

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

- (1) Tr. Application No.520/86
and
(2) Tr. Application No.241/87.

- (1) Smt.K.K.Mokashi,
Quarter No.4, (in Tr. Application No.520/86)
Building No.106,
South Eastern Railway Quarters,
Santra Market,
Nagpur. ... Applicant

V/s.

1. The Divisional Manager,
South Eastern Railways,
Nagpur.
2. The Divisional Personnel Manager,
South Eastern Railways,
Nagpur.
3. Shri I.L.Mokashi,
Officiating Superintendent,
South Eastern Railways,
Nagpur.
4. Shri S.L.Madniwale, Head Clerk,
South Eastern Railways,
Nagpur.
5. Shri B.S.Koratkar, Senior Clerk,
South Eastern Railways,
Nagpur.
6. Shri T.N.Paunikar, Senior Clerk,
South Eastern Railways,
Nagpur. ... Respondents.

- (2) Shri S.L.Madniwale,
Head Clerk in the office of
Divisional Personnel Officer, (in Tr. Application No.241/87)
South Eastern Railway,
Nagpur. ... Applicant

V/s.

1. Union of India owning and managing
Indian Railways through General
Manager, South Eastern Railway,
Calcutta.
2. Divisional Personnel Officer,
South Eastern Railway,
Nagpur.
3. District Magistrate, Nagpur. ... Respondents
4. Smt.K.K.Mokashi. ... Intervenor.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Oral Judgment:

¶Per Shri M.B.Mujumdar, Member(J)¶ Dated: 20.1.1989

Miss K.K.Mokashi had filed Writ Petition
No.1193/82 in the Nagpur Bench of the Bombay High Court

on 30.4.1982 against six respondents including Shri S.L.Madniwale. Shri S.L.Madniwale had filed Writ Petition No.1301/82 in the Nagpur Bench of the Bombay High Court on 14.6.1982 against three respondents not including Miss K.K.Mokashi. Miss K.K.Mokashi was, however, included as an intervener in that Writ Petition in terms of the High Court's order dated 8.2.1985. Both the writ petitions were transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 and in this Tribunal they have been numbered as Transferred Applications No.520/86 and 241/87, respectively. By this common judgment we are deciding both these petitions.

2. The relevant facts for the purpose of this judgment may be stated as follows: Miss Mokashi was appointed as Junior Clerk with the South Eastern Railway on 30.9.1963. She was promoted as Senior Clerk on officiating basis on 20.5.1974. She was confirmed in that post on 1.9.1978. On 27.5.1976 she was promoted as Head Clerk on ad hoc basis. On 15.6.1978 she was reverted from that post to the post of Senior Clerk. However, again on 5.9.1980 she was promoted as Head Clerk as a stop gap arrangement. On 22.2.1984 she was promoted as Office Superintendent Gr.II on an officiating basis and she was regularised in that post on 1.5.1984.

3. As against this, Madniwale was appointed as Junior Clerk on 26.5.1957. He was promoted as Senior Clerk on 20.6.1960 in the Construction organisation.

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However, he was given proforma promotion as Senior Clerk in the open line organisation in his parent cadre with effect from 23.4.1967. By order dated 24.5.1978 he was promoted to officiate as Head Clerk. By the same order Miss Mokashi is reverted. Miss Mokashi was required to be reverted by that order because Madniwale was senior to her.

4. It may be noted that both Madniwale and Miss Mokashi are shown as members of the Scheduled Tribes (ST) in their service records.

5. In the application dated 13.3.1957 made by Madniwale to the Railway Service Commission for appointment as Office Clerk he had mentioned that he was a "Halba", a member of the Scheduled Tribes. He had also attached a Secondary School Leaving Certificate which showed that his caste was "Halba", but the endorsement on the application shows that he had not produced a separate caste certificate. In 1975 or thereabout he was asked by the Railway authorities to produce a caste certificate. Accordingly, he produced a caste certificate dated 10.5.1977 issued by the Executive Magistrate, Nagpur stating that he belongs to "Halba community" which is recognised as a Scheduled Tribe. However, after his promotion as Officiating Head Clerk, Miss Mokashi made a representation stating that he was not a "Halba" and not a member of the Scheduled Tribes.

