

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 386/2012
ORIGINAL APPLICATION No. 469/2012
ORIGINAL APPLICATION No. 965/ 2012.

~~WEDNESDAY~~ this the 10th day of June, 2015.

CORAM :

HON'BLE MR. U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MR.R.RAMANUJAM, ADMINISTRATIVE MEMBER

O.A.No. 386/12:

G.Ramachandran Nair, aged 56 years,
s/o Gangadhara Kurup, Deputy Chief Ticket Inspector (Dy.CTI),
Southern Railway, Trivandrum Division,
Trivandrum : Residing at TC 3/ 13241, Laksminagar,
E/59, Pattom, Trivandrum District PIN : 695 004. Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus.

1. Union of India represented by the Secretary to Government of India
Ministry of Railways (Railway Board, Rail Bhavan,
New Delhi 110 001.
- 2 The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Thiruvananthapuram -695 014.
- 3 The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Thiruvananthapuram -695 014.
- 4 K.D.Joseph, Chief Travelling Ticket Inspector
Ernakulam Junction Station, Ernakulam , Kochi -16
- 5 P.K.Jayachandran, Chief Travelling Ticket Inspector
Trivandrum Central, (Sleeper -A),
Trivandrum.
- 6 P.M.Ambika, Chief Travelling Ticket Inspector
Trivandrum Central Railway Station (Sleeper),
Trivadrum
- 7 Joseph George, Chief Travelling Ticket Inspector
Ernakulam Town (Sleeper), Ernakulam North P.O.,
Ernakulam.
- 8 K.V.Manikuttan, Chief Travelling Ticket Inspector
Ernakulam Junction Railway Station (Sleeper),
Ernakulam.
- 9 P.P. Johnson, Chief Travelling Ticket Inspector
Ernakulam Junction Railway Station (Sleeper)
Ernakulam



10 M.Santhosh, Chief Travelling Ticket Inspector
Trivandrum Central Railway Station (Sleeper-A)
Trivandrum.

11 K.Suresh Kumar, Chief Travelling Ticket Inspector
Trivandrum Central Railway Station (Sleeper -a)
Trivandrum.

12 C.A.Sajeevan, Chief Travelling Ticket Inspector
Ernakulam Town Railway Station (Sleeper)
Ernakulam North P.O.,
Ernakulam

13 M.Lakshmi Kani, Chief Travelling Ticket Inspector
Nagercoil Junction Railway Station (Sleeper),
Nagercoil.

14 R.Sivanandan, Chief Travelling Ticket Inspector
Trivandrum Central Railway Station (Sleeper -A),
Trivandrum.

15 Sajimon George, Chief Travelling Ticket Inspector
Ernakulam Junction Railway Station (Sleeper)
Ernakulam.

16 K.Murugiah, Chief Travelling Ticket Inspector
Nagercoil Junction Railway Station (Sleeper),
Nagercoil.

17 K.V.Raghavan, Chief Travelling Ticket Inspector
Ernakulam Twon Railway Station (Sleeper),
Ernakulam P.O., Ernakulam

18 P.G.Georgekutty, Chief Travelling Ticket Inspector
Trivandrum Central Railway Station (Sleeper -A),
Trivandrum.

19 C.Selvagurunathan, Chief Travelling Ticket Inspector
Nagercoil Junction Railway Station (Sleeper),
Nagercoil. Respondents

(By Advocate Mr.P.Haridas (R1-3),

O.A No. 469/12:

C.Girishan, aged 45 years
s/o C.Rarichuty,
Loco Pilot (Goods)
Southern Railway/ Calicut
Residing at : ÄSHIRWAD"
Chittadath Kandi Parambu
Puthiyangadi P.O.,
Calicut -673 021. Applicant
(By Advocate Mr.T.C.Govindaswamy)

Versus

1 Union of India represented by the
Secretary to the Government of India,

Ministry of Railways, "Rail Bhavan",
New Delhi -110 001.

