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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8262/2016

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Judgment dated 20th September, 2016

HARSH KAKAR & ORS

..... Petitioner

Through : Mr.M.K. Bhardwaj and Ms.Shriambhra
Kashyap, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr.Rajesh Gogna, CGSC, and
Mr.Santosh Kumar Pandey, Adv. for
the UOI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by the petitioners under Articles 226/227 of the Constitution of India seeking a direction to set aside the order dated 29.1.2016 passed by the Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') in Contempt Petition No.664/2014 in OA No.2093/2005.
2. In this case, pursuant to an advertisement published by the Staff Selection Commission in the year 1990 for filling up post of Inspectors under CBDT and Central Excise, the petitioners submitted their candidature. In the year 1992, the petitioners were appointed as Inspectors, Customs and Central Excise, Ministry of Finance. On 27.2.2003, the respondents issued provisional seniority list where the petitioners were placed below all the promotes. The petitioners objected to the said seniority list and requested to re-fix their seniority as per rotation of quota i.e. 3:1 as per DoP&T instructions and the judgments rendered by the Supreme Court of India on the same issue.

Since the request of the petitioners was not considered, the petitioners filed OA 2093/2005 before the Tribunal against the said seniority list. Since notice was issued by the Supreme Court of India in the Special Leave Petition, being CA No.7514-15/2005, titled as *Union of India & Ors. v. N.R. Parmar & Ors.*, the Tribunal disposed of the said OA vide order dated 20.3.2007 observing that both the sides would be governed by the judgment which would be pronounced in the aforesaid Special Leave Petition. The Tribunal also held that in case the petitioners would further be aggrieved, it would be open for them to take appropriate action in accordance with law. The relevant portion of the order reads as under:

“MA 1844/2015 for joining together is allowed.

2. *We have heard ld. counsel for both sides for some time. It was fairly pointed out to us that issue regarding inter se seniority of Inspectors and various other grades pertaining to Ministry of Finance whether they belong to CBEC/CBDT is pending adjudication before the Hon’ble Supreme Court in C.A. No.7514-7515/2015 Union of India & Ors. v. N.R. Parmar & Ors.*

3. *On bestowing our careful consideration to all aspects of the case, we are of the considered view that all parties including this Tribunal would be bound by the judgment to be rendered in the said case, and accordingly, we dispose of present OA with the observation that both sides would be governed by the judgment to be pronounced in the afore-mentioned case, as and when it is decided. In case applicants are further aggrieved, it will be opened to them to take appropriate action in accordance with law.”*

3. On 27.11.2012, the Supreme Court of India decided the Special Leave Petition thereby declining the claim of the promotees. Thereafter the petitioners submitted their representations for fixation of their seniority as per the aforesaid judgment. On 29.9.2014, the respondents

circulated the seniority list of Inspectors, Central Excise, but ignored the petitioners. The petitioners thereafter filed contempt petition alleging willful disobedience of the order dated 20.3.2007 passed by the Tribunal in the OA. On 29.1.2016, the respondents submitted their affidavit stating that the judgment rendered in *Union of India* (supra) is prospective in nature and cannot be applied to the case of the petitioners. The contempt petition filed by the petitioners was dismissed by the Tribunal, which led to the filing of the present writ petition.

4. Learned counsel for the petitioners submits that the impugned order passed by the Tribunal is bad in law as the Tribunal has failed to take into consideration the order dated 20.3.2007. Counsel further submits that the Tribunal has failed to consider that once the decision rendered in the case of *Union of India* (supra) and the OA was disposed of by the Tribunal observing that the judgment which would be passed by the Supreme Court would be applicable to the case of the petitioners, the respondents could not have declined the relief as claimed by the petitioners. It is further submitted that the Supreme Court of India in its judgment dated 27.11.2012 has nowhere held that the judgment is prospective. Counsel next contends that the Tribunal has failed to consider that the DoP&T itself has clarified vide clarification dated 1.5.2014 that the seniority fixed as per OM dated 3.3.2008 is required to be revisited.
5. Learned counsel for the petitioners further submits that the complaint of the petitioner is that the petitioners waited almost eight years for the judgment to be pronounced in *Union of India* (supra) and once the judgment was pronounced, they approached the Department for refixation of their seniority but the Department rejected their claim and

did not fix their seniority and communicated to the petitioners that the decision rendered in the case of *Union of India* (supra) would not be applicable, which led to the filing of the contempt petition, which was dismissed by the Tribunal.

6. Learned counsel for the petitioners further submits that the order dated 20.3.2007 passed by the Tribunal was not challenged by the respondents. In effect they had agreed that the case of the petitioners would be decided based on the decision rendered in *Union of India* (supra). Counsel also contends that the Department was well aware that the judgment in the case of *Union of India* (supra) would be rendered by the Supreme Court of India at a later stage. Counsel also contends that since the Tribunal has not interfered in the Contempt Petition, OA No.2093/2005 filed by the petitioners should be revived and the petitioners should be permitted to approach the Tribunal once again as no final order was passed in the said OA.
7. Mr.Gogna, learned counsel for the respondents, enters appearance on an advance copy, and submits that the complicated questions of law and fact are involved, which could not have been decided in the contempt proceedings.
8. Heard counsel for the parties and considered their rival submissions.
9. In this case, the petitioners had approached the Tribunal by filing OA No.2093/2005. The said OA was disposed of by the Tribunal with the observation that both the parties would be governed by the judgments to be pronounced by the Supreme Court of India in the case of *Union of India* (supra). After the Supreme Court of India rendered its decision, the petitioner approached the respondents for deciding their seniority in terms of the aforesaid judgment, which request was declined by the respondents. A contempt petition filed by the

petitioners was also dismissed.

10. Having regard to the submissions made, we are of the view that the respondents were also bound by the observations made by the Tribunal in the order dated 20.3.2007, which has been extracted hereinabove, however, counsel for the respondents has submitted that complicated questions of fact and law are involved which could not have been decided in the contempt proceedings.
11. Resultantly, the present writ petition is disposed of as prayed by counsel for the petitioner with a direction to the Tribunal to revive OA No.2093/2005 and decide the same on merits. The petitioner would make a formal application before the Tribunal in this regard.

G.S.SISTANI, J

I.S. MEHTA, J

SEPTEMBER 20, 2016

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