6. On 1.9.1978 the Divisional Superintendent (Personnel) wrote a letter to the District Magistrate, Nagpur referring three cases for verification of correctness of the caste certificates issued by the different State authorities to enable the Railway

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Administration to decide upon their eligibility for the concessions available to Scheduled Caste and Scheduled Tribe communities. The cases were of Madniwale and S/Shri R.S.Koratkar and T.N.Paunikar (Respondents No.5 and 6 respectively in Tr.520/86, filed by Miss Mokashi). The District Magistrate, in turn, asked the Tahsildar, Nagpur to verify the caste certificates issued to these 3 persons. By letter dated 10.9.1980 the Tahsildar informed the District Magistrate that Koratkar and Paunikar belonged to "Halba" community. As regards Madniwale, however, he informed that it was difficult to opine whether he was of "Halba" community in the absence of documentary proof. However, on 15.9.1980 he informed that Madniwale had appeared before him on the same day and produced documentary proof in support of his assertion that he belongs to the "Halba" community. The Tahsildar further reported that on verification of documentary proof and Secondary School Leaving Certificate, it was found that Madniwale belongs to the "Halba" community.

7. By his letter dated 3.1.1981, the District Magistrate however, informed the Divisional Superintendent (Personnel) that till the final decision was communicated, no action should be taken on the letters of the Tahsildar, Nagpur dated 10.9.1980 and 15.9.1980 regarding verification of caste. Thereafter, on 3.9.1981 the Sub-divisional Magistrate, Nagpur submitted his report. The report deserves to be quoted here and it reads as under:

"Confidential"

No.Q/Steno/SDM/NGP/WS-Caste-
Verification/81
Office of the Sub-Divisional
Magistrate, Nagpur,

...5.

Dated: 3rd September, 1981.

To
The Addl. District Magistrate,
Nagpur.

Sub: Verification of caste certificate to :-
Shri S.L. Madniwale, and Shri B.S. Koratkar
Shri T.M. Paunikar.

Ref: Your Office letter No. CRL-D-24/SIM-BSK/WS-
752/81 dated the 31st January, 1981.

Respected Sir,

Enquiries have been made about the caste of
the following 3 incumbents mentioned below:-

- 1) Shri S.M. Madniwale,
- 2) Shri T.M. Paunikar,
- 3) Shri B.S. Koratkar.

These persons claim that they are Halba by
caste. Perusal of the Primary School Leaving
certificate of Shri Madniwale, High School
Leaving Certificate of Shri Paunikar and Koratkar,
reveals that Shri Madniwale, was recorded as
belonging to the Koshti caste in the Primary
School, and as Halba in the High School. And
Shri T.M. Paunikar was recorded as a Koshti in
the High School. Shri B.S. Koratkar was
recorded as Koshti in High School. It is
evident that the 3 incumbents either belong to
Koshti caste or to Halba Koshti caste, but they
claim that they are Halba by caste. It appears
that they got Halba caste certificate on the
basis of affidavits in the past.

Since during the present inquiry, we have
tried to find out the caste as recorded in the
primary or High School leaving certificate, it
is seen that they belong to Koshti caste. They
have, however, pleaded that they belong to Halba
caste and not Koshti caste.

It is not the jurisdiction of this Court to
go into the merits of the claim put forth by the
incumbents. My finding in brief is that, at the
time of admission in the Primary and High School
classes, their caste was shown by their parents
as Koshti and hence subsequent claims cannot be
considered. They have to be treated as of Koshti
caste and not Halba.

All records duly flagged are submitted
herewith for perusal.

Encl: Caste record from
page No. 1 to 558.

Yours faithfully,
Sd/-S.M.H. Jafree
Sub-Divisional Magis-
trate,
Nagpur.

8. Relying on that report the District Magistrate submitted his report to the Divisional Superintendent (Personnel) on 3.12.1981. That report reads as under:

"Confidential

No.R/CM/Nagpur/Caste Verif./81
Office of the District Magistrate,
Nagpur, dt.3rd Dec. 1981.

