

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/01183/2019
DATED THIS THE 04th DAY OF MARCH, 2020
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Manoj Kumar Guha
S/o R.N.Guha
Aged about 42 years
Working as Loco Pilot Goods
S.W.Railway, Vasco Da Gama
Residing at Flat No.506
Amans Vivienda
Mangoor Hill
Vasco Da Gama
Goa-403 802.

....Applicant

(By Advocate Sri B.S.Venkatesh Kumar)

Vs.

1. Union of India represented by
General Manager
South Western Railway
Headquarters Office
Gadag Road
Hubli-580 020.
2. Senior Divisional Personnel Officer
South Western Railway
Personnel Branch
Divisional Office
Hubli Division
Hubli-580 020.
3. Railway Board represented by
its Chairman
Ministry of Railways
Rail Bhavan
New Delhi-110 001.
4. Gopendra S.Dhruw
Father's name not known
Aged about 39 years
Working as Loco Pilot (Pass)/
Crew Controller
Castle Rock Railway Station
South Western Railway
Castle Rock.

5. Jawakin Kandula
 Father's name not known
 Aged about 42 years
 Working as LP Passenger/
 Power Controller
 South Western Railway
 Hubli-580 020.
6. Anil Oran
 Father's name not known
 Aged about 41 years
 Working as Loco Pilot Pass
 South Western Railway
 Hubli-580 020.
7. Gali Jayaraj
 Father's Name not known
 Aged about 49 years
 Working as Loco Pilot Goods/Pass
 South Western Railway
 Hubli-580 020.
8. Raju S.Kusagal
 Father's name not known
 Aged about 47 years
 Working as Loco Pilot Goods
 South Western Railway, Hubli-580 020.
9. Dharawath Jumki
 Father's name not known
 Aged about 43 years
 Working as Crew Controller
 South Western Railway, Bijapur. ...Respondents

(By Advocate Shri N.Amaresh, Sr. PC for CG for R1-3)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was selected and appointed as Assistant Loco Pilot on 19.7.2004 under General Merit category after he qualified in the direct recruitment conducted by RRB, Bangalore pursuant to notification No.01/2003. He was promoted as Senior Loco Pilot on 27.6.2008 and thereafter as Loco Pilot Goods on 3.11.2008. He is presently working as Crew Controller in Vasco Da Gama. Respondents No.4 to 6, 8 and 9 belong to Scheduled Tribe and

respondent No.7 belongs to Scheduled Caste and the date of promotion of private respondents is from 18.11.2008 onwards. In the provisional seniority list of Loco Pilot Goods dtd.31.10.2017(Annexure-A1) issued by the 2nd respondent, the applicant's name is at Sl.No.164 while the names of private respondents are in between Sl.Nos.166 to 182. Hence, all the private respondents are juniors to the applicant. In another provisional seniority list dtd.1.1.2019(Annexure-A2) also issued by the 3rd respondent, his name is at Sl.No.99 while those of the private respondents are in between Sl.Nos.100 and 103 & 110 and 112. On 11.12.2018, the 2nd respondent issued office order whereby respondents No.4 & 5 were promoted to the post of Loco Pilot Passenger overlooking the seniority of the applicant(Annexure-A3). The 2nd respondent issued office order (Annexure-A4) for filling up of vacancies of Loco Pilot Passenger. Vide this office order, 6th respondent was promoted to the said post. The 2nd respondent issued another letter dtd.7.1.2019(Annexure-A5) for pre-promotion course for the private respondents to become eligible for promotion to Loco Pilot Passenger in the course commencing from 16.1.2019 to 20.2.2019. Five employees including 8th & 9th respondents were sent for training and they have duly completed their training and they may be promoted to the post of Loco Pilot Passenger. Being aggrieved by the same, the applicant submitted representation dtd.26.4.2019(Annexure-A6) requesting that he be promoted as per general seniority list by reverting the juniors who were granted promotion on accelerated seniority for reserved community members. On 21.6.2019, 2nd respondent issued another communication directing the persons mentioned thereto to attend pre-promotional training scheduled from 1.7.2019 to 27.8.2019(Annexure-A7). The applicant submitted a representation dtd.26.6.2018(Annexure-A8) requesting that

candidates be sent for training by following general seniority and sending reserved community persons for pre-promotion training is against the dicta laid down by the Hon'ble Supreme Court and other Courts in a number of decisions. But, so far no reply is received by the applicant on both the representations.

