

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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Pronounced on: 27.7.2015.

Reserved on: 16.07.2015

I. OA. No. 060/00468/14

MA s No. 00888/14, 00907/14, 01143/14 and 01232/14

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER(A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER(J)**

1. Gurbinder Singh S/o Sh. Balwant Singh
2. Manmohan Singh S/o Sh. Khem Singh
3. Om Parkash S/o Sh. Sham Lal
4. Darshan Kumar Sharma S/o Sh. Sant Ram
5. Kuldeep Singh S/o Sh. Prithvi Raj
6. Jagdish Singh S/o Sh. Gurbachan Singh
7. Adesh Kumar S/o Sh. Ranvir Singh
8. Vimal Chander S/o Sh. Mubhia
9. Daljeet Singh S/o Sh. Nirmal Singh
10. Sukhvinder Singh S/o Sh. Harbans Singh
11. Harjeet Singh S/o Sh. Kartar Singh
12. Raj Davinder Singh S/o Sh. Major Singh
13. Nirman Singh S/o Mehar Singh
14. Jatinder Pal Singh S/o Sh. Inder Singh
15. Anil Kumar S/o Sh. Lalji Srivastava
16. Harmel Singh S/o Sh. Malkiat Singh
17. Pawan Kumar S/o Sh. Ram Lal

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OA. 060/00468/14

OA. 060/00494/14

All the applicants are working as Diesel Technician Grade I under the respondent No. 4.

.....Applicants

BY ADVOCATE: **SH. ROHIT SETH**

VERSUS

1. Union of India through Chief Administrative Officer (Railways), Diesel Locomotive Modernization Works, Patiala.
2. Chief Administrative Officer, Railway, Diesel Locomotive Modernization Works, Patiala.
3. Executive Director Reservation, Rail Bhawan, Railway Board, New Delhi.
4. Senior Personnel Officer, Diesel Locomotive Modernization Works, Patiala.
5. EMP No. 502935, Sh. Ram Krishan Singh S/o Jarnail Singh.
6. EMP No. 502972, Sh. Ram Singh S/o Sh. Bant Singh
7. EMP No. 503188, Sh. Swaran Singh S/o Sh. Bant Singh
8. EMP No. 503163, Sh. Ashok Kumar S/o Sh. Jagan Nath.
- ⑨ 9. *ALL India SC/ST Railway Employees Association (Regd S-1517), Zone, DM W Patiala through its Secretary Sh. Ram. Murti.*
(Respondents No. 5 to 8 are working as Diesel Technician Grade I under the respondent No. 4)

.....Respondents

BY ADVOCATE: **SH. G.S. SATHI FOR RESPDTS. 1-4**

SH. JAGDEEP JASWAL FOR RESPDTS. 5-8

II. OA NO. 060/00494/2014

MA No. 00494/14

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⑩ *correction has been done in compliance of order dated 21-10-2015 in MA No 060/01150/2015 in OA No 060/00468/2014.*

Bandey
27/10/15

OA. 060/00468/14
OA. 060/00494/14

1. Vishesh Kumar S/o Sh. Sumer Singh
2. Mukesh Kumar S/o Sh. Jas Ram
3. Basant Kumar Sharma S/o Sh. Bal Kishan Sharma
4. Raj Kumar S/o Sh. Ram Dayal
5. Kamaljit Singh S/o Sh. Najir Chand
6. Bidhya Bhushan Kumar S/o Sh. Bilas Singh

(Applicants No. 1 to 6 are working as Technician Grade I in Welder Trade)

7. Ramesh Chander S/o Sh. Harphul Singh
8. Brita Ram Sharma S/o Sh. Balak Ram
9. Mohinder Kumar S/o Sh. Karam Chand
10. Karnail Singh S/o Sh. Lachaman Singh
11. Gulab Singh S/o Sh. Chharda Singh
12. Rajbir Singh S/o Sh. Pritam Dass

(Applicants No. 7 to 12 are working as Technician Grade I in TM Fitter Trade)

13. Subhash Chander S/o Sh. Sunder Lal
14. Jai Bhagwan S/o Sh. Ganga Ram

(Applicants No. 13 and 14 are working as Technician Grade I in Mill Wright (Mech.) Trade)

