
(2020) 11 CAT CK 0001

In the Central Administrative Tribunal

Case No : Original Application No. 249 Of 2016, Miscellaneous Application No. 1204 Of 2020

Diana George & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 02-11-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2020) 11 CAT CK 0001

Hon'ble Judges : A.K. Bishnoi, Member (A), R.N. Singh, Member (J)

Bench : Division Bench

Advocate : M.K. Bhardwaj, R.K. Jain, Rajeev Sharma

Final Decision : Disposed Of

Judgement

R.N. Singh, Member (J)

Heard the learned counsels for the parties.

MA No. 1204 of 2020

1. The present MA No.1204/2020 has been filed by the applicants praying therein for restraining the respondents from promoting the reserved

category persons to the post of Assistant Nursing Superintendent and Deputy Nursing Superintendent till the disposal of the OA or to dispose of the

OA as per the order passed in OA No.3476/2013 titled Ram Pher Yadav and others vs. Union of India and others and other connected cases.

2. With the consent of the parties, the OA itself has been taken up for final hearing. Therefore, the MA is disposed as having become infructuous.

O.A. No. 249 of 2016

1. In the aforesaid Original Application, the applicants are aggrieved of the action

of the respondents in giving benefits of reservation while making promotion in nursing cadre.

2. Learned counsel for the applicants submits that such action of the respondents is contrary to the settled law on the subject and, therefore, the applicants have prayed for the following reliefs in the present OA:-

â??a) Call for the records of the matter;

b) Strike down the action of respondents in giving benefit of reservation to SC/ST category candidates in the matter of promotion to the post of

Nursing Sister, ANS & DNS as illegal and bad in law and quash all the promotion orders dated 29.06.2015, 21.07.2015, 09.03.2015 & 01.12.2015

whereby benefit of reservation has been given as well as the seniority list prepared by giving benefit of reservation and direct the respondents to make

pro/motions to the post of NS, ANS & DNS without applying reservation in promotion.

c) To direct the respondents to consider the applicants for promotion by holding review DPC of the original DPC in which juniors of applicants were

promoted were promoted to the higher post and make promotions to the relevant posts without applying element of reservation in promotion.

d) To direct the respondents to prepare the seniority list of Nursing Sister, ANS & DNS as per promotion orders to be issued on the basis of review

DPC and without applying rule of reservation.

e) To allow the OA with cost.

f) Pass any other orders that this Honâ??ble Tribunal may deem fit in the facts and circumstances of the case.â??

3. Mr. Bhardwaj, learned counsel for applicants submits that issue raised in the present OA has already been adjudicated by this Tribunal in common

order/judgment dated 22.01.2018 in OA No.3476/2013 titled Ram Pher Yadav and others vs. Union of India and others with etc. etc. Para 1 of

the order/judgment dated 22.01.2018 in Ram Pher Yadav (supra) reads as under: -

â??All these batch of OAs are pertaining to the issue of reservations in promotions and hence are being disposed of by way of this common order.â??

This Tribunal after considering the law laid down by the Honâ??ble Apex Court in M. Nagaraj & others v. Union of India & others, (2006) 8

SCC 212, and Suresh Chand Gautam Vs. State of Uttar Pradesh and others ,AIR 2016 SC 1321., and various other cases, has disposed of these

OAs, i.e., Ram Pher Yadav (supra), etc. as under:-

15. In the circumstances and for the aforesaid reasons, the respondents are directed to act in terms of M. Nagaraj (supra), i.e. without following

the rule of reservation in promotions and to redraw the promotional lists/panels, if already issued, with all consequential benefits, however, without any

back wages in the circumstances. This exercise shall be completed within 90 days from the date of receipt of a copy of this order. Accordingly, all the

O.As. are disposed of.

4. Mr. Bhradwaj, learned counsel for the applicants, further argues that order/judgment of the Tribunal dated 22.01.2018 in Ram Pher Yadav (supra)

was followed by the Tribunal while passing the common order/judgment dated 21.03.2018 in OA No.1596/2017 with OA No.1111/2017 titled Raj

Kumar, Deputy Secretary, Group A and others vs. Union of India & others etc. (Annexure M-1). Para 3 of this common order/judgment dated

21.03.2018 reads as under :

3. Through the medium of these O.As., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the

following reliefs:-

O.A. No.1596/2017

(i) To quash and set aside the impugned order dated 01.02.2017 and direct the Respondents to take remedial action as per the law declared by Hon?

ble Supreme Court of India in the case of M. Nagaraj as well as B.K. Pavitra & Ors by promoting the applicants and similarly situated other General

category CSS officers to the post of Under Secretary and above from the dates of promotion of their juniors officers of SC/ST categories and without

applying rule of reservation in promotion, with all consequential benefits.

(ii) To declare the action of Respondents in applying rule of reservation while preparing select lists of Under Secretary Grade of CSS for the year

2003 as void being violative of judgment of the Apex Court delivered in M Nagaraj (2006) 8 SCC 212 and direct the respondents to make promotions

in the aforesaid grade of Under Secretary and above for the select lists years 2003 and onwards without applying rule of reservation in promotion and

fix the seniority of applicants/ general category officers in the Under Secretary Grade by applying 'catch-up' rule as affirmed by Hon'ble

Supreme Court in the case of B.K. Pavitra & Ors. (A-18) and publish and operate the said seniority list for all purposes.