- 2 The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.
Chennai – 600 003.
- 3 The Sr. Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat -678 002.
- 4 Shri Unnikrishnan P.K., Loco Pilot (Passenger),
Southern Railway/ Calicut Railway Station,
Calicut – 673 001.
- 5 Shri Krishnankutty P.C., Loco Pilot (Goods)
Southern Railway/ Calicut Railway Station,
Calicut – 673 001
- 6 Shri Vijayan K., Loco Pilot (Passenger)
Southern Railway/ Calicut Railway Station,
Calicut – 673 001
- 7 Shri Ramesh Babu N.T., Loco Pilot (Passenger)
Southern Railway/ Calicut Railway Station,
Calicut – 673 001
- 8 Shri Rajesh K., Loco Pilot (Passenger)
Southern Railway/ Calicut Railway Station,
Calicut – 673 001 ... Respondents

(By Advocates Mr. Thomas Mathew Nellimoottil for R1 -3) &
Mr. C.S.Manilal for R4 – 7)

O.A. No. 965/12:

- 1 P.Sujeev, aged 38 years, s/o Sukumaran,
Senior Ticket Examiner (STE),
Chief Ticket Inspector Office, Southern Railway,
Sleeper Section, Quilon,
residing at "Nandanam", Valiyavila,
Krikkuzhy, Mayyanad P.O.,
Quilon , Pin 691 303.
- 2 Bibu Abraham, aged 33 years,
s/o T.A. Baby, Senior Ticket Examiner (STE),
Chief Ticket Inspector Office, Southern Railway,
Sleeper Section, Quilon,
Residing at Thekkthenguvila Veedu, Kuzhimathicadu P.O.
Kundra, Quilon -691 509.
- 3 Bindu Suresh, aged 42 years,
w/o Suresh K.G., Senior Ticket Examiner (STE)
Chief Ticket Inspector Office, Southern Railway,
Sleeper Section, Ernakulam South
Residing at 138/K, Ernakulam South Railway Quarters,
Cochin PIN 662 016.
- 4 Manoj S.Menon, aged 36 years

5

s/o K.Sreedhara Menon,
 Senior Ticket Examiner (STE)
 Chief Ticket Inspector Office, Southern Railway,
 Sleeper Section, Ernakulam Town,
 Residing at "Vaikunth", 18A, PNRWA,
 Pandavath Road, AIYNI Temple,
 Maradu, Ernakulam South Railway Quarters,
 Cochin- PIN 682 304.

5 Justin J, aged 30 years,
 s/o Late G.Joseph, Senior Ticket Examiner (STE),
 Chief Ticket Inspector Office, Southern Railway,
 Sleeper Section, Ernakulam South,
 Residing at 126/H, Ernakulam South Railway Quarters,
 Cochin PIN 682 016.

6 Anto Mathew, aged 47 years,
 s/o Mathew K.A., Senior Ticket Examiner (STE),
 Chief Ticket Inspector Office, Southern Railway,
 Sleeper Section, Ernakulam south,
 Residing at Kolenchery House, Mullassery P.O.
 Thrissur PIN 680 509.

7 K.Sreekumar, aged 29 years,
 s/o Kunchunni, Senior Ticket Examiner (STE),
 Chief Ticket Inspector Office, Southern Railway,
 Sleeper Section, Trivandrum,
 Residing at "SREYAS".
 Kuttikchira House, Kulakkattukurussi Post,
 Kattamppazhipuram, Palghat -PIN: 678633.

8 Divya P.Ravendran, aged 29 years,
 W/o Arun, Senior Ticket Examiner (STE),
 Chief Ticket Inspector Office, Southern Railway,
 Squad Section, Trichur,
 Residing at Palapparambil House,
 Medical College P.O., Valapaya, Trichur,
 PIN 680 596.

9 Rajani I. aged 29 years,w/o Krishnakumar K.R.,
 Senior Ticket Examiner (STE)
 Chief Ticket Inspector Office, Southern Railway,
 Sleeper Section, Trivandrum,
 Residing at"Krishna",, Biltech Villa,
 Studio Road, Villamcode,
 Trivandrum PIN 695 019.