15. Harvinder Singh S/o Mehar Singh

(Applicant No. 15 is working as Technician Grade II in Mill Wright (Mech.) Trade)

16. Satish Kumar S/o Sh. Sham Sunder
17. Tarjit Pal Singh S/o Sh. Kirpal Singh
18. Gursharanprit Singh S/o Sh. Darshan Singh

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OA. 060/00468/14
OA. 060/00494/14

(Applicants No. 16 to 18 are working as Technician Grade II in AC Fitter Trade)

19. Sham Swaroop Sharma S/o Sh. Hari Haran Sarswat, working as JE/Machinist Grade in Machinist Trade
20. Suresh Kumar Sharma S/o Sh. R. Das Sharma
21. Bhupinder Kumar S/o Sh. Virpal Singh
22. Harcharan Singh S/o Sh. Bhoop Singh

(Applicants No. 20 to 22 are working as Technician Grade I in Machinist Trade & all the applicants are working under Respondents No. 1 and 4)

.....Applicants

BY ADVOCATE: **SH. ROHIT SETH**

VERSUS

1. Union of India through Chief Administrative Officer (Railways), Diesel Locomotive Modernization Works, Patiala.
2. Chief Administrative Officer, Railway, Diesel Locomotive Modernization Works, Patiala.
3. Executive Director Reservation, Rail Bhawan, Railway Board, New Delhi.
4. Senior Personnel Officer, Diesel Locomotive Modernization Works, Patiala.
5. Michal Kumar S/o Sh. Munna Lal
6. Govardhan Singh S/o Sh. Ram Singh
7. Radhey Shyam Meena S/o Sh. Ram Niwas Meena
(Respondents No. 5 to 7 are working as Technician Grade I in Welder Trade)

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8. Adal Singh S/o Sh. Hoti Lal
9. Ranjit S/o Sh. Ujagar
(Respondents No. 8 and 9 are working as Technician Grade I in TM Fitter Trade)
10. Amarjeet Singh S/o Sh. Harbans Lal
11. Sarwan Kumar S/o Sh. Suraj Mal
(Respondents No. 10 and 11 are working as Technician Grade I in Mil Wright (Mech.) Trade)
12. Khem Raj Meena S/o Sh. Ram Banarsi Meena
(Respondent No. 12 is working as Technician Grade II in Mil Wright (Mech.) Trade.)
13. Hardeep Singh S/o Sh. Harbans Singh
14. Avtar Singh S/o Jang Ram
(Respondents No. 13 to 14 are working as Technician Grade II in AC Fitter Trade)
15. Sucha Singh S/o Sh. Sadhu Singh
16. E. Barla S/o Sh. Birsa Barla
17. Bichha Ram S/o Sh. Barkha Ram
(Respondents No. 15 to 16 are working as JE/Machinist Grade in Machinist Trade)
18. Beer Singh S/o Sh. Gomta Dass
19. Balbir Singh S/o Sh. Mohinder Singh
20. Braham Singh S/o Sh. Jagan
(Respondents No. 18 and 20 are working as Technician Grade I in Machinist Trade and all the private respondents are working under Respondents No. 1 and 4)

 Respondents

BY ADVOCATE: **SH. G.S. SATHI FOR RESPDTS. 1-4**
SH. JAGDEEP JASWAL FOR RESPDTS. 7 & 17


ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. In both these OAs, the issue for consideration is whether the restructuring of the cadres of staff in the DLMW Patiala is to be considered as promotion and whether reservation for persons belonging to Scheduled Caste Category is to be allowed while placing them in the higher posts in the cadre. Hence, both these OAs are decided through a common order.