To

The Divisional Superintendent(Personnel)
South Eastern Railway,
Nagpur. ion

Sub: Verification of caste certificate.

Ref: Your letter No.DPO/NGP/CON/Verification/
Caste dt. 1.9.1978.

According to the letter referred to above, it was asked to verify the caste certificates issued to (1) Shri Shamrao son of Laxmanrao Madniwale, Head Clerk, Divisional Personnel Officer's Office, Nagpur, (2) Shri Baburao son of Shankarrao Koratkar, Senior Clerk, Divisional Personnel Officer's Office, Nagpur, and (3) Shri Tukaram son of Morbaji Paunikar, Junior Clerk, Divisional Personnel Officer's Office, Nagpur.

In this regard the detailed inquiry was conducted by the Sub-Divisional Magistrate, Nagpur. Adequate opportunity was given to the employees to prove their claim. The Sub-Divisional Magistrate, Nagpur after considering all the facts, has submitted his report dated 3.9.1981. A copy of his report is enclosed herewith for your perusal. Caste certificates issued to S/Shri Madniwale, Koratkar, and Paunikar are not in accordance with the instructions issued by the State Government from time to time for issue of caste certificates much less according to the instructions contained in Government Resolution dated 29.10.1980. The school leaving certificates of all these three employees show that they are Koshti by caste. Thus certificates issued, are without any basis much less on the strength of school leaving certificates. Primary School Leaving certificate of Shri Madniwale and High School leaving certificate of Shri Koratkar and Paunikar record them as Koshti and thus all the caste certificates issued so far, are wrong and, therefore they are not valid.

The papers in this connection are being filed at this end.

Encl: S.DM's report
Dated 3.9.81.

Sd/- Illegible,
for District Magistrate
Nagpur.

9. Relying on the District Magistrate's report, the Divisional Personnel Officer (DPO) of the South Eastern Railway, Nagpur informed Madniwale, Paunikar and Koratkar on 5.4.1982 that in future they would be treated as unreserved candidates and promotions would be regulated accordingly. They were further informed that if they had already derived any benefits against ST points, the same would be reviewed and the result would be intimated to them in due course.

10. Meanwhile, on 20.1.1981, Miss Mokashi had filed Writ Petition No.251/81 in the Nagpur Bench of the Bombay High Court praying for quashing the order in respect of holding suitability test for the post of Office Superintendent on 25.1.1981 for which Paunikar and Koratkar were called as eligible candidates on the basis that they were ST candidates. An interim stay was granted, but the Railway authorities (i.e. Respondents No.1 and 2 in that petition) passed a 'purshis' stating that in view of the District Magistrate's report they had already informed Paunikar and Koratkar that they would be treated as unreserved candidates and promotions would be regularised accordingly. In view of that statement, writ petition No.251/81 was disposed of on 18.10.1982. It may be pointed out here that Madniwale was not a party to that petition.

11. Two persons, namely S/Shri Kashinath and I.L.Mokashi Head Clerks were promoted by order dated 21.8.1981 to officiate as Office Superintendent Grade II, purely as an ad-hoc measure in the same

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office. Shri I.L.Mokashi is of the Scheduled Tribe community. Hence on 30.4.1982 Miss Mokashi filed Writ Petition No.1193/82 challenging the said order of 21.3.1981. In the Original Petition No.1193 of 1982 there were only two prayers, other than interim and consequential reliefs, viz. first, for quashing the order dated 21.8.1981 and second, for restraining Shri Mokashi from carrying on the duties of Office Superintendent. However, by an amendment application allowed on 13.12.1982 one more prayer was added, viz. for directing the railway authorities to revise the seniority list of Senior Clerks of the Personnel Department and for regulating promotions to the posts of Office Superintendent as also to higher posts with retrospective effect by granting a deemed date of promotion to the applicant. In 1988 the applicant made another application for amendment of the petition. That was allowed on 4.4.1988. By that application the applicant has added three more prayers. The first is for declaring her as senior to Madniwale and Shri Mokashi. The second prayer is for declaring that she is entitled to get promotions to the post of Senior Clerk w.e.f. 25.6.1973, as Head Clerk w.e.f. 15.6.1978, as Office Superintendent Grade II from 1.1.1979 and as Office Superintendent Grade I from 1.1.1984. The third prayer is for a declaration that Madniwale is not a member of the Scheduled Tribe community.