10 Krishnakumar K.R., aged 37 years,
 s/o K.N. Ramakrishnan,
 Senior Ticket Examiner (STE)
 Chief Ticket Inspector Office, Southern Railway,
 Sleeper Section, Trivandrum,
 Residing at"Krishna",, Biltech Villa,Studio Road,
 Villamcode,Trivandrum PIN: 695 019 Applicants
 (By Advocate Mr.T.C.Govindaswamy)

Versus

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1. Union of India represented by the General Manager, Southern Railway, Headquarters office, Park Town P.O., Chennai – 600 003.
- 2 The Chief Personnel Officer, Southern Railway, Headquarters Office, Park Town P.O., Chennai – 600 003.
- 3 The Senior Divisional Personnel Officer, Southern Railway, Divisional Office, Thiruvananthapuram -695 014.
- 4 The Divisional Railway Manager, Southern Railway, Trivandrum Division, Thiruvananthapuram – 695 014.
- 5 The Railway Board, Rail Bhavan, New Delhi -110 001. Through its Secretary.
- 6 G.Karunakaran, Head Ticket Examiner, Sleeper (A), Chief Ticket Inspector Office, Southern Railway, Trivandrum Central Railway Station, Trivandrum – 695014.
- 7 K.P.Satheesan, Head Ticket Examiner, Sleeper (A), Chief Ticket Inspector Office, Southern Railway Ernakulam Town R.S. & P.O., Ernakulam -682018.
- 8 A.P.Asokan, , Head Ticket Examiner, Sleeper (A), Chief Ticket Inspector Office, Southern Railway, Ernakulam Town., R.S.& P.O., Ernakulam – 682018.
- 9 N.A.Sarojini Head Ticket Examiner, Sleeper (A), Chief Ticket Inspector Office, Southern Railway Ernakulam Town., R.S.& P.O., Ernakulam – 682018.
- 10 L.Sasikumar Head Ticket Examiner, Sleeper (A), Chief Ticket Inspector Office, Southern Railway Nagercoil, R.S. & P.O., Nagercoil – 629001.
- 11 S.Pradeepkumar, Head Ticket Examiner, Sleeper (A), Chief Ticket Inspector Office, Southern Railway Ernakulam Town, R.S. & P.O., Ernakulam-682018
- 12 B. Pratheesh Head Ticket Examiner, Sleeper (A), Chief Ticket Inspector Office, Southern Railway Trivandrum Central R.S. & P.O., Trivandrum – 695014.



13 Sneha Manmadan,
Chief Commercial Clerk, Southern Railway
Booking Superintendent Office,
Kadackavur R.S. & P.O., Trivandrum Dt.
Pin 695 306.

14 Pradeep S. Madhu
Head Ticket Examiner, Sleeper (A),
Chief Ticket Inspector Office, Southern Railway,
Ernakulam Town, R.S. & P.O., Ernakulam 682 018.

15 S.R.Naveen
Head Ticket Examiner, Sleeper (A),
Chief Ticket Inspector Officer,
Trivandrum Central R.S. & P.O.,
Trivandrum – 695 014. Respondents

(By Advocates Mr. Thomas Mathew Nellimoottil for R1 -5 &
Mr. C.S.Manilal for R6 – 15)

These Original Applications having been heard on 01.04.2015, this
Tribunal on 10.6.15 delivered the following:

O R D E R

HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

In these three cases, the common grievance of the applicants is that
the party respondents who belong to Scheduled Castes/Scheduled Tribes
have been given promotion to the higher post bypassing the applicants who
belong to the general category.

ORIGINAL APPLICATION No. 386/2012

2. In OA 386/12, the applicant is a Deputy Chief Ticket Inspector. He
was initially appointed as Ticket Collector on 5/11/94 by direct recruitment.
According to him, party respondent Nos. 4 to 19 were granted accelerated
promotion to the higher post in the hierarchy earlier than the applicant.
Applicant contends that the aforesaid party respondents have been given
promotion and assigned seniority above the applicant not in accordance
with the directions of the Constitution Bench of the Apex Court in
M.Nagaraj & Ors Vs. UOI & Ors (2006) 8 SCC 212 (decided on 19.10.2006).
Applicant alleges that during the pendency of the *M.Nagaraj's* case before
the Apex Court, without taking recourse to any of the conditions prescribed

in Article 16 (4-A), the Railway Board had issued Annexure A/7 RBE No.33/2002 dt. 08.03.2012. Applicant therefore prays for the following reliefs:

- i. Declare that Annexure -A/7 orders of the Railway Board is arbitrary, discriminatory, opposed to the Constitutional provisions contained in Article -14, 16(1) and 16 (4-A) and hence unconstitutional;
- ii. Call for the records leading to issue of Annexure -A/7 and quash the same;
- iii. Call for the records leading to issue of Annexure -A/1 and quash the same to the extent it relates to the respondents 4 to 19;
- iv. Direct the respondents to consider the applicant to promote as Chief Travelling Ticket Inspector (CTTI) in PB2 + GP= 4600 in preference to the respondents 4 to 19, after determining the applicant's inter se seniority in terms of Annexure -A3, read with Annexure -A4 and direct further to grant the consequential benefits of promotion from the date of Annexure -A1, including arrears of pay and allowances arising there from :
- v. Award costs of and incidental to this application;
- vi. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

3. Respondents resist the OA by contending that applicant has approached this Tribunal after the lapse of nearly 10 years and hence it is hit by the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985. It is further submitted by the respondents that all the party respondents arrayed as respondent Nos.4 to 19 are already senior to the applicant and he had never made any representation against the aforesaid party respondents being assigned seniority above the applicant.

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4. A rejoinder was filed by the applicant stating that the question of delay in challenging Annexure -A/7 does not arise as *M.Nagaraj's* case was finally decided only in 2007 and again clarified only in 2011 and the right to challenge Annexure A/7 arose to the applicant only when the same has affected him and therefore there is no delay.

5. An additional reply statement was filed by the official respondent stating that Annexure -A/7 circular was issued as per the direction of DoPT which was on the basis of a policy decision of the Government in pursuance of the Constitution 85TH (Amendment) Act, 2001. Details of the dates of entry of party respondents 4 to 7 into service have been given by the respondents pointing out that applicant had in fact been junior to them. The official respondents contend that if an employee belonging to reserved category is appointed against open quota he should be placed only in the open quota. Article 16 (4) empowers Government to make special provisions for advancement of Scheduled Castes/ Scheduled Tribes and a further enabling provision has been made in Article 16 (4A) for providing reservation in the matters of promotion. According to the official respondents, the pre-conditions stipulated in *M. Nagaraj's* case were discussed by the Apex court in *UOI v. Pushparani* (2008) 9 SCC 242 and has upheld the reservations followed in Railways. Respondents further contend that reservation in promotion being a policy and Constitutional issue, this Tribunal is not competent to examine and adjudicate on the said policy decision touching upon the Constitutional matters as held in *L.Chandrasekhar vs. UOI* AIR 1995(SC) 1151. Respondents pray for rejecting the O.A.

Original Application No. 469/2012 :

6. In this O.A., the first applicant was deleted from the array of parties vide order dt. 23.08.14 in MA No.180/882/2014. The challenge in this OA is



again the promotion given to the party respondent Nos.4 to 8 as Loco Pilots (Passenger) in preference to the applicant vide Annexure - A/1 order dt. 01.06.2012. Annexure- A/7 RBE No.33/2002 (same as Annexure- A/7 in OA 386/12) also is under challenge in this OA. The reliefs sought in this OA are :

- i. Declare that Annexure-A/7 orders of the Railway Board is arbitrary, discriminatory, opposed to the Constitutional provisions contained in Article -14, 16(1) and 16 (4-A) and hence unconstitutional;
- ii. Call for the records leading to issue of Annexure -A/7 and quash the same;
- iii. Call for the records leading to issue of Annexure -A/1 and quash the same to the extent it relates to the respondents 4 and 6 to 8;
- iv. Direct the respondents to consider and promote the applicants who are next in order of seniority and promote them as Loco Pilot (Passenger) from the date from which respondents 4 and 6 to 8 were promoted by virtue of A1, with all consequential benefits emanating there from ;
- v. Declare that the respondents 4 and 5 are not entitled to seniority in the cadre of Loco Pilot (Goods) over and above the applicants and direct the respondents accordingly;
- vi. Award costs of and incidental to this application;
- vii. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

