them should have been impugned atleast in a representative capacity but that has not been done and therefore this OA suffers from non-joinder of proper and necessary parties.

8. The impugned orders challenged in this OA had earlier been challenged in OA No.238/2019 in which the respondents were directed to pass a speaking order and that remains pending. Subsequently, in another OA

No.209/2019, the applicants therein who are similarly placed had also challenged, *inter alia*, these impugned orders and that OA has been dismissed by this Tribunal on 10.07.2019. Since in the present OA, the applicants have referred to certain later judgements that they believe need to be considered, it would be in the order of things for them to file a proper representation covering all aspects of their grievances and issues therein so that the respondents may apply their minds and pass a detailed reasoned and speaking order.

9. This Tribunal, therefore, while reiterating its orders passed in OA No.238/2019, also permits the applicants to file a detailed representation as set out above within two weeks. The respondents are directed to consider such representation upon receipt and pass a reasoned and speaking order in four weeks thereafter and communicate such orders to these applicants in two weeks. While doing so, the issues contained in the representation dated 26.02.2019 filed by applicants in OA No.238/2019 which are presumably of similar

nature, shall also be similarly disposed of by respondents and communicated.

10. In the aforesaid terms, this OA is disposed of without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

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