

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/01052/2014

Date of decision: 11.09.2015.

Coram: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

Anil Kumar Shukla son of Sh. K.K. Shukla age 55 years working as Chemical and Metallurgical Superintendent (CMS) Diesel Shed, Northern Railway, Ludhiana, Punjab.

By Advocate: Shri D.R. Sharma

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Union of India, through the General Manager (P), Northern Railway, Headquarters Officer, Baroda House, New Delhi.



APPLICANT

-RESPONDENT

By Advocate: Shri K.K. Thakur proxy counsel for respondent.

ORDER

Mr. Sanjeev Kaushik, Member (J):

The present Original Application is directed against an order dated 09.10.2014 (Annexure A-1) vide which the respondent-
Railways have reserved one vacancy for scheduled caste category
for promotion to the post of ACMT/Northern Railway in the grade of
Rs.9300-34800 with Grade Pay of Rs.4800/-.

2. The facts are not in dispute. Therefore, brief facts, which are relevant for adjudication of the matter, are that the respondents issued a circular dated 25.09.2013 thereby showing their intention to hold selection for promotion to Group 'B' post ACMT/Northern Railway for the assessment period from 01.09.2013 to 31.08.2015.

Total five posts were notified, out of which 04 were for general and one for SC category. The selection was based upon written test, medical examination and thereafter viva voce. The test was scheduled to be held on 01.08.2014 but on a request made by the applicant he was allowed to appear in the supplementary examination, which was scheduled to be held on 27.08.2014, result of which was declared on 03.09.2014. As many as five candidates were declared successful, including the applicant. They were subjected to medical examination and the viva voce was scheduled



to be held on 22.09.2014. However, by the impugned order dated 09.10.2014 the respondents issued a provisional panel of ACMT where four candidates, including the one belonging to SC category, were shown to be provisionally selected for the vacancies reserved for general category and the vacancy of SC was kept vacant as nobody from that category qualified.

3. The sole grievance of the applicant, as brought out in this Original Application, is that he is aggrieved of the action of the respondents in following reservation in promotion by keeping the 5th vacancy reserved for SC category.

4. The applicant has placed reliance upon a Constitution Bench decision in the case of M. Nagraj & Ors. v. Union of India &

Ors., (2006) 8 SCC 212, U.P. Power Corpn. Ltd. v. Rajesh

Kumar & Others, 2012 (4) SCALE 687, Full Bench decision of

Central Administrative Tribunal, Principal Bench in OA

No.2211/2008 -All India Equality Forum and Others v. Union

of India and others, decided on 02.12.2010, decision of Hon'ble

High Court of Punjab & Haryana in CWP No.13218 of 2009 (O&M) -

Lachmi Narain Gupta and others v. Jarnail Singh and others,

decided on 15.07.2011, decision of the Central Administrative

Tribunal, Principal Bench in Liladhar Ramchandi and others v.



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Govt. of NCT of Delhi and others, OA no.2434/2012 decided on 27.09.2013 and decision of the Hon'ble Supreme Court in the case of **K. Manorama v. Union of India, represented by General Manager, Sourthern Railway and others**, (2010) 10 SCC 323.

5. The respondents resisted the claim of the applicant by filing written statement wherein they admitted this fact that they reserved one vacancy for SC category and since no candidate in that category was found eligible, therefore the same was kept vacant. They submitted that in terms of Department of Personnel and Training (for short, DoP&T) letter dated 07.01.2014 where an intention has been shown to go with the reservation pending amendment by the Parliament in clause 16 (4A) and therefore they have reserved the above vacancy.



6. We have heard learned counsels appearing for the respective parties and perused the pleadings available on record.

7. The solitary contention at the hands of the applicant is that the respondents cannot go with the reservation in promotion unless they comply with the mandate given in the case of **M. Nagraj** (supra).

8. The respondents have relied upon DoP&T instructions dated 07.01.2014 where the Govt. of India decided to go with the reservation in promotion despite the mandate in the case of M. Nagraj (supra). We are afraid that the respondents can go with reservation unless they follow the mandate in the case of M. Nagraj (supra), where the Constitution Bench of the Hon'ble Supreme Court held as under:

"121. 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.

122. 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.

123. 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."

9. There is not even a whisper in the written statement that the respondents have quantified the vacancies or they have complied with the directions in M. Nagraj (supra). Therefore, they cannot go with the reservation in promotion.

10. Insofar as the second limb of argument that in terms of DoP&T instructions dated 07.01.2014 they are permitted to go with reservation is concerned, a similar argument was considered by the Allahabad Bench of this Tribunal in the case of Sunil Kumar

Rajpoot & Ors. v. Union of India & Ors., (OA No.1502/2012) decided on 15.11.2014, where the same was rejected. The relevant observation reads as under:

"27. Having regard to the argument advanced on behalf of respondents that in preparation of the impugned panels and promotion order, the respondents have merely followed the contents of the letter dated 07.01.2014 written by the DOP&T to the U.P.S.C, New Delhi, wherein it has been stated that the Government of India in principle has decided to continue with the policy of reservation in promotion and do away with the conditions which have been laid down in the case of M. Nagaraja (Supra) in relation to section 16(4-a). For this purpose the required constitutional amendment has been introduced and passed in Rajya Sabha. So far as this argument is concerned, the contents of letter of the DOP&T dated 07.01.2014 itself admits that the Apex court has laid down certain pre-conditions for undertaking reservation in promotion

which has been sought to be done away in the proposed amendment bill. In the face of this admission of the department as well as the fact that the amendment bill is yet to assume the form of an Act, the contents of letter cannot be said to have a binding effect particularly in the face of specific dictum of the Apex Court in this matter. Therefore, this argument cannot be accepted.