7. Respondents contend that after the 6th Pay Commission, there was merger of Loco Pilots (Goods Gr.I & II), Loco Pilots (Passenger Gr.I & II) and Loco Pilots (Mail) uniformly granting a pay band of Rs.9300-34800 with Grade Pay Rs. 4200/- . Due to the late implementation of the 6th Pay Commission recommendations in the year 2008 and due to merger of loco

pilots (Goods Gr.I& II) w.e.f. 1.1.2006 the promotion of applicant as loco pilot(Goods Gr.I) became ineffective. Party respondents 4 to 8 are members of Scheduled Caste appointed later than the applicant and they are promoted as Loco Pilots (Goods Gr. II) later than applicant. Respondent nos. 4 & 5 were promoted as loco pilots (Goods Gr.I)/ Senior Goods Driver (non functional) w.e.f 16.04.2005 against the shortfall vacancies. Such promotion was made earlier to that of the applicant. Therefore the applicant is not eligible for seniority above respondent nos. 4 & 5. Respondent nos. 4 to 8 are promoted as Loco Pilots (Passenger) as per Annexure A/1 against the reserved vacancy of Scheduled Caste whereas the applicant comes under the general category. Therefore the respondents pray for rejecting the O.A.

Original Application No. 965/2012 :

8. In this case, applicants are 10 in number working as Senior Ticket Examiners. They are aggrieved by Annexure -A/1 order dtd 15.02.2012 promoting party respondent Nos. 6 to 15 as Head Ticket Examiners/ Travelling Ticket Examiners from PB1 with Grade Pay of 2400/- to PB2 with Grade Pay 4200/- applying the roster of reservation in promotion contrary to Constitutional provisions and settled norms in promotion. Applicants also challenge Annexure- A/2 Railway Board Order RBE 119/97 dt. 05.0.9.1997 enabling reservation in promotion in the purported exercise of powers vested in the Government under Article 16 of the Constitution of India. They seek the following reliefs:

- i. Call for the records leading to the issue of Annexure-A1 and quash the same to the extent it relates to the respondents 6 to 15;
- ii. Call for the records leading to issue of Annexure -A/2 Railway Board Order and quash the same duly declaring the same as being violative of Articles 16 (4A) of the Constitution;



- iii. Direct the respondents to consider and promote the applicants as Head Ticket Examiners/ Travelling Ticket Inspects in PB2 + GP Rs. 4200, based on their seniority and in preference to the respondents 6 to 15 with all the consequential benefits of promotion from the date of promotion of the respondents 6 to 15 including arrears of pay and allowances to be calculated with effect from the date of Annexure -A1;
- iv. Award costs of and incidental to this application;
- v. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

9. The official respondents filed reply statement contending that the claim of the applicants is barred by limitation. According to them applicants cannot challenge Annexure -A/2 as this Tribunal has no jurisdiction for adjudicating on Annexure- A/2. The official respondents contend that 13 senior Ticket Examiners in PB1 5200-22000 plus Grade Pay 2400 were promoted as Senior Ticket Examiners/ Travelling Ticket Examiners as per Annexure-A/1 and out of these 13 Senior Ticket Examiners, 3 unreserved, 5 SCs and 5 ST employees had been promoted. All the STs/SCs have been accommodated against roster points meant for reserved community. The remaining vacancies reserved for SC/ST had to be kept vacant for want of eligible employees who had completed the requisite residency period. In this category, 5 of the applicants were senior to party respondent Nos. 6 to 15. They were promoted against the posts reserved for them after *M.Nagaraj* judgment by Annexure-R/1 order dt 29/2/08, reiterating Railway Board's order dt 8.3.2002 restricting consequential seniority of SC/ST employees on promotion. Official respondents pray for rejecting the OA.

10. Party respondents 6 to 8 and 10 to 15 filed reply statements.



11. We have heard Mr.T.C.Govindaswamy, learned counsel for the applicants and Shri Shijin learned counsel representing Mr.Haridas and also Mr.Thomas Mathew Nellimoottil. We have perused the records and carefully gone through the decisions cited by the applicants and the respondents in OA 386/12. We take note that while the seniority assigned to some of the party respondents were based on the initial date of appointment which was much earlier than that of some of the applicants and consequent to the merger of grades, the other party respondents have indeed been given accelerated promotion by invoking Art 16 (4A) of the Constitution of India . As laid down by the Apex court *M.Nagaraj* judgement (*supra*) before arriving at a decision to grant accelerated promotion to the employees belonging to Scheduled Caste and Scheduled Tribe, the State is obliged to ascertain the need for such accelerated promotion , based on quantifiable data. In the case of the remaining applicants in OA 469/12 the respondents contend that party respondents 4 & 5 were promoted as loco pilots against the Scheduled Castes reserved vacancy on 6.4.2005 and consequentially due to implementation of 6th Pay Commission recommendations and the resultant merger of loco pilots, the applicant became lower in seniority. In the case of OA 965/12, the party respondents are stated to have been promoted against roster points meant for reserved communities. We take note that except in a few cases of the party respondents, promotions have been given to the SC/ST candidates bypassing the general candidates by employing the enabling provision for reservation in the matters of promotion as envisaged in Article 16 (4A) of the Constitution of India read with Article 335 of the Constitution of India.

