

**Central Administrative Tribunal
Hyderabad Bench**

OA No.021/541/2017 with CP No.71/2018 in OA 541/2017

Hyderabad, this the 22nd day of January, 2020

**Hon'ble Shri Ashish Kalia, Member (J)
Hon'ble Mr. B. V. Sudhakar, Member (A)**

OA No.021/541/2017:

1. A. Sambasiva Rao, S/o Late Madhava Rao
Aged 58 years, Occ: Sub-Divisional Engineer
O/o The Executive Engineer, Lower Krishna Division
Central Water Commission, H.No.11-4-648
AC Guards, Hyderabad – 500 004, Telangana State
R/o Flat No.110, Sai Plaza, Opp: Bank of Maharashtra
KPHB Colony, Hyderabad, Telangana State.

2. K.Vijaya Bhaskara Reddy
S/o Late Rama Koti Reddy
Aged 59 years, Occ: Assistant Director-II
O/o The Superintending Engineer
Godavari Circle, Central Water Commission
H.No.11-4-648, AC Guards
Hyderabad – 500 004, Telangana State
R/o Plot No.448, Vasanth Nagar Colony
Kukatpally, Hyderabad, TS .. Applicants in both OA and CP

(By Advocate: Shri K.R.K.V.Prasad)

Vs.

1. Union of India represented by
The Secretary, Ministry of Water Resources
RD & GR, Shram Shakti Bhawan, Rafi Marg
New Delhi-110 001.

2. The Chairman, Central Water Commission
Sewa Bhawan, R.K.Puram, New Delhi – 110 066.

3. The Under Secretary (Estt.V), Government of India
Central Water Commission, Room No.329
Sewa Bhawan, R.K.Puram, New Delhi – 110 011.

4. The Secretary, Department of Personnel & Training
North Block, Central Secretariat, New Delhi-110 001.

5. S. Prasanta Rao, Occ: Sub-Divisional Engineer
O/o The Sub-Divisional Engineer
Vamsadhara Sub-Division, Central Water Commission
Near City College, Ambapua at Post Berhampur
Ganjam District, Odissa State – 764004.

6. P. Shiva Prasad, Occ: Sub-Divisional Engineer
O/o The Sub-Divisional Engineer, Kaveri Delta
Sub-Division, Central Water Commission

Opp. Mazig-e-Hussaini, Pullyakottar Salai
Karaikala, Tamil Nadu State-609602.

7. Smt. P.Saikia, Occ: Sub-Divisional Engineer
O/o The Sub-Divisional Engineer
Upper Brahmaputra Sub-Division-I
Central Water Commission
Jibon Phukon Nagar, At Post CR Building
Dibrugarh, Assam State – 786003. Respondents in OA

CP No.71/2018 in OA 541/2017:

1. U.P.Singh, The Secretary, Ministry of Water Resources
RD & GR, Shram Shakti Bhawan
Rafi Marg, New Delhi-110 001.
2. S. Masood Husain, The Chairman, Central Water Commission
Sewa Bhawan, R.K.Puram, New Delhi – 110 066.
3. Shalini Juneja, The Under Secretary (Estd.V), Government of India
Central Water Commission, Room No.329
Sewa Bhawan, R.K.Puram, New Delhi – 110 011.
4. The Secretary, Department of Personnel & Training
North Block, Central Secretariat, New Delhi-110 001.
5. S. Prasanta Rao, Occ: Sub-Divisional Engineer
O/o The Sub-Divisional Engineer
Vamsadhara Sub-Division, Central Water Commission
Near City College, Ambapua at Post Berhampur
Ganjam District, Odissa State – 764004.
6. P. Shiva Prasad, Occ: Sub-Divisional Engineer
O/o The Sub-Divisional Engineer, Kaveri Delta
Sub-Division, Central Water Commission
Opp. Mazig-e-Hussaini, Pullyakottar Salai
Karaikala, Tamil Nadu State-609602.
7. Smt. P.Saikia, Occ: Sub-Divisional Engineer
O/o The Sub-Divisional Engineer
Upper Brahmaputra Sub-Division-I
Central Water Commission
Jibon Phukon Nagar, At Post CR Building
Dibrugarh, Assam State – 786003. Respondents in CP

[Note: Respondents No.4 to 7 are not necessary parties.]

(By Advocate: Shri R.V.Mallikarjuna Rao, Sr. PC for CG through Mr.R.V.Pavan Maitreya)

O R D E R (Oral)

By Shri B.V.Sudhakar, Member (A):

2. The OA is filed against the final seniority list circulated vide letter dated 25.04.2017 read along with letters dated 31.03.2017 and 19.04.2017.

