

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

O.A. No. 60/332/2017 &
 M.A. No. 60/643/2018,
 M.A. No. 60/966/2018
 M.A. No. 60/1348/2018
 M.A. No. 60/1347/2018

Chandigarh, this the 25th day of February, 2020

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

HON'BLE MRS. NAINI JAYASEELAN, MEMBER (A)

Prakash Vir, Staff No. 182200, aged 51 years, s/o Sh. Surya Parkash, presently working as Accounts Officer, Rohtak Telecom District, BSNL, Rohtak, and resident of House No. 1303, Sector 3, Rohtak- 124001 (Group-B).

...Applicant

(BY: Mr. R.K. Sharma , Advocate)

Versus

- 1 Chairman Cum Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, 3rd Floor, Bharat Sanchar Bhawan, Harish Chandra Lane, Janpath, New Delhi - 110001
- 2 Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Haryana Telecom Circle, No. 107, Mahatma Gandhi Road, Ambala Cantonment - 133001



3

General Manager (FP), Bharat Sanchar Nigam Limited, Corporate Office, 7th Floor, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi – 110001

4

Union of India through Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi – 110001

5

Mali Ram Meena, Staff No.182221

6

M.N.Chaudhari, Staff No.182238

7

R.K.Parmar, Staff No.182249

8

D.D.Chauhan, Staff No.182260

9

Babu Lal, Staff No.182306

10

Balbir Singh Bhumbak, Staff No.182309

11

B.B.Chauhan, Staff No.182336

12

I.A.Solanki, Staff No.182403

13

S.Srivalli, Staff No.182424

14

Krishnaperumal S., Staff No.182439

15

Ku.Versha Kanojia, Staff No.182440

16

K.Chandrasekhar, Staff No.182445

17

Shanti Lal Kandare, Staff No.182450

18

Suresh Pal, Staff No.182455

19

Tek Chand Mehra, Staff No.182486

20

Brij Bhushan Lal, Staff No.182494

21

Malay Kanti Halder, Staff No.182498

22

Ramesh Chand Bansiwala, Staff No.182512

23

K.Shanthi, Staff No.182542

24

T.Ramulu, Staff No.182546

25

Surja Ram, Staff No.182559

26

Amitabh Arya, Staff No.182560

27

Manna Ram Raigar, Staff No.182561

28

S.Gopalakrishna, Staff No.182562

29

Ram Karan Mandawara, Staff No.182563

30

M.Mastan Babu, Staff No.182564

31

M.M.Makwana, Staff No.182565

32

Ku.K.S.Kumar, Staff No.182566

33

D.Kuppuswamy, Staff No.182567

34

K.B.Krishna, Staff No.182568

35

K.Srinivas, Staff No.182569

36

Charan Singh, Staff No.182570



37	L.S.Wanjari, Staff No.182571
38	B.Ratna Sadananda, Staff No.182572
39	E.Y.N.Lotha, Staff No.182573
40	Arumugam P., Staff No.182574
41	Tej Pal, Staff No.182575
42	Damodar Prasad, Staff No.182576
43	T.Dinesh Chandra, Staff No.182577
44	C.R.Chunia, Staff No.182578
45	Balaram Das, Staff No.182579
46	R.B.Sodagar, Staff No.182580
47	Chhabiraj Ram, Staff No.182581
48	V.S.Dongre, Staff No.182582
49	Basant Lal Tirtade, Staff No.182583
50	Dharambir, Staff No.182584
51	Sathiyarayanan K., Staff No.182585
52	M.Vasantha Kumari, Staff No.182586
53	Ram Kishan Meena, Staff No.182587
54	Tapas Kumar Khan, Staff No.182588
55	Urvashi Laxminarayan, Staff No.182589
56	Chiranji Lal, Staff No.182590
57	Jayanti Sinha, Staff No.182639
58	S.Ramani Bai, Staff No.182640
59	Hira Lal, Staff No.182641
60	Parikarma Din, Staff No.182644
61	J.R.Asari, Staff No.182665
62	Kishore Kole, Staff No.182669
63	Ram Avtar, Staff No.182670
64	Madan Singh, Staff No.182671
65	K.Muniyandi, Staff No.182672
66	Shyam Lal Bairwa, Staff No.182673
67	Kartar Chand, Staff No.182674
68	P.S.Rasotra, Staff No.182675
69	Jagdish Chander, Staff No.182880
70	Subramanian A.-IV, Staff No.182843
71	Sanjoy Kumar Halder, Staff No.182916
72	Pramod Dayaram Ramteke, Staff No.182927
73	Kalyan Singh Chauhan, Staff No.182961
74	Amarjit Kaur, Staff No.182995
75	Arup Kumar Roy, Staff No.182997
76	Rajesh Kumar, Staff No.182999
77	P.Balakrishnaiah, Staff No.183001
78	Onkar Das, Staff No.183028
79	Surajit Saha, Staff No.183032
80	Surinder Kumar, Staff No.183031
81	Rishi Pal, Staff No.183033
82	B.Mancha, Staff No.183035
83	Brijesh, Staff No.183086