12. On 14.6.1982 Madniwale filed Writ Petition No.1301/82. In that petition he has prayed for quashing the report of the District Magistrate dated 3.12.1981

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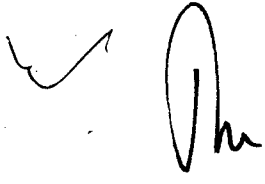


and the letter from the DPO to the applicant dated 5.4.1982. He had asked for a copy of the District Magistrate's report and by a letter dated 1.5.1982 the DPO had rejected that request by stating that the report was a clasified document. The applicant had challenged this letter dated 1.5.1982 also. Then the applicant has requested for a declaration that he belongs to the "Halba" community and as such he is entitled to all benefits admissible to such employees. By an order dated 29.6.1982 the High Court admitted the application and granted interim stay in terms of prayer clause (iii). In that clause the applicant has requested for staying the operation of the report of the District Magistrate dated 3.12.1981 and the letter of the DPO dated 5.4.1982. The stay is in force even now. In Transferred Application No.241/87 filed by Madniwale, Miss Mokashi is allowed to join as an intervener and she has filed her detailed statement.

13. We have heard Mr.Mohan Sudame, learned advocate for Shri S.L.Madniwale, Mr.S.H.Pandit, learned advocate for Miss K.K.Mokashi and Mr.P.S.Lambat, learned advocate for the Railway authorities. We have also perused the documents on record and the relevant record from the files which were brought by the railway authorities.

14. In this case the main point that we are required to consider is the legality and validity of the report of the District Magistrate dated 3.12.1981. We have already quoted it earlier as it is. Mr.Sudame challenged that report on two grounds. The first was that the District Magistrate had no jurisdiction

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and authority to make that report at the time that he did so and the second was that the report is not factually correct.

15. While deciding whether the District Magistrate had jurisdiction or authority to make that report, we shall have to refer to certain circulars. We may point out here that by our order dated 1.12.1987 we had directed that ^{a necessary} ~~some~~ information should be obtained from the Government of Maharashtra. The Under Secretary to the Government of Maharashtra, Tribal Development Department, by letter dated 8.2.1988 submitted all the relevant circulars of the Government of India and the Government of Maharashtra. Along with the Government of Maharashtra's resolution dated 29.10.1980 a copy of the instructions for issuance of caste certificates to ST persons was sent to various departments. These were the instructions in force at the time the District Magistrate submitted his report to the Divisional Superintendent (Personnel) on 3.12.1981. According to these instructions, the authorities empowered to issue caste certificate to Scheduled Tribes were (1) Taluka Executive Magistrate of the concerned Taluka/Tehsil (2) Sub-Divisional Executive Magistrate of the concerned Sub-Division, and (3) District Magistrate of the concerned District. It is mentioned in instruction No. 3 that the caste is generally mentioned in the School Leaving Certificate and if the competent authority is satisfied from the documentary evidence produced by the applicant, that he belongs to a caste stated in the School Leaving Certificate of the school last

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attended (preferably a primary school), a caste certificate may be issued. According to instruction No.10, if the application is rejected by the Competent Authority, the applicant may prefer an appeal against its rejection to the Divisional Commissioner within 10 days of such a rejection. Instruction No.19 inter alia provides that any complaint or allegation that a person not belonging to a tribe has been issued a caste certificate shall be inquired into by the Divisional Commissioner in respect of certificates issued by the competent authority in his jurisdiction. Then, by resolution dated 31.7.1981, Government of Maharashtra has directed that until further orders, in so far as Halbas are concerned the School Leaving Certificate shall be accepted as valid for the purpose of their caste.

16. At this point we may mention that this

resolution dated 31.7.1981 is referred to by the Bombay High Court in its judgment in Abhay Shrawanji Parate v. State of Maharashtra & Ors., (AIR 1985 Bombay 45). It is held in that case that the Director of Social Welfare

committed an error in not noticing this circular and in not accepting the caste mentioned in the School Leaving Certificate as correct. The State of Maharashtra filed Special Leave Petition before the Supreme Court against this judgment which was refused but by making it specifically clear ^{vide} that the judgment shall govern the petitioner only (AIR 1985 S.C. 328).