2. In OA No. 060/00468/14, all the applicants are working as Diesel Technician Grade I under the Respondent No. 4 i.e. Senior Personnel Officer, DLMW Patiala and the relief as follows has been sought through this OA:-

- (i) Quash Letter/RBE No. 102/2013 dated 08.10.2013 (Annexure A-1) vide which the respondents are continuing with the provisions of reservation with regard to reservation of SCs/STs in as much as Para 9 of the said letter is against the judgement of the Hon'ble Supreme Court in the case of **M. Nagaraj & Ors. Vs. UOI & Ors., AIR 2007 SC 71** and Hon'ble Punjab and Haryana High Court in case of **Lacchmi Narain Gupta and Ors. Vs. UOI and Ors., CWP No. 13218 of 2009** decided on 25.7.2011 which says that there cannot be any reservation in promotion after year 1997 or unless the exercise of collection of data as to adequacy of representation as enumerated in M. Nagaraj's case is undertaken



and despite the law as settled above, the respondents are promoting the Reserved Category candidates by granting them the benefits of reservation thereby exceeding the reservation of fifty percent in the cadre of the applicants as there are already Reserved Category incumbents in excess and since there has been no collection of data by the respondents to assess adequacy of representation of Reserved Category before granting them benefits aforesaid.

- (ii) Quash eligibility list dated 06/07.05.2014 (Annexure A-2) vide which Senior Administrative Officer, DMW, Patiala has issued list of 28 persons in which juniors to applicants are placed at Sr. No. 25 to 28, to make promotions from Diesel Technician Grade I to the post of Senior Technician by providing reservation in promotion under the circumstances explained above under scheme of restructuring of cadre and vigilance clearance of said persons has also been taken vide letter No. 174/DSL/FTR dated 19.05.2014 and as such respondents are going to consider the Reserved Category candidates placed at Sr. No. 29, 35, 36 and 56 and ignoring the applicants who are at Sr. No. 26, 27, 28, 30, 31, 32, 33, 34, 37, 38, 39, 40, 42, 43, 48, 49 and 52 who belong to General Category and are senior to respondents No. 5 to 8 as is evident from the seniority list of Diesel Fitter Grade I as on 31.01.2014 (Annexure A-3) as such action of respondents is in violation of law laid down in the various decisions of the Hon'ble Supreme Court in the case of M. Nagaraj.
- (iii) Direct the respondents to consider and promote the applicants as Senior Technicians on the restructuring of cadres as per law of the land which says that there is no reservation in promotion unless data as to adequacy of representation of reserve category is collected and specially when there is excessive representation of Reserved Category already in the cadre of applicants, with all the consequential benefits of pay and allowances and seniority.

3. When the matter was taken up for hearing on admission on 28.05.2014, the respondents were restrained from extending the benefit of reservation in restructuring till the next date of hearing and this position

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continues till date. Meanwhile, although MAs No. 888/2014 and 907/2014 were filed seeking vacation of the stay order dated 28.5.2014 and reply to the same was also filed on behalf of the applicants in the case, these remained undecided.

4. In the OA, it has been stated that all the applicants belong to the General Category while the Private Respondents belong to the Reserved Category. The applicants joined the Railways initially as Diesel Technician Grade III between 1990 and 1992 and thereafter, were promoted as Technician Grade II and subsequently as Technician Grade I between 1995 and 2000. Charts showing particulars of applicants and Respondents No. 5 to 8 are appended as Annexures A-5 and A-6 respectively. The respondents issued the letter RBE No. 102/2013 dated 08.10.2013 vide which the respondents decided to restructure some Group 'C' cadres w.e.f. 01.11.2013. Consequent to this, 31 posts of Senior Technicians had been assessed as vacant by the Department and these posts are to be filled from persons working as Diesel Technician Grade I. Para 9 of this letter states that provision of reservation with regard to SC/ST wherever applicable will continue to apply. The respondents issued seniority list for Technician Grade I of DMW, Patiala as on 31.01.2014. Applicants were shown at Sr. No. 26, 27, 28, 30, 31,

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32, 33, 34, 37, 38, 39, 40, 42, 43, 48, 49 and 52 and the junior of applicants, respondents No. 5 to 8 are shown at Sr. No. 29, 35, 36 and 56. The applicants submitted a representation dated 21.03.2014 (Annexure A-7) to the respondents that the benefit of reservation cannot be granted in promotion to their juniors at the time of restructuring in the view of the judgement passed by the Hon'ble Supreme Court in the cases of **Ajit Singh Jhanjua Vs. State of Punjab and Ors., M. Nagraj and Ors. Vs. UOI and Ors.** The respondents, however, issued list of 28 eligible persons vide letter No. DMW/P/S-I/174/Sr. Tech./Dsl. dated 06/07.05.2014 (Annexure A-2) for further promotion to the post of Sr. Tech. in Diesel Trade. In the list of eligible 28 persons, name of the juniors to applicants belonging to Reserved Category are placed at Sr. No. 25 to 28. Respondents have completely ignored the eligibility of applicants as well as law settled by the Hon'ble Apex Court and their representation dated 21.03.2014. Further, vigilance clearance of the Reserved Category has been undertaken vide letter No. 174/DSL/FTR vide letter dated 19.05.2014 and as such respondents are likely to go ahead with the promotion of Reserved Category very shortly.