Article 16 (4A) & 16(4-B) reads:

“4(A). Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.



The Special provisions for SCs/STs in Art. 335 for appointment to the service and posts reads:

"335. Claims of Scheduled Castes and Scheduled Tribes to services and posts – The *claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into* consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:

Provided that nothing in this article shall prevent in making of any provision in favour of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation for reservation in matters or promotion to any class or classes of services or posts in connection with the affairs of the Union of a State."

The constitutional validity of this provision was examined by a Constitution Bench of the Apex Court in *M.Nagaraj* case. In *Nagaraj* case (*supra*) the Apex Court observed:

"It is important to bear in mind the nature of constitutional amendments. They are curative by nature. Article 16(4) provides for reservation for Backward Classes in cases of inadequate representation in public employment. Article 16(4) is enacted as a remedy for the past historical discriminations against a social class. The object in enacting the enabling provisions like Article 16(4), 16(4-A) and 16(4-B) is that the State is empowered to identify and recognise the compelling interests. If the State has quantifiable data to show backwardness and inadequacy then the State can make reservations in promotions keeping in mind maintenance of efficiency which is held to be a constitutional limitation on the direction of the State in making reservation as indicated by Article 335. As stated above, the concepts of efficiency, backwardness, inadequacy of representation are required to be identified and measured. That exercise depends on availability of data. That exercise depends on numerous factors. It is for this reason that enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimise these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment. As long as the boundaries mentioned in Article 16(4), namely, backwardness, inadequacy and efficiency of administration are retained in Article 16(4-A) and 16 (4-B) as controlling factors, we cannot attribute constitutional invalidity to these enabling provisions. However, when the State fails to identify and implement the controlling factors then excessiveness comes in, which is to be decided on the facts of each case. In a given case, where excessiveness results in reverse discrimination, this Court has to examine individual cases and decide the matter in accordance with law. This is the theory of "guided power". We may once again repeat that equality is not violated by mere conferment of power but it is breached by arbitrary exercise of the power conferred.

..... Efficiency in administration is held to be a constitutional limitation on the discretion vested in the State to provide for reservation in public employment. In our view, even after insertion of this proviso, the limitation of overall efficiency in Article 335 is not obliterated. Reason is that "efficiency" is a variable factor. It is for the State concerned to decide in a given case, as in the past, the State is free not to relax such standards. In other cases, the State may evolve a mechanism under which efficiency, equity and justice, all three variables, could be accommodated. Moreover, Article 335 is to be read with Article 46 which provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice. Therefore, where the State finds compelling interests of backwardness and inadequacy, it may relax the qualifying marks for SCs/STs. These compelling interests however have to be identified by weighty and comparable data.

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12. Therefore it is mandatory on the part of the State and its instrumentalities as defined under Article 12 of the Constitution of India to follow the directions contained in *M.Nagaraj's* case before it implements its decision to make reservations for promotions invoking the enabling provisions in the Article 16 (4A) of the Constitution.

13. In these cases, nothing is seen from records that before making reservation for promotion posts the respondent railway had conducted any such study or collected any quantifiable data regarding backwardness, inadequacy of representation and keeping in view of the overall administrative efficiency before making any provision for reservation. As rightly cautioned by the Apex court in *M.Nagaraj* case at para 119,

'the concept of reservation Article 16 (4) is hedged by three constitutional requirements, namely, backwardness of a class, inadequacy of representation in public employment of the class and overall efficiency of the administration. These requirements are not obliterated by the impugned constitutional amendments. Reservation is not in issue. What is in issue is the extent of reservation. If the extent of reservation is excessive then it makes an inroad into the principle of equality under Article 16(1).'