17. Coming back to the relevant circulars, by


resolution dated 23.1.1985 the Government of Maharashtra has appointed a Scrutiny Committee for verification of caste certificates of ST persons. One of the works of

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of the Scrutiny Committee is to verify the caste certificates of or complaints made by the concerned Departments/Offices. By resolution dated 8.3.1985 the Government of Maharashtra has appointed some authorities as Appellate Authorities against the decisions of the Scrutiny Committee regarding the various items of work to be done by the Scrutiny Committee. So far as the work of verifying the caste certificates of Government servants according to the requests or complaints made by the concerned Department/Office is concerned, the Appellate Authority so appointed is the concerned Divisional Commissioner.

18. It is clear according to instruction 19 issued on 29.10.1980 that on 3.12.1981 it was the Divisional Commissioner who was the competent authority to inquire into the complaints in respect of certificates issued by the Competent Authority. In this case the competent authority i.e. Executive Magistrate, Nagpur had issued the certificate dated 10.5.1977 stating that Shri S.L.Madniwale "belongs to Halba community which is recognised as backward class community as Scheduled Tribe in non Scheduled Area, vide G.A.D. No.BCC.1064 III-J dated 9.4.1965". It was this certificate which was sent for verification to the District Magistrate by the railway authorities, according to the instructions received by them in this respect. What the District Magistrate should have done when dealing with such a request at any time after 29.10.1980 was to refer the caste certificate for verification to the Divisional Commissioner. Instead what he did was to refer it first

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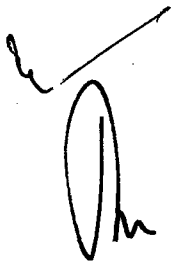


to Taluka Executive Magistrate and then to the Sub-Divisional Magistrate. In our opinion, this procedure followed by the District Magistrate was entirely wrong. We have already quoted the report of the Sub-divisional Magistrate dated 3.9.1981. In the penultimate para he has clearly pointed out that it was not within his jurisdiction to go into the merits of the claims put forth by the incumbents. Still he went on to report that Madniwale, Paunikar and Koratkar be treated as of "Koshti" caste and not "Halba". While doing so he has relied on the fact that while taking admission in the Primary and High School classes their parents had shown their caste as "Koshti". In view of the instructions quoted above and in view of the fact that the Sub-divisional Magistrate had pointed out that he had no jurisdiction to go into the merits of the claims, the District Magistrate should have referred the matter to the Divisional Commissioner. Instead, he reported to the Divisional Superintendent (P) of the South Eastern Railway that these three persons belonged to "Koshti" caste and the certificates issued by the Executive Magistrate were wrong and invalid.

19. Hence, after considering the position carefully we are of the view that the District Magistrate was not justified in sending the report dated 3.12.1981. That report, in our opinion is illegal, without jurisdiction and hence liable to be quashed.

20. As Miss Mokashi has sought for a declaration that Madniwale is not a member of the ST community and as Madniwale has requested for a declaration that

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he is a "Halba", it has become necessary for us to decide the factual position in this regard as disclosed from the record.

21. The primary school leaving certificate dated 21.7.1978 shows that Madniwale was in the Primary School at Bela in Tehsil Umrer of Nagpur District from 15.6.1945 to 5.4.1952 and in the record of that school his caste was shown as "Koshti". This is the certificate on which the Sub-divisional Magistrate and the District Magistrate have relied. However, the School Leaving Certificate issued by the Superintendent of Shri Dadasaheb Dhanwatey Nagar Vidyalaya, Nagpur on 2.6.1956 shows that Madniwale was in that school from 6.5.1952 to 31.3.1956 and his caste is "Halba". The certificate further shows that Madniwale had passed the Secondary School Certificate Examination in 1956 in 1st division. It appears that the Executive Magistrate, Nagpur had relied on this certificate and the other documentary evidence while submitting his report dated 15.9.1980 to the District Magistrate, Nagpur.