84	Suraj Kumar Pradhan, Staff No.183203
85	Jitender Singh, Staff No.183212
86	Yadav Manoj, Staff No.183235
87	Supriyo Kumar Saha, Staff No.183288
88	Ashok Kumar Chauhan, Staff No.183319
89	Anand Verma, Staff No.183333
90	Sanjay Kumar Ved, Staff No.183335
91	Anjali Kajal, Staff No.183342
92	Mawrie Dale Soh, Staff No.183348
93	Joji K., Staff No.183352
94	Manjeet Kaur, Staff No.183353
95	Jaswinder Singh, Staff No.183356
96	Vipin Kumar, Staff No.183360
97	Om Prakash Chitara, Staff No.183370
98	Rakesh Kumar, Staff No.183383
99	P.Radha Krishna, Staff No.183389
100	Harjeet Singh, Staff No.183394
0	
101	Swati Kale (Dongre), Staff No.183397
102	Mukesh Kumar, Staff No.183405
103	Pushp Prakash Pankaj, Staff No.183407
104	Vijayan K., Staff No.183416
105	Hukum Chand, Staff No.183429
106	Suman Bala, Staff No.183436
107	Kanheya Lal, Staff No.183437
108	Amit Kumar, Staff No.183446
109	Keshav Krishan Sahai, Staff No.183447
110	T.Nagaraju, Staff No.183453
111	Biswajit Samaddar, Staff No.183466
112	Vivek Ramesh Satpute, Staff No.183472
113	Solanki Kamlesh Govindbhai, Staff No.183488
114	Smita Kajur, Staff No.183491
115	Tarsem Singh, Staff No.183497
116	Tashi Tundup, Staff No.183498
117	Rekha Kaushal, Staff No.183500
118	Chalwadi Rajesh Basawaraja, Staff No.183501
119	Vijayashankar B., Staff No.183502
120	Gulshan Kumar, Staff No.183503
121	Senthil Murugesan A., Staff No.183504
122	Venkatesh K., Staff No.183505
123	Surender Kumar Chandel, Staff No.183506
124	Rohit Rahul Purusotam, Staff No.183508
125	Chandranisatdev Das, Staff No.183509
126	Premaraj Bhoi, Staff No.183510
127	Baljit Singh, Staff No.183511
128	Sudip Bej, Staff No.183512
129	Parmar Kishor Valjibhai, Staff No.183513
130	Sandhya T.C., Staff No.183514