2. The applicant submits that the Hon'ble Supreme Court in the judgment dtd.26.9.2018 held that 'the conclusion in *Nagraj's* case that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being contrary to the nine-Judge Bench in *Indra Sawhney* is held to be invalid'. The applicant relied on the judgment of Patna Bench of this Tribunal in OA.No.107/2016(Annexure-A9) and the judgment in *Jarnail Singh vs. Lachchmi Narain Gupta in SLP(C) No.30621/2011* decided on 15.4.2019(Annexure-A10) in support of his claim. The 1st respondent issued a letter dtd.21.4.2017(Annexure-A11) to all divisional offices pursuant to issue of RBE No.117/2016 and decided that all promotions are to be done as per general seniority. All SC and ST candidates in the purview of general seniority shall be considered against existing roster points only. No jumping of candidates will be allowed which means that all promotions shall be made on general seniority and not on accelerated seniority. In South Central Railway, when five persons including three SC candidates were promoted from Loco Pilot(Pass) to Loco Pilot(Mail/Express) by accelerated seniority, the aggrieved persons approached the Hyderabad Bench of this Tribunal which passed interim orders dtd.25.2.2019. Subsequently, the promotion orders granted in favour of SC candidates were suspended by office order dtd.8.3.2019(Annexure-A12). The Hyderabad Bench of this Tribunal in respect of several OAs filed regarding the same issue of reservation in promotion had finally passed orders dtd.11.1.2019(Annexure-A13)

directing the Min. of Railways & Railway Board to take a policy decision indicating the parameters for introduction and implementation of the reservation in promotions. In view of the above, the action of the respondents in promoting the persons belonging to reserved communities and also sending juniors to the applicant for pre-promotion training in order to promote them to higher post later, is arbitrary, unjust and against the judgment of Hon'ble Supreme Court in *M.Nagraj's* case. Therefore, the applicant has filed the present OA seeking the following relief:

- a. *Call for records of the case from the respondents and on perusal*
- b. *Issue a writ in the nature of certiorari and quash the (1) Office order No.41/MECH/RNG/2018 dated 11.12.2018(Annexure-A3); (2) Office order No.44/MECH/RNG/2018 dated 29.12.2019(Annexure-A4); (3) Communication No.H/P.515/RNG/PASS/VOL.IV dated 7.1.2019(Annexure-A5) passed by 2nd respondent and (4) communication No.H/P673/IV/RNG/LR-5/Vol.II dated 21.6.2019(Annexure-A7) in so far as it related to the promotions and sending for pre-promotional training in respect of private respondents.*
- c. *Issue a consequential direction to the respondents to give promotion strictly in accordance with general seniority as per Annexure-A11 and not to jump the seniority in respect of SC/ST persons in violation of M.Nagraj's case and also in view of the directions issued by Hyderabad Bench of this Hon'ble Tribunal in Annexure-A13.*
- d. *Issue such other order/relief as deemed fit to grant to the applicant in the circumstances of the case including an order as to costs.*

3. We have heard the Learned Counsel for the parties and perused the materials placed on record in detail. The issue in this application is exactly similar with the issue that was dealt with by the Hyderabad Bench of this Tribunal in OA.1162/2013 & connected cases(Annexure-A13) and in the said OAs, the Hon'ble Hyderabad Bench in its order dtd.11.1.2019, after discussing at length the various judgments of the Hon'ble Apex Court, came to the following conclusion:

18. What emerges, therefore, is that before the reservation in promotion to any particular category of posts is implemented, the employer or the State is under obligation to:

- (a) *undertake verification of the adequacy of representation in the posts to which the promotions are to be effected, and decide whether such reservation would have any adverse impact on the efficiency of the department;*
- (b) *stipulate the parameters as to the application of the concept of creamy layer; and*
- (c) *(c) indicate the period up to which, the reservations so provided, are to be in force.*

19. Unless a policy decision in general, or a decision with reference to as specified cadre is taken in this behalf, it cannot be said that the Article 16(4A), as interpreted by the Supreme Court is enforced properly.

4. In the same order, the Bench had finally ordered as follows:

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.

5. We are in respectful agreement with the said orders and therefore, we quash the orders at Annexures-A3, A4, A5 & A7 and direct the respondents to take necessary action with respect to the promotion of the applicant in accordance with general seniority within a period of six(6) months from the date of issue of this order subject to the above exercise being undertaken. Even though the respondents would lay stress on the guidelines that have been issued so far, these are based on various judicial orders and on the bedrock of government policy enunciated from time to time. These need to be concretized based on the exercise inked above.

6. The OA is allowed with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01183/2019

Annexure-A1: Provisional seniority list dtd.31.10.2017 i.r.o. LP Goods

Annexure-A2: Provisional seniority of LP Goods as on 1.1.2019

Annexure-A3: Office order No.41 dtd.11.12.2018

Annexure-A4: Office order No.44 dtd.29.12.2018

Annexure-A5: Letter dtd.7.1.2019

Annexure-A6: Representation dtd.26.4.2019

Annexure-A7: Communication dtd.21.6.2019

Annexure-A8: Representation dtd.26.6.2019

Annexure-A9: Order dtd.11.8.2017 in OA.107/2016 of Patna Bench

Annexure-A10: Order dtd.15.4.2019 of Hon'ble Supreme Court in Jarnail Singh case

Annexure-A11: 1st respondent letter dtd.21.4.2017

Annexure-A12: Office order No.64/2019 of South Central Railway

Annexure-A13: Order dtd.11.1.2019 in OA.1162/2013 of CAT, Hyderabad Bench