5. In the OA, reference has also been made to the following judgements in (i) CWP No. 13218 of 2009 (O&M) titled Lacchmi Narain

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Gupta & Ors. Vs. Jarnail Singh & Ors., (ii) OA No. 3623/2011 (Principal Bench) titled Karan Singh Vs. Secretary, Ministry of Labour and Employment, GOI and many other cases.

Hence this OA.

6. In the grounds for relief, it has inter alia been stated as follows:-

- (i) An OA No. 2211 of 2008 was filed by All India Equality Forum before the CAT Principal Bench seeking the same relief and the same was allowed by the Full Bench of the Principal Bench on 02.12.2010. The Principal Bench held that there is no reservation in promotion. The respondents approached the Hon'ble High Court by filing CWP No. 2280 of 2011 and the said petition stands admitted for regular hearing. The Hon'ble Delhi High Court vide order dated 09.01.2012 directed the respondents that they shall not take any action in contradiction of the orders passed by the Principal Bench of the Tribunal.
- (ii) The Supreme Court decision dated 29.07.2008 titled as Union of India Vs. Pushpa Rani and Ors. has already been dealt with by the CAT Principal Bench in OA No. 3623/2011 titled Karan Singh Vs. UOI & Ors. decided on 22.04.2014 (Annexure A-8) and many other OAs involving similar controversy which is the subject matter of the present OA. The question before the Principal Bench was whether reservation is permissible in filling up higher posts which have become available on account of cadre restructuring. The answer given in the order is that reservation cannot be resorted to and as such, entire exercise was directed to be re-done/reviewed by complying with the principles laid in case of M. Nagaraj by Constitution Bench of Hon'ble Supreme Court.
- (iii) Application of the impugned policy of reservation would lead to excessive representation of the members of Scheduled Castes and Scheduled Tribes i.e. more than 50% as the existing policy of reservation framed by the Government of India was not preceded

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by an exercise in relation to the issue of adequacy of their representation.

7. In the written statement filed on behalf of respondents No. 1-4 alongwith MA No. 1143/2014, the facts of the matter have not been disputed. It has further been stated that in support of their claim, the applicants have placed reliance upon decision of Hon'ble Supreme Court in the case of M. Nagraj Vs. UOI & Ors., Lacchmi Narain Gupta & Ors., CWP No. 13218/2009 of Hon'ble Punjab and Haryana High Court and some other decisions which are not applicable to the facts of this case at all. The Hon'ble Supreme Court of India in the case of State of Punjab Vs. Baldev Singh (1991)6 SCC 172, was pleased to hold that precedent(s) have to be examined in the light of the law declared as well as facts and circumstances of the case concerned, and that a decision of the court takes its color from question involved in the case, in the context of which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of the Apex Court, and that it is neither desirable nor permissible to pick out a word or a phrase or a sentence from a judgement of the court, divorced from the context of the question under consideration, and then treat it to be the complete law declared by Apex Court. *As* — .

8. It has also been stated that issues under consideration pertain to the fourth periodical review and restructuring of cadres in the DMW, Patiala. The Railway Board had lastly issued similar instructions on "Reservation in Restructuring" on 9.10.2003 which were challenged by Pushpa Rani and six others, whose OA was allowed by this Tribunal. The Railway Administration challenged the orders of this Tribunal by filing a CWP in the Hon'ble High Court of Punjab and Haryana wherein the orders passed by this Tribunal were upheld. Thereafter, the Railways filed SLP before the Hon'ble Supreme Court, which was ultimately converted as C.A.No. 6934-6946 of 2005, the main case titled UOI Vs. Pushpa Rani & Ors. wherein also the identical question was under consideration before the Apex Court as has been raised by the applicants in the present OA. The issue was finally answered in favour of the Railways and the Hon'ble Supreme Court upheld the applicability of reservation in restructuring scheme issued vide letter dated 9.10.2003 in judgement delivered by Hon'ble Supreme Court on 29.7.2008. As such, the law as settled by the Hon'ble Apex Court in the specific facts of this case, is for making provision of reservation in restructuring. It is clear that the Hon'ble Supreme Court judgement in C.A. No. 6934-6946 of 2005 decided on 29.7.2008 has not been considered in right perspective