22. We may point out that the caste of Madniwale shown in the record of the Primary School was "Koshti", while in the record of the Secondary School, i.e. Shri Dadasaheb Dhanwatey Nagar Vidyalaya, his caste is shown as "Halba". The change is permissible according to the Secondary School Code issued by the Government of Maharashtra. Of course, it is not clear as to when the change was made, but it must be either when Madniwale was admitted in the Secondary School or some time thereafter but before the certificate was issued

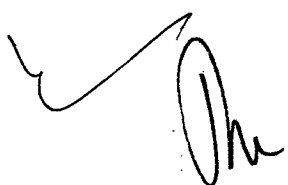
on 2.6.1956. We may point out that till the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 came into force with effect from 27.7.1977 "Halbas" of Nagpur District were not treated as of ST and hence were not entitled to the concessions available to ST communities. Still the applicant was shown as "Halba" in the record of Secondary School in which he was studying from 1952 to 1956. In other words there was no motive for entering a false caste in the Secondary School's records pertaining to the applicant as he was not entitled to any benefit from this caste entry. Moreover, as pointed out in the Bombay High Court's judgment in Milind Sharadrao Katware and ors. v. State of Maharashtra and ors., 1987 Maharashtra Law Journal 527, "Koshti" (Weaver) is a profession while "Halba" is a tribe. Hence there is no contradiction between the description of the caste of Madniwale in the Primary School Leaving Certificate and the Secondary School Leaving Certificate. Some families belonging to the "Halba" tribe were pursuing the profession of weaving. Hence they were described as "Koshti".

23. According to the resolution dated 31.7.1981, the Government of Maharashtra had directed that in so far as "Halbas" are concerned the school leaving certificate should be accepted as valid for the purpose of their caste. This resolution does not say that the primary school leaving certificate should be accepted. In fact, when a student joins a secondary school the school leaving certificate issued by the authorities of the Secondary School assumes importance because that is later in time. There is no doubt that the primary school leaving certificate can also be relied upon, but it will be in the case of students who had not joined a

secondary school.

24. We may further point out that in his application made to the Railway Service Commission on 13.3.1957 the applicant had mentioned his community as "Halba". He had also mentioned that he is a member of ST. The latter position is not correct because in 1957 when the application was made, "Halbas" from Nagpur District were not held to be members of ST. It is only in 1977 that they became entitled to be treated as ^{of} a ST, with the coming into force of the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 with effect from 27.7.1977. However, what is important is that in 1957 when "Halbas" at Nagpur District were not declared as members of the ST the applicant had mentioned that he was a "Halba". He had also produced a copy of the certificate dated 2.6.1956 issued by his secondary school in which, too, he was shown as being a "Halba." In the service record prepared on 27.6.1957 his caste is shown as "Halba" and there is an endorsement at the top that he was of ST. For the reason already pointed out, this endorsement at the top was not correct so far as the situation in 1956 was concerned. Then, the certificate issued by the Executive Magistrate, Nagpur on 10.5.1977, to which we have already referred, also shows that he belongs to the "Halba" community. In our opinion, all the above documentary evidence supports the say of Madniwale that he is of the "Halba" community which is declared to be a Scheduled Tribe in terms of the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976. Hence we hold that Madniwale is entitled to a

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declaration that he is of the "Halba" community and Miss Mokashi is not entitled to the declaration prayed for by her viz., that he is not of that community. In this view of the matter also the report of the District Magistrate, saying that Madniwale is a "Koshti" and hence the certificate issued ^{by the Executive Magistrate} in his favour is wrong and invalid, is liable to be quashed.

25. In view of the above findings Madniwale is entitled to prayers (1) and (2) made in his writ petition. On the contrary Miss Mokashi will not be entitled to prayer (7) in her writ petition.