131	Anjeneya P., Staff No.183515
132	M.Kameswara Rao, Staff No.183516
133	Arun Singh, Staff No.183517
134	Prakash Mandal, Staff No.183518
135	Jayarama, Staff No.183519
136	Biswajit Sarkar, Staff No.183520
137	Solanki Manishkumar Mangaldas, Staff No.183521
138	Bindu, Staff No.183522
139	Swapan Das, Staff No.183523
140	Rajendra M Pasi, Staff No.183524
141	Sushma Anand Kore, Staff No.183525
142	Sukhendu Majumder, Staff No.183526
143	Komal, Staff No.183527
144	Kamaljit, Staff No.183529
145	Ganesan S., Staff No.183530
146	Prashant Manohar Naik, Staff No.183531
147	L.Haokholun Haokip, Staff No.183532
148	Gracer Richmond Pathaw, Staff No.183533
149	Manoj Kumar, Staff No.183534
150	Chouhan Sunil, Staff No.183535
151	P.Raja Ramesh, Staff No.183536
152	Subhasish Das, Staff No.183537
153	Narendra Kumar Majhi, Staff No.183538
154	Siddharth Kumar, Staff No.183539
155	Karthik N., Staff No.183540
156	Jagdeep Singh, Staff No.183541
157	Ramesh Kumar, Staff No.183542
158	Rajinder Pal Singh, Staff No.183543
159	Ritu Koli, Staff No.183544
160	Sonara Rajesh Shankarlal, Staff No.183545
161	Diwan Nitin Mukeshbhai, Staff No.183546
162	Pynjanai Marbaniang, Staff No.183547
163	Uttam Kumar Mistry, Staff No.183548
164	Venkateswaran R., Staff No.183549
165	Samsher Singh, Staff No.183550
166	Bansode Gautam Hariba, Staff No.183551
167	Vijay Pal, Staff No.183552
168	Sachin Kumar, Staff No.183553
169	Sukhen Das, Staff No.183554
170	Yogendra Singh, Staff No.183555
171	Khushvir Singh, Staff No.183556
172	Siddhartha Sankar Roy, Staff No.183557
173	Paramjeet Singh, Staff No.183558
174	B.Venkateshwar, Staff No.183559
175	Viji V., Staff No.183560
176	Dusmanta Kumar Patra, Staff No.183561
177	Sanjeev Kumar Verma, Staff No.183562



178	Susheel Kumar Pusker, Staff No.183563
179	Santosh Kumar Sethi, Staff No.183564
180	Dhabale Kondiba Gyanoji, Staff No.183565
181	M.Chandramohan, Staff No.183566
182	M.Satyanarayana, Staff No.183567
183	Siddharth Kumar Nim, Staff No.183568
184	Pritam Lal, Staff No.183569
185	Rolester Syiemlieh, Staff No.183570
186	K.Rajasekhar, Staff No.183571
187	Devadas, Staff No.183572
188	Parikh Bharktkumar Nagarbhai, Staff No.183573
189	A.Srinivas, Staff No.183574
190	Sapan Kumar Ram, Staff No.183575
191	Duranta Mondal, Staff No.183576
192	Mukesh, Staff No.183577
193	Priyanka Soni, Staff No.183578
194	Shah Nilesh Virabhai, Staff No.183579
195	Kamble Pramod, Staff No.183580
196	Ramesh Rai, Staff No.183581
197	Bhaskar A., Staff No.183582
198	Surendra Behera, Staff No.183583
199	Kashmir Singh, Staff No.183584
200	Patel Ashokkumar Manilal, Staff No.183585
201	Bablu Jaiswar, Staff No.183586
202	Shailender Kumar, Staff No.183587
203	Rajesh Kumar Negi, Staff No.183588
204	Sukhai Sema, Staff No.183589
205	Bijoy Krishna Sonowal, Staff No.183590
206	Ricky Sohtun, Staff No.183591
207	Dilraj Richard Ashish, Staff No.183592
208	Matbar Singh Chauhan, Staff No.183593
209	Wonderly Shangdiar, Staff No.183594
210	Babula Pradhan, Staff No.183595
211	Anita Bhagat, Staff No.183596
212	G.L.John Seldow, Staff No.183597
213	Mangilal Badara, Staff No.183598
214	Jonathan Langel, Staff No.183599
215	Pratap Chand, Staff No.183600
216	P.N.Bhukya, Staff No.183601
217	Rvinder Singh Tomar, Staff No.183602
218	Swatanter Kumar, Staff No.183603
219	Mayoring Marchang, Staff No.183604
220	Dulu Charan Deogam, Staff No.183605
221	Doujathang Touthang, Staff No.183606
222	Kiran Radheshyam Killedar, Staff No.183607
223	Sadananda Borah, Staff No.183608
224	Arun Tirkey, Staff No.183609



