



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/750/2018

Date of decision: 25.2.2020

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MS. NAINI JAYASEELAN, MEMBER (A).**

...

Ramesh Kumar, HRMS No. 199803110, Staff No. 150029,
Aged 46 years S/O Sh. Raghbir Singh, Divisional Engineer,
O/D, I/D (Look-after), O/O General Manager, Telecom District,
Rohtak, Group B.

...APPLICANT

BY: SH. R.K. SHARMA, COUNSEL FOR THE APPLICANT.

VERSUS

1. Bharat Sanchar Nigam Limited, Corporate Office, 4th Floor,
Bharat Sanchar Bhawan, Harish Chander Lane, Janpath,
New Delhi-110001 through Chairman Cum Managing
Director (CMD).
2. Director (HR), CR Section, Bharat Sanchar Nigam Limited,
Room No. 210, CTO Building, Eastern Court, Janpath, New
Delhi-110001. Corporate Office, 7th Floor, Bharat Sanchar
Bhawan, Harish Chander Lane, Janpath, New Delhi-110001.
3. Ashok Kumar Bhoria, SDE(T), BSNL, Looking after,
AGM(Admn.), Rohtak.

...RESPONDENTS

BY: SH. ASEEM RAI, COUNSEL FOR THE RESPONDENTS.

ORDER (Oral)

...
SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed seeking following relief(s):-

- “(i.) Quash action of the respondents including Orders (i) No. 451-15/2017/Pers(DPC)/11 dated 12.06.2018 (Annexure A-1), (ii) No. 451-31/2015-Pers(DPC)/19 dated 19.06.2018 (Annexure A-2) (iii) No. 451-31/2015-Pers(DPC)/21 dated 22.06.2018 (Annexure A-3) whereby they are following reservation in the matter of promotion from the post of Sub Divisional Engineer [SDE(T)] to the post of AGM/Divisional Engineer(T) on regular basis by following rule of reservation without applying catch up rule by ignoring the mandate of Hon’ble Supreme Court in S. Paneer Selvam and others Versus Government of Tamil Nadu and others 2015(1) SCC 292; Union of India Versus Veerpal Singh Chauhan, reported as JT 1995(SC) 231; B.K. Pavitra, JT 2017(2) SC 277; M. Nagraj’s case[2006(8)SCC 212].
- (ii) Direct the respondents to consider and promote the incumbents in the cadre of SDE(T) including the applicant who fall within zone of vacancies, to the cadre of AGM/DE(T) after applying catch up rule in terms of the judgment of Hon’ble Supreme Court in the case of S. Paneer Selvam and others Versus Government of Tamil Nadu and others; Union of India Versus Veerpal Singh Chauhan, reported as JT 1995(SC) 231; B.K. Pavitra, JT2017(2) SC 277 and by not applying rule of reservation without compliance of mandate of the Hon’ble Supreme Court in case of M. Nagraj’s case[2006(8)SCC 212] with all the consequential benefits.

2. Learned counsel for the parties are in agreement that this O.A. can be disposed of in terms of the decision of even date in the case of **Prakash Vir vs. BSNL & Ors.** (O.A. No.60/322/2017). Relevant paras of the same read as under:-

“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.

XXXX

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 the Coordinate Bench of this Tribunal at Hyderabad bench of this tribunal 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.

xxxxxxx

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."

3. Accordingly, this O.A. stands disposed of in terms of the case of Prakash Vir (supra). No costs.

(NAINI JAYASEELAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 25.2.2020.
Place: Chandigarh.

'KR'