3. Brief facts of the case are that the applicants, who belong to Un-Reserved category were appointed as Junior Engineers in the year 1983 in the respondents organization, whereas their juniors, who belong to SC/ST category, were appointed in 1985/1986. The Juniors were given accelerated promotion to the next higher post of Assistant Director-II/Sub-Divisional Engineer against roster point of SC/ST in the year 2010, while the applicants were promoted in the year 2012. In view of the various judgments of the Hon'ble Supreme Court, covering the issue of reservation in promotions and consequential seniority benefit to the SC/ST employees vis-à-vis the 'catch up' rule to be followed in the case of Un-reserved employees, the applicants submitted a representation to restore their seniority to their original position, wherein the applicants are above their juniors. Despite the Judgments of the superior judicial forums, which are in favour of the applicants, the respondents issued the final seniority list without fixing the seniority as prayed for.

4. The contentions of the applicants are that the Judgment of the Hon'ble Supreme Court in **M. Nagaraj** case was not followed, in respect of collection of quantifiable data pertaining to 3 parameters laid down in the said Judgment. The applicants have also cited Judgments of the Hon'ble Supreme Court in Ashok Kumar Thakur v. Union of India, (2008) 6 SCC 1, E.V.Chinnaiah v. State of A.P. (2005) 1 SCC 394, UP Power Corporation v. Rajesh Kumar and Others, (Pager 7) and Amar Kumar v. Javed Usmani [CA No.2679 of 2011, decided on 20.08.2015] in support of the relief sought. Besides, an incompetent authority has issued the impugned replies and refused to revise the seniority of the applicants. The action of the 1st Respondent, Ministry and the 2nd Respondent, Commission, in not following the judicially evolved 'catch up' rule and restoring the original seniority of the applicants, is illegal and arbitrary.

5. Respondents, in their reply statement, have submitted that the promotions given to the unofficial/private respondents is strictly in accordance with rules and also as per the guidelines issued by the DoPT. The claim of the applicants that their juniors, who lawfully got the promotion as per Rule of Reservation (in short, RoR) should be now pushed down below the applicants ignoring the existing rules, without amending them, is not envisaged by the rules and law. The respondents

have referred to the following latest observations of the Hon'ble Supreme Court made on 05.06.2018 in SLP (C) No.31288 of 2017, connected to SLP (C) No.28306/2017:

"Heard learned counsel for the parties. Learned ASG has referred to order dated 17/05/2018 in SLP (C) No.30621/2011. It is made clear that the Union of India is not debarred from making promotions in accordance with law subject to further order, pending further consideration of the matter. Tag to SLP(C) No.30621 of 2011."

6. Heard both the learned counsel and perused the pleadings on record.

7. (I) As can be seen from the above observations in para 5, the Hon'ble Supreme Court has not granted any stay in regard to the subject on the issue. The matter was left open for the respondents to act as per law. The same issue fell for consideration by this Tribunal in OA 1162/2013 [**Sunkara Radhakrishna & Others v. Union of India & Others**] & batch, decided on 11.01.2019, wherein, while allowing the OAs, it was directed as under:

"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 correctivesteps. 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.”

This Tribunal after considering all the relevant Judgments on the subject, delivered by the Hon’ble Supreme Court, has finally delivered the said Judgment as above. Further, the Hon’ble Supreme Court did give permission to proceed in the issue, but in accordance with law.

(II) The issue raised in the present OA is squarely covered by the Judgment of this Tribunal cited supra. As observed by the Hon’ble Supreme Court, in Sub Inspector Roop Lal & Anr. v. Lt. Governor through Chief Secretary, Delhi & Others, (2000) 1 SCC 644, as the

order is binding. The relevant observations of the said case are extracted below:

“12. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bounded by the enunciation of law made by the superior courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of Tribhuvandas Purshottamdas Thakar v. Ratilal Motilal Patel, AIR 1968 SC 372=[1968] 1 SCR 455 while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same court observed thus:

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in Pinjare Karimbai's case and of Macleod, C.J., in Haridas 's case did not lay down the correct Law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority. Gajendragadkar, C.J. observed in Lala Shri Bhagwan and Anr, v. Shri Ram Chand and Anr.:

"It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier

decisions of the High Court, whether of a Division Bench or of a single Judge, need to be reconsidered, lie should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

Thus, there being a binding precedent laid down by the Coordinate Bench of this Tribunal it has to be adhered to as per the directions of the Hon'ble Supreme Court cited supra. Similarly situated persons need to be extended similar relief. Hence, the respondents are directed to act in pursuance of the directions referred to in the Judgment in OA 1162/2013 and batch. In particular with reference to para 3 concerning the laying down a policy in respect of reservation in promotion.

(III) In view of the above said observations of the Tribunal, the final seniority list circulated vide impugned orders dated 25.04.2017, 31.03.2017 and 19.04.2017 are quashed and set aside, since the respondents have not come up with the policy in regard to reservation on promotions.

(IV) The respondents are given 6 months time to comply with the clauses stated in OA 1162/2013 (supra), as are applicable to their

organization in terms of the general principle laid down in the Judgement.

(V) With the above directions, the OA is disposed of with no order as to costs. CP No.71/2018 also stands disposed of, in view of the orders passed above in OA No.541/2017.

(B. V. Sudhakar)
Member (A)

(Ashish Kalia)
Member (J)

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