225	Kekhriesetuo, Staff No.183610
226	Subhash Chander Nayak, Staff No.183611
227	V.Pandu, Staff No.183612
228	Hemanta Raj, Staff No.183613
229	Suryanarayana Naika H., Staff No.183614
230	Gajam Ku. Malini, Staff No.183615
231	Goto Padu, Staff No.183616
232	Vishal Kapoor, Staff No.183617
233	Ninawe Atul Kumar Vitthal Rao, Staff No.183618
234	Ajay Kumar, Staff No.183619
235	Mukhesh Doley, Staff No.183620
236	Rajeev Kumar, Staff No.183621
237	Ramanna Naik, Staff No.183622
238	Bhubendra Nath Behera, Staff No.183623
239	Rakhi Rawal (Chouhan), Staff No.183624
240	Kushal Sonowal, Staff No.183625
241	B.Ravi Kumar, Staff No.183626
242	Uttam Mandal, Staff No.183627
243	Kailash Chand Sonwal, Staff No.183628
244	B.Valibai, Staff No.183629
245	Abhay Shankar Hattewar, Staff No.183630

(The respondent No. 5 to 245 are working as Accounts Officer, BSNL under the control of Respondent No.1)

... Respondents

(BY: Mr. K.K. Thakur, Advocate
Mr. Sanjay Goyal, Advocate)

ORDER (Oral)

Sanjeev Kaushik, (Member) (J):

The solitary Controversy in the above petition pertains to the reservations to Scheduled Castes and Scheduled Tribes in matter of promotions and consequential seniority.



2. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, before this Tribunal questioning the legality of order dated 3.7.2014 (Annexure A-1), whereby the respondent Bharat Sanchar Nigam Limited (BSNL) has rejected his representation for review of promotion made from the post of Junior Accounts Officer (JAO) to the post of Accounts Officer (AO) w.e.f. 2008, by not applying the reservation in matter of promotion. He has also sought issuance of a direction to the respondents to review the promotions made by the respondents from the post of (JAO) to (AO) vide order dated 8.10.2008 and 6.7.2016 (Annexure A-3 & A-16) and to consider and promote the applicant to the grade of Accounts Officer w.e.f. 8.10.2008, the date on which the private respondents no. 5 to 25 were promoted as such in terms of the judgment in the cases of **M. NAGRAJ VERSUS UNION OF INDIA**, 2006 (8) SCC 212 and B.K. PAVITRA & ORS. VS. **UNION OF INDIA & ORS.** JT 2017 (2) SC 277. It was also prayed that after reviewing the promotions made after the judgment of M. Nagraj (supra) to the post of Accounts Officer, promotion to the next higher post of Chief Accounts



Officer be also made strictly in accordance with the mandate of Hon'ble Supreme Court in the following cases:-

- i) **Union of India vs Veerpal Singh Chauhan**, reported in JT 1995 (7) SC 231;
- ii) **S.B. Meena vs State of Rajasthan**, JT 2010 (13) SC 341;
- (iii) **S. Paneer Selvam and Ors. vs. Government of Tamil Nadu and Ors.** reported in (2015) 1 SCC 292;
- (iv) **B.K. Pavitra, JT 2017 (2) SC 277 read with mandate in M. Nagraj versus Union of India** reported in (2006) 8 SCC 212 by applying the catch up rule.

3. After exchange of pleadings, the matter came up for hearing today.

4. We have heard the learned counsel for the respective parties.

5. Learned counsel appearing on behalf of applicant, Mr. R.K. Sharma, vehemently argued that the action of the respondents in providing reservation in promotion is violative of the mandate given in the case of M. Nagraj (supra). He argued that despite there being mandate in



that case to the contrary, the respondents have provided reservation in promotion, which is contrary to settled law. Thus, it is pleaded that the impugned order providing reservation in promotion and grant of actual promotion to the private respondents to the higher post is liable to be set aside. He also refers to decision by the coordinate Bench of C.A.T., Hyderabad Bench in the case of **SUNKARA RADHAKRISHNA & ORS VS UNION OF INDIA & ORS.** – O.A. NO. 20/1162/2013 decided on 11.1.2019 whereby bunch of petitions were decided on similar issue, holding that unless the authorities carry out the mandated exercise as given in the case of M. Nagraj (supra), the action of respondents in providing reservation in promotion is bad in law. Thus, he pleaded that the O.A. be allowed and impugned orders be quashed and set aside by directing the respondents to consider the claim of the applicant for promotion not only to the post of Accounts Officer but also for the next higher promotional post. He also refers to decision of the Apex Court in the case of **MUKESH KUMAR & ANR. VS THE STATE OF UTTARAKHAND & ORS.** (Civil Appeal No. 1226 of 2020 arising out of SLP (civil) NO. 23701 of 2019) in support of his contention.