26. Now we will deal with the other prayers in Miss. Mokashi's petition. Her first prayer is for quashing the order dated 21.8.1981. As already pointed out, by that order Shri Mokashi was promoted to officiate as Office Superintendent ^{Gr. II} purely as an ad hoc measure. There is no dispute that Shri Mokashi is of ST community, being a "Pardhan". It is true that he was appointed as Junior Clerk on 31.10.1963 while Miss Mokashi was appointed as Junior Clerk earlier on 30.9.1963. But he was promoted as Senior Clerk on 24.11.1973 and confirmed in that post on 1.1.1977. On the contrary, Miss Mokashi was promoted as Senior Clerk on 20.5.1974 and confirmed in that post on 1.9.1978. In their reply to Miss Mokashi's amendment application which was allowed on 4.4.1988, the respondents have stated that Shri Mokashi and Miss Mokashi both appeared in the special competitive examination held on 24.12.1972 against vacancies in the category of Senior Clerk and whereas Shri Mokashi had passed the competitive

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examination, Miss Mokashi had failed. Hence we find nothing wrong in the impugned order dated 21.8.1981 by which Shri Mokashi was promoted to officiate as Office Superintendent Gr.II. In this view of the matter prayer (3) ⁱⁿ of Miss Mokashi's petition that Shri Mokashi should be restrained from carrying out the duties of Office Superintendent in pursuance of the order dated 21.8.1981, cannot be granted.

27. Then prayer 1 (a) in Miss Mokashi's petition is for reviewing the seniority of the Senior Clerks of the Personnel Department and to regulate promotions to posts of Office Superintendent, as also to higher posts, with retrospective effect by granting her a deemed date of promotion. We do not find anything wrong in the seniority list of Senior Clerks of the Personnel Department. Moreover, she has not challenged the promotions of Madniwale, Koratkar and Paunikar (respondents 3 to 5) as Senior Clerks. In the seniority list of Senior Clerks as on 1.11.1975 published on 18.12.1975 all of them are shown senior to her. Hence prayer 1(a) in her petition also cannot be granted. In prayer (5) in the amended Petition Miss Mokashi has prayed for a declaration that she is senior to Madniwale and Shri Mokashi. In view of the earlier discussions this prayer also cannot be granted. Consequentially, prayer (6) also cannot be granted.

28. Madniwale in his writ petition has requested for quashing the report of the District Magistrate dated 3.12.1981 and the letter dated 5.4.1982 from the DPO. By his report dated 3.12.1981 the District Magistrate has informed the DPO that the caste certificate issued

in favour of Madniwale, Koratkar and Paunikar are wrong and invalid. The letter from the DPO is consequential and addressed to these three persons stating that they would be treated as unreserved candidates and promotions would be regulated accordingly. Out of them it is only Madniwale who has filed the writ petition and challenged the report and the letter. Koratkar and Paunikar, though they are respondents in the writ petition filed by Miss Mokashi, have not challenged the report and the letter. Hence in view of the findings given earlier it will be proper and legal to quash and set aside the report and the letter so far as these relate to Madniwale only.

29. In result we pass the following order:-

ORDER

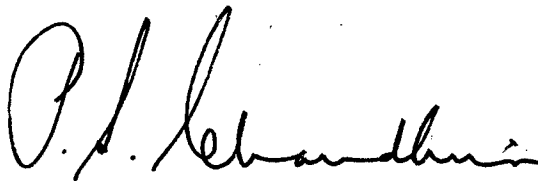
- (1) Transferred Application No.520/86 (writ petition No.1193/82) is dismissed.
- (2) Transferred Application No.241/87 (writ petition No.1301/82) is allowed.
- (3) The report of the District Magistrate, Nagpur dated 3.12.1981 (Annexure R-2 to the reply filed by respondents 1 and 2 on 21.8.1984 in Transferred Application No.241/87) and the letter dated 5.4.1982 from the Divisional Personnel Officer, South Eastern Railway (Annexure 5 to the Transferred Application No.241/87), so far as these relate to Shri S.L.Madniwale only, are hereby quashed and set aside.
- (4) It is hereby declared that Shri S.L.Madniwale (applicant in Tr. Application


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No.241/87) is a "Halba" which is recognised as a Scheduled Tribe under the Constitution (Scheduled Tribe) Order, 1950 as amended by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976.

- (5) Parties to bear their own costs of Transferred Applications No.520/86 and 241/87.


(P.S. CHAUDHURI)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J).