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29. Having regard to the clear, consistent and explicit view held by the Apex Court with regard to the question of reservation in promotion, it is apparent that unless the controlling factor of the compelling reasons stated in Article 16(4) are met, no reservation in promotion can be proceeded with by the State. In case they take up such exercise then in each case the State would have to require to place before the court the quantifiable data and satisfy the court that such reservation has become necessary on account of inadequacy of representation of SCs /STs without affecting general efficiency in service. The concept of efficiency, backwardness and inadequacy of representation have to be identified and measured and that would be contingent upon the availability of relevant data. This would depend on numerous factors. Apparently, it is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best these claims can be optimized, can only be done by the administration in the context of prevailing local conditions in public employment. If the State concerned fails to identify and measure the backwardness, inadequacy and affecting of efficiency then even in the face of existing enabling provisions, reservation in promotion cannot be undertaken."

11. Therefore, the respondents cannot go with the reservation which is against the spirit of the judgment of the Constitution Bench in the case of M. Nagrai (supra).



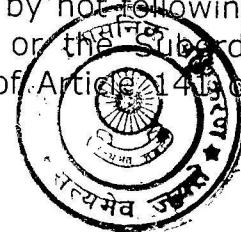
12. We may notice here that recently their Lordship of the Hon'ble Supreme Court in case of South Central Railway Employees Cooperative Credit Society Employees Union Vs. B. Yashodabai & Ors. 2015 (1) SCC (L&S) 582 have considered the



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judgment passed by the Hon'ble Madras High Court in which it was tried to take another view contrary to the law in the case of M. Nagraj (supra) by saying that few points were not dealt by the Constitutional Bench but same was set-aside by the Hon'ble Supreme Court by upholding by mandate in case of M. Nagraj (supra). The Hon'ble Supreme Court held as under:-

“15. If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set aside. The High Court had considered several provisions which, in its opinion, had not been considered or argued before this Court when C.A. No.4343 of 1988 was decided. If the litigants or lawyers are permitted to argue that something what was correct, but was not argued earlier before the higher court and on that ground if the courts below are permitted to take a different view in a matter, possibly the entire law in relation to the precedents and ratio decidendi will have to be re-written and, in our opinion, that cannot be done. Moreover, by not following the law laid down by this Court, the High Court or the Subordinate Courts would also be violating the provisions of Article 141 of the Constitution of India.”



13. From the above it is clear that the law laid down in case of M. Nagraj (supra) holds the field and any deviation from the same amounts to violation of settled mandate by the Constitutional Bench. Now considering the letter dated 07.01.2014 issued by the Nodal Ministry- DoPT, which is advisory in nature, cannot stand. Suffice to record here that till date the Government of India has not

carried out any exercise showing that there is inadequacy in representation of the State SC & ST categories in terms of the mandate in case of **M. Nagraj** (supra). The amendment of Article 16 (4) of the Constitution of India has been approved by the law maker, therefore, this letter dated 07.01.2014 cannot be applied, which is also considered by the Allahabad Bench of this Tribunal in **Sunil Kumar Rajpoot** (supra) by holding that same cannot be enforced until there is amendment in Article 16 (4) of the Constitution of India and said judgment has been upheld by the Jurisdictional High Court as informed by the applicants.



14. In the light of the above, we are left with no option but to accept the Original Application and accordingly quash the impugned decision of the respondents dated 09.10.2014 (Annexure A-1) where they have kept one post reserved for SC category. They are directed to fill up the post from amongst the panel and consider the person next in the merit for appointment to the post of ACMP. The above exercise shall be carried out by the respondents within a period of two months from the date of receipt of a certified copy of this order.

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15. No order as to costs.



(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Chandigarh

Dated: 11.9.2015

'San.'

1. प्रतिलिपि अवेदन की क्रम संख्या..... 2333
Serial No. of the Copy Application.....

2. अवेदन का नाम..... Kasam Chand
Name of the Applicant.....

3. अवेदन पत्र देने की तारीख..... 6/10/15
Date of Presentation of Application.....

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अनुचान अधिकारी(इ.)/Section Officer (Jus.)

क्षेत्रीय प्रशासनिक अधिकारण/C. A. T.

चंडीगढ़ बीड़/Chandigarh Bench

10/10/2015/14
I declare that this is true & accurate copy
of the document/order as per file.....
No..... 100, so that all the matter
appearing therein..... is correctly and faith-
fully copied in the documents.