6. Mr. K.K. Thakur, learned counsel for respondents at the outset, admitted the fact that the respondents have not yet collected the quantifiable data in terms of the decision in the case of M. Nagaraj (supra). He further admitted that the respondents are in the process of collecting the quantifiable data.

7. We have given our thoughtful consideration to the entire matter with the able assistance of learned counsel for the parties and have perused the judgments cited thereupon.

8. At the first instance, possibly no-one can dispute that Article 16(4A) was inserted w.e.f. 17.6.1995, authorizing the State, to make any provision for reservation in the matter of promotion, with consequential seniority, to any class or classes of posts, in the services under the State. Admittedly, this amendment was challenged and examined by a Constitution Bench of the Hon'ble Supreme Court in the case of **M. NAGRAJ & OTHERS VS. UNION OF INDIA & OTHERS**, (2006) 8 SCC 212. While upholding the constitutional validity of the amendment, the Hon'ble Apex Court has held as under :-



"The impugned constitutional amendments by which Articles 16(4A) and 16(4B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling-limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBC on one hand and SCs and STs on the other hand as held in Indra Sawhney, the concept of post-based Roster with in-built concept of replacement as held in R.K. Sabharwal.

We reiterate that the ceiling-limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.

However, in this case, as stated, the main issue concerns the "extent of reservation". In this regard the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

Subject to above, we uphold the constitutional validity of the Constitution (Seventy-Seventh Amendment) Act, 1995, the Constitution (Eighty-First Amendment) Act, 2000, the Constitution (Eighty-Second Amendment) Act, 2000 and the Constitution (Eighty-Fifth Amendment) Act, 2001."

9. Meaning thereby, it is the mandatory duty of the State to prove in each case the existence of the compelling reasons for (a) backwardness (b) inadequacy of the representation and (c)



administrative efficiency, before making any provision for reservation in promotion. It was also held that the State is not bound to make reservation for SC/ST in the matter of promotion. However, if they wish to exercise their discretion, and make such provision, the State has to collect quantifiable data showing the backwardness of the class and inadequacy of the representation of that class, in public employment, in addition to compliance with Article 335 of the Constitution. It is not a matter of dispute that the appropriate Government has neither made any specific provision in consonance with Article 16(4A) of the Constitution nor got conducted the survey or collected the quantifiable data showing the backwardness of the class and in- adequacy of the representation of SCs/STs, in the present case as admitted by the respondents while making statement as recorded in the preceding paragraph.

10. Likewise, in the case of **S. PANNEER SELVAM V. STATE OF TAMIL NADU**, 2015(10) SCC 292. The question before the Hon'ble Apex Court was whether in absence of any policy decision by the State for giving consequential seniority to candidates promoted



on the basis of reservation prior to a senior general category candidate, claim for consequential seniority could be accepted. Answering the question in the negative, it was held that in absence of provision for consequential seniority, 'catch up' rule will be applicable and the roster point promotes cannot claim such consequential seniority. The senior general candidates will regain their seniority on being promoted. Observations relevant in this regard are as follows:

"33. ..If we look at the above comparative table of the service particulars of the appellants and the respondents, it is seen that the contesting respondents U. Palaniappan joined the service almost seven years after the appellants, his seniority is automatically accelerated at an unprecedented rate and as on 1-4-2004 his seniority rank as ADE is 150 and seniority of V. Appadurai is 120. The appellants who are qualified and senior than the contesting respondents are placed much below in rank in comparison to the person belonging to the reserved class promotees who were promoted following the rule of reservation.