5. This Tribunal again considered the law laid down by Hon'ble Supreme Court in M. Nagaraj & others vs. Union of India & others (supra),

Indra Sawhney & others Vs. Union of India & others, 1992 Supp (3) SCC 217, and also that in S. Panneer Selvam & Ors. v. State of Tamil

Nadu & Ors., (2015) 10 SCC 292 as well as in B.K. Pavitra & Ors. v. Union of India & Ors., (2017) 4 SCC 620 and also the order/judgment of this

Tribunal in Ram Pher Yadav and others (supra) and disposed of the said OAs, i.e., Raj Kumar (supra), etc. by passing the following orders:-

9. The issues relating to reservation in promotion for SC/ST officers and application of 'catch-up' rule have been taken by the respondents

before the Hon'ble Apex Court in various SLPs but no interim direction has been issued by the Apex Court as to non-applicability of ratio of law laid

down in M. Nagaraj and B.K. Pavitra (supra). As the law stands today, the ratios laid in those judgments are required to be implemented. A similar

view has been taken by this Tribunal in Ram Pher Yadav (supra), referred to hereinabove.

10. In the conspectus, these O.As. are disposed of in terms of the judgment of this Tribunal in Ram Pher Yadav (supra). No order as to costs.

6. In pursuance of the notice issued from this Tribunal, the respondents have filed their replies. Learned counsel appearing for the respondents do not

dispute the facts noted hereinabove. They also do not dispute the judgment of this Tribunal referred to by the learned counsel for the applicants in

Ram Pher Yadav and others (supra) as well as in Raj Kumar & others (supra). However, they argue that the situation at the time when the

aforsaid orders/judgments were passed by this Tribunal, were different with that of today inasmuch as when the said orders/judgments were passed

by this Tribunal, the Hon'ble Supreme Court has not passed the judgment dated 28.9.2018 in Jarnail Singh & others vs. Lachmi Narain Gupta

& others, (2018) 10 SCC 396.

7. In rejoinder, Mr. Bhardwaj, learned counsel appearing for the applicants submits that judgment passed by the Hon'ble Apex Court in Jarnail

Singh's case (supra) is not of any help to the respondents inasmuch as the same has already been considered by the Hon'ble High Court of

Delhi in order/judgment dated 12.11.2018 in W.P.(Civil) No.12035/2018 in the case of Union of India and another vs. Raj Kumar and others. He

further submits that this Tribunal's order/judgment dated 21.3.2018 in OA No.1596/2017 titled Raj Kumar and others vs. Union of India and

others was challenged by the respondents by filing the W.P.(Civil) No.12035/2018 before the Hon'ble High Court of Delhi and the Hon'ble

High Court of Delhi has taken into consideration the judgment of the Hon'ble Apex Court dated 28.09.2018 in Jarnail Singh (supra).

The judgment of the Hon'ble High Court dated 12.11.2018 in the said WP (C) No.12035/2018 reads as under :

Union of India has preferred these writ petitions to assail the common order of the Central Administrative Tribunal, Principal Bench, New Delhi

(the Tribunal) dated 21.03.2018 rendered in OA Nos.1596/2017 and 1111/2017. The direction issued by the Tribunal in the impugned order is

that the petitioner should follow the ratio laid down by the Supreme Court in M. Nagaraj & others vs. Union of India & others, (2006) 8 SCC 212

and B.K. Pavitra & others vs. Union of India & others, CA No.2368/2011 decided on 09.02.2017 by the Supreme Court.

After the impugned order was passed, the Constitution Bench of the Supreme Court has rendered its decision in Jarnail Singh & Ors. vs. Lacchmi

Narain Gupta & Ors., (2018) 11 SCALE 530. The Constitution Bench of the Supreme Court, which was examining whether the decision in M.

Nagaraj (supra) should be referred to a Larger Bench for its reconsideration concluded that the decision in M. Nagaraj (supra) does not need to be

referred to Seven Judges Bench. However, the conclusion in M. Nagaraj (supra) that the State has to collect quantifiable data showing

backwardness of the Scheduled Casts and Scheduled Tribes, being contrary to the Nine Judges Bench's decision in the case of Indra Sawhney

& others vs. Union of India & others, 1992 Supp. (3) SCC 217, was held to be invalid to that extent.

There is no gain saying that in view of the latest decision of the Supreme Court in Jarnail Singh (supra), the Union of India and all others are bound

to comply with the same. In view of the aforesaid, we dispose of the present petitions by directing that the Union of India shall comply with the

judgment in Jarnail Singh (supra). Since the judgment in Jarnail Singh (supra) has been rendered only on 26.09.2018, we extend the time for compliance by another three months.

Petitions stand disposed of in the above terms along with pending applications.â??

8. From the aforesaid judgment of the Honâ??ble High Court of Delhi, it is evident that Honâ??ble High Court has clearly held that there is no gain

saying that in view of the latest order of the Honâ??ble Supreme court in the case of Jarnail Singh and UOI & others (supra). It is noted that the

judgment of the Honâ??ble High Court is binding for this Tribunal. In view of the aforesaid, the objection raised by the learned counsel for

respondents is not tenable.

9. In view of the aforesaid, the present OA is disposed of with direction as under:-

The OA is disposed of in terms of Order/Judgment of this Tribunal in Raj Kumar and others vs. Union of India and others (supra)

10. However, in the facts and circumstances, no order as to costs.