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in the judgements annexed by the applicants as Annexures A-4 and A-8 (with the OA). Hence, there is no merit in the OA and the same deserves to be dismissed.

9. It has also been stated that in compliance to the Constitutional Bench of Supreme Court judgement in the cases of R.K. Sabharwal Vs. State of Punjab (AIR) 1995 SC 1371, UOI Vs. Virpal Singh Chauhan (AIR 1996-SC 442) and UOI Vs. J.C. Malik, the vacancy- based rosters were replaced with the post-based rosters for implementing the reservation policy. It was held by the Hon'ble Court that the reservation of jobs should apply to posts and not to the vacancies. After attaining the prescribed percentage of reservation, the vacancies released by general and the reserved categories should be filled on replacement basis so that the prescribed percentage of reservation is maintained. It was further held that the persons belonging to Reserved Category, who are appointed on the basis of merit and not on account of reservation are not to be counted towards the quota meant for reservation. The limit of not more than 50% reservation is always applied. Accordingly, the orders were issued vide Railway Board letter No. 95-E(SCT)I/49/5(2) dated 21.8.1997. In terms of Railway Board letter No. 97-E(SCT)I/25/11 dated 5.9.1997, consequent to the judgement in the

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Indira Sawhney case, the Constitution of India was amended by an Act viz. the Constitution 77th (Amendment) Act, 1995 and Article 16(4A) has been incorporated in the Constitution. Through this amendment Act, it has been decided to continue the reservation in promotion till such time as the representation of SC and ST in each cadre reaches the prescribed percentage of reservation and thereafter, the reservation in promotion shall continue to maintain the representation to the extent of the prescribed percentages for the reserved categories i.e. 15% for SCs and 7.5% for STs as far as possible which may vary due to rounding off fraction number but shall not exceed 50% limit of cadre post (s). This amendment Act has been held as constitutionally valid in M. Nagraj's case.

10. It is further stated that the applicants belong to Technician Grade I cadre of Diesel Fitter Trade in Mechanical Department of DMW, Patiala. They have challenged Notice No. DMW/P/S-I/174/Sr. Tech/Dsl dated 06/07.05.2014 (Annexure A-2 with the OA) vide which the process has been initiated for promotion from Technical Grade I to the post of Sr. Technician of Diesel Fitter Trade under restructuring scheme of RBE No. 102/2013. The redistribution of posts due to the restructuring of cadres has been issued vide Office Order No. 221 dated 10.4.2014 (Annexure R-

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4). In Annexure II of this office order at Item No. 8, it may be seen that before restructuring of cadre, there were 29 posts of Sr. Technician in the scale of pay of Rs. 9300-34800 + Grade Pay of Rs. 4200 (i.e. 8% of total Technician Cadre). After restructuring of cadre, the sanctioned posts of Sr. Technician have been increased to 57 (i.e. 16% of total Technician Cadre). At present, only 26 Senior Technician staff are in position. Accordingly, the assessment for filling 31 posts has been done based on the post-based roster. A copy of the post-based roster of Sr. Technician Diesel Fitter Trade is attached as Annexure R-5. It is clear from this post-based roster that a total of 13 posts are reserved – 9 for SC Category and 4 for ST Category. Remaining 44 posts are unreserved. Point No. 4, 12, 17, 24, 30, 38, 44, 50 and 57 are allocated to SC Category candidates and point No. 8, 20, 34 and 47 allocated to STs. Point No. 4, 12, 17 and 24 has been occupied by SC and point No. 8 has been occupied by SC under the exchange policy. The SC category candidates shown against occupied point Nos. 6, 7, 13, 16, 18, 21, 22, 23, 26, 27 & 28 have been promoted against unreserved posts. This staff is not to be counted against reserved quota. Since there is shortfall of 5-SC, 3-ST in the cadre of Sr. Technician Diesel Fitter Trade, the posts have been notified to be filled accordingly vide Notice dated 06/07.05 2014 (Annexure A-2 with the