It is to be noted that the private respondents in the present case have been promoted temporarily under Rule 39(a) and Rule 10(a)(i) of the General Rules with the condition that their inclusion in the promotional order shall not confer on them any right whatsoever in the service. Determination of seniority is a vital aspect in the service career of an employee and his future promotion is dependent on this. Therefore, determination of seniority must be based on some principles which are just and fair. In the absence of any policy decision taken or rules framed by the State of Tamil Nadu regarding Tamil Nadu Highways Engineering Service, accelerated promotion given to the respondents following rule of reservation in terms of Rule 12 will not give them consequential accelerated seniority.

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36. In the absence of any provision for consequential seniority in the rules, the "catch-up rule" will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16(4-A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained."

11. Again, in the case of **B.K. PAVITRA & OTHERS VS. UNION OF INDIA & OTHERS**, (2017) 4 SCC 620, the Hon'ble Apex Court, relying upon its earlier decisions, has ruled (in para 29), as under :-

"29. It is clear from the above discussion in S. Panneer Selvam case, that exercise for determining "inadequacy of representation", "backwardness" and "overall efficiency", is a must for exercise of power under Article 16(4-A). Mere fact that there is no proportionate representation in promotional posts for the population of SCs and STs is not by itself enough to grant consequential seniority to promotees who are otherwise junior and thereby denying seniority to those who are given promotion later on account of reservation policy. It is for the State to place material on record that there was compelling necessity for exercise of such power and decision of the State was based on material including the study that overall efficiency is not compromised. In the present case, no such exercise has been undertaken. The High Court erroneously observed that it was for the petitioners to plead and prove that the overall efficiency was adversely affected by giving consequential seniority to junior persons who got promotion on account of reservation. Plea that persons promoted at the same time were allowed to retain their seniority in the lower cadre is untenable and ignores the fact that a senior person may be promoted later and not at same time on account of roster point reservation. Depriving him of his seniority affects his further chances of promotion. Further plea that seniority was not a fundamental right is equally without any merit in the present context. In absence of exercise under Article 16(4- A), it is the „catch up“ rule which fully applies. It



is not necessary to go into the question whether the Corporation concerned had adopted the rule of consequential seniority."

12. Not only that, Hon'ble High Court of Punjab and Haryana in the case of **BHARAT SANCHAR NIGAM LIMITED & ANOTHER VS. SHRI NAVEEN SHARMA AND OTHERS**, CWP No. 26882 of 2016 decided on 23.12.2016, has held as under:

"5. After considering the matter in detail and relying upon the law laid down by the Apex Court in M.Nagraj's case (supra) and other judgments as noticed in its order dated 30.09.2016, it has been categorically recorded by the Tribunal that there can be no reservation in promotion without collecting quantifiable data of backwardness of the reserved classes and inadequacy of their representation in public employment. In the present case, no such data was held to be collected by the official respondents. Thus, the respondents could not grant reservation in promotion. It has been further recorded by the Tribunal that the reservation in promotion cannot be permitted merely on the basis of shortfall in vacancies of one category or one cadre of one department or one entity or unit only which would be against the principles laid down by the Apex Court. The relevant findings recorded by the Tribunal read thus:-

"13. We have carefully considered the matter. It was not necessary to implead the candidates of SC/ST categories as party to the O.A. because the O.A. was filed even before the examination was held and, therefore, candidates of those categories were not identifiable at that time. Moreover, the challenge is to policy of official respondents regarding reservation in promotion and for this reason also, it was not essential to implead the candidates of the reserved categories as party to the O.A. Accordingly objection of official respondents to this effect is overruled.

14. As regards merit, the applicants are entitled to succeed in view of judgments in the cases of M.Nagraj (supra), Suraj Bhan, Meena (supra), Lachhmi Narayan Gupta (supra), Rajesh Shukla and another (supra), Sukhwinder Singh (supra) and Narender Singh (supra). According to these judgments, there can be no reservation in promotion without collecting



quantifiable data of backwardness of the reserved classes and inadequacy of their representation in public employment. No such data has however been collected by the official respondents. Consequently, the respondents cannot grant reservation in promotion.”