14. The Apex Court has also observed that the extent of reservation has to be decided on the facts of each case. Therefore it is only in the fitness of things and in accordance with the Constitutional requirements that the respondent Railways ought to have taken a decision on reservation in respect of the posts mentioned in these promotion cases which have affected the seniority position of general candidates.

15. With regard to Annexure- A/7 No. RBE 33/02 dtd 08.03.2002 challenged in OAs 469/ 12 & 368/12, it has to be noted that the Principal Bench of Tribunal in its order dtd 2/1/2010 held as follows:

"37. We have applied our mind to the pleadings and the contentions raised by the learned counsel representing the applicants on the issues as mentioned above, but are of the view that once, in brevity, it is the case of the applicants that when no compliance of pre-conditions as spelled out in *M.Nagaraj's* case has been done, reservation in promotion with accelerated seniority shall have to be worked in way and manner as per the law settled earlier on the issue. If that be so, we need not have to labour on the issues

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raised by the applicants, as surely, if the position is already settled, the only relevant discussion and adjudication in this case can be and should be confined to non-observance of the pre-conditions for making accelerated promotions as valid. We have already held above that the railways have not worked out or even applied their mind to the pre-conditions as mentioned above before giving effect of the provisions of Article 16 (4A), and for that reason, circular dated 29.2.2008 vide which the seniority of SC/ST railway servants promoted by virtue of rule of reservation/ roster has to be regulated in terms of instructions contained in Board's letter dated 8.3.2002 and 13.1.2005, has to be quashed. There is a specific prayer to quash instructions dated 8.3.2002 and 13.1.2005 as well, but there would be no need to do so as the same have been discussed in the case of railways itself in the matter of Virpal Singh Chauhan (supra), and commented upon. While setting aside instructions dated 29.2.2008, our directions would be to not to give accelerated seniority to Scheduled Caste and Scheduled Tribe category employees till such time pre-conditions on which alone Article 16 (4A) of the Constitution is to operate, are complied with. No directions in this case can be given as regards seniority of the applicants vis-à-vis those who were appointed with them and have stolen a march over them because of reservation and have obtained accelerated seniority. No such specific prayer has been made either. However, it would be open for the parties to this lis or any one else to seek determination of their proper seniority for which legal proceedings shall have to be resorted to. It would be difficult to order across the board that all those who have obtained the benefit of reservation and have also been accorded accelerated seniority be put below general category candidates who may have been senior to the reserved category employees and became below in seniority on the promoted posts because of conferment of accelerated seniority to the reserved category employees. Surely, for seeking seniority over and above Scheduled Caste and Scheduled Tribe Employees, number of things shall have to be gone into, as for instance, as to when was the promotion made and seniority fixed, and whether the cause of general category employees would be within limitation. There can be number of issues that may arise. We have mentioned only one by way of illustration.

38. Present Original Application is disposed of in the manner fully indicated above. In view of the nature of the controversy involved in the case, costs of the litigation are made easy".

16. Therefore, we are inclined to follow the view taken by the Principal Bench of this Tribunal in the aforesaid case. Taking into consideration of the totality of the circumstances of these cases we direct the respondent Railway that whenever it decides to provide reservation for the promotional posts, the pre-condition for making accelerated promotions as spelled out in *M.Nagaraj* case shall be followed.

17. In the result, while directing the respondent Railway to collect quantifiable data showing backwardness of the class, inadequacy of the class in public appointment in addition to compliance with Article 335 as ruled by Apex Court in *Nagaraj* case before taking decision to grant accelerated promotion to the employees who are members of Scheduled caste and Scheduled Tribes, we direct the respondents to reconsider the

promotions given to the party respondents in each of these cases in the light of the above observations and to revise the seniority of the parties, if found necessary. Ordered accordingly. No order as to costs.

18. Copy of this common order be placed in the files of OA Nos. 386/12, 469/12 and 965/12.

(Dated this the 10th day of June, 2015)


(R.RAMNUJAM)

ADMINISTRATIVE MEMBER


(U.SARATHCHANDRAN)

JUDICIAL MEMBER

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