13. In so far as the reliance of the applicant upon decision of the Coordinate Bench of this Tribunal at Hyderabad is concerned, we may observe that it gives answer to the question raised in the present petition as it is held therein that there cannot be reservation in the matter of promotion with consequential seniority unless state collect data as held in celebrated case of M. Nagaraj case supra. The relevant finding reads as under:-

“2. In this batch of O.As, the applicants challenge the various orders issued by the Administration of the South Central Railway (SCR, for short) effecting reservation in promotions, mostly in the category of Drivers and Guards, who are commonly known as Loco staff/ running staff. The grievance of the applicants is that the reservations in promotions are being effected indiscriminately without undertaking any exercise indicated by the Hon’ble Supreme Court in M. Nagaraj & Others vs Union of India & Others { (2006) 8 SCC 212 } and that the reservations are being implemented almost at every level of the hierarchy, thereby adversely affecting the chances of promotion of other categories of employees in those cadres. The applicants have furnished the particulars of the respective dates of appointment of themselves and those of the private respondents in the respective O.As to indicate their respective places in the cadre, and have made an attempt to show that the private respondents have been conferred with the benefit of promotions, one after the other, to higher levels. The grievance is not only about the promotion from an induction stage to higher cadre but also to further higher cadres on the basis of seniority, which has accrued to the private respondents on account of the promotions made on the basis of



reservation. We are not referring to the individual particulars since they are covered by the descriptions given above.

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22. We, therefore, allow the OAs directing:

1. the South Central Railway or the Railway administration, in general shall take a policy decision indicating the parameters for introduction and implementation of the reservation in promotions, which shall include:

(i) the verification of the representation of the category of Scheduled Castes & Scheduled Tribe employees in the post or cadre for promotion to which, reservation is sought to be effected and the resultant effect of any on the efficiency of the administration;

(ii) the manner in which the concept of creamy layer shall be applied in enforcing such reservations in promotions; and

(iii) the duration up to which the promotion shall be in force.

2. The views of the Association of Scheduled Caste & Scheduled Tribe employees on the one hand and the Association of employees in general on the other hand, shall be taken into account before such parameters are identified.

3. Unless and until a decision at the level of Ministry of Railways & Railway Board is taken as regards the implementation of the reservation in promotions, the same shall not be effected at the lower levels.

4. If such guidelines already exist in respect of any post or cadre, reservations in promotion can be made to such posts or cadre, duly referring to the relevant guidelines and administrative orders.

5. If any promotions have taken place contrary to the law as it exists now, it shall be open to the Railway administration to take corrective steps. Pending such action, the promotions so made shall be treated as provisional, without giving rise to any right to seniority in the promoted post.

6. The entire exercise indicated above shall be completed within a period of six months from the date of receipt of a copy of this order."

14. Now, coming back to the case in hand. It is clear from the statement of the learned counsel for the



respondents, as noticed hereinabove, that the respondents have not collected data regarding the adequacy or inadequacy of representation of Scheduled Castes and Scheduled Tribes in respondent department, therefore their action impugned in this lis cannot be approved as it is contrary mandate given in the case of M. Nagaraj (supra).

15. In this case it is matter of record that the official respondents have already promoted persons from the reserved categories to the posts of Accounts officer / Chief Accounts Officer. Considering this, as agreed, the petition is disposed of in the same terms as in the case of **SUNKARA RADHAKRISHNA & OTHERS** (supra), by reiterating the directions as under :-

1. The respondents, in general shall take a policy decision indicating the parameters for introduction and implementation of the reservation in promotions, which shall include:

(i) the verification of the representation of the category of Scheduled Castes & Scheduled Tribe employees in the post or cadre for promotion to which, reservation is sought to be effected and the resultant effect of any on the efficiency of the administration;



(ii) the manner in which the concept of creamy layer shall be applied in enforcing such reservations in promotions; and

(iii) the duration up to which the promotion shall be in force.

2. Unless and until a decision at the highest level is taken as regards the implementation of the reservation in promotions, the same shall not be affected.

3. If any promotions have taken place contrary to the law as it exists now, it shall be open to the respondents to take corrective steps. Pending such action, the promotions so made shall be treated as provisional, without giving rise to any right to seniority in the promoted post.

16. The petition is disposed of in the above terms.

17. No order as to costs.

18. Pending M.As also stand disposed of.

(Naini Jayaseelan)
Member (A)

(Sanjeev Kaushik)
Member (J)

Place: Chandigarh
Dated: 25.02.2020
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