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OA). In Annexure A-2, the staff shown from Sr. No. 1 to 23 are being considered against unreserved posts and the staff shown at Sr. No. 24 and 28 are being considered against the posts reserved for SC Category. Due to non-availability of ST Category candidates in the feeding cadre, the posts reserved for ST Category are being kept as vacant. The SC Category candidates listed at Sr. No. 9, 13, 14, 15, 16 & 17 of Annexure A-2 are being considered against unreserved vacancies. Thus, the contention of the applicants that there would be excessive representation of reserved category in Senior Technician cadre is not based on factual position.

11. Sh. Jagdeep Jaswal, learned counsel for the private respondents also filed MA No. 890/2014 seeking to implead All India SC/ST Railway Employees Association Zone, DMW Patiala through its Secretary Sh. Ram Murti as respondent No. 9 in the OA. This application was opposed by the counsel for the respondents but has not been decided. It is to be noted that in spite of Sh. Jagdeep Jaswal having been present on all dates of hearing, no reply has been filed in the matter on behalf of the private respondents.

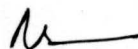
12. In the rejoinder filed on behalf of the applicants, while the content of the OA has mainly been reiterated, it has also been stated that

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reservation in the cadre of Senior Technician has already reached a level of 65.56% i.e. 19 SC out of total 29 persons belong to Reserved Category as is apparent from the seniority lists. However, respondents are still showing a backlog of reserved vacancies which is blatant lie. Since catch up principle has not been applied, the SC/ST category employees on the top of seniority will be promoted against general seats apart from other SC/ST positioned below the applicants of General Category who are being given slots of Reserved Category thereby giving them benefit to Reserve Category which is illegal. A copy of the seniority list of Senior Technician as on 31.01.2014 is attached as Annexure A-9.

13. In OA No. 060/00494/2014, the applicants belong to different categories of technical staff and they are also opposing the applicability of reservation in the upgradation to the higher level posts within the same cadre. In this case also, the respondents No. 1-4 have filed the written statement on similar lines as in OA No. 468/2014.

14. Sh. Jagdeep Jaswal who represents some of the private respondents, has stated that he adopted the reply filed on behalf of the official respondents. Many of the private respondents have been proceeded against ex parte since they have not been represented despite service.



15. Arguments advanced by the learned counsel for the parties in both these cases have been heard. Learned counsel for the applicants reiterated the content of the OAs and stated that the circular dated 8.10.2013 issued to the General Manager/Director General, All Indian Railways Production Units regarding restructuring of certain Group 'C' Cadre mentioned in para 9 that the existing instructions with regard to the reservation of SCs/STs wherever applicable, will continue to apply. He stated that it had been clearly held by the Punjab and Haryana High Court in Lacchmi Narain Gupta (supra) that reservation of SCs/STs would not be applicable to promotions. He stated that the DLMW Patiala fell within the jurisdiction of Punjab and Haryana High Court. It had been concluded in many cases that no action had been taken by the Government of India/Indian Railways regarding directions in M. Nagraj (supra) to determine the need for reservation in promotion after carrying out a study regarding adequacy of representation in the services and socio-economic backwardness of the community for which reservation was sought to be allowed as well as aspects regarding maintenance of efficiency in administration. Learned counsel also cited the following judgements to support his contention that reservation in filling the posts

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with higher scale in the cadre that had become available on account of restructuring, was not to be allowed:-

(i) **M. Nagraj & Ors. Vs. UOI & Ors., AIR 2007 SC 71**

(ii) **Civil Appeals No. 3622 of 1995 with No. 9149 of 1995 titled UOI Vs. V.K. Sirothia** decided on 19.11.1998 wherein it has been held as under:-

“A. Constitution of India, Articles 16(4) and 16(4-A) – Service Law – Reservation – Provisions – Applicability – Upgradation on account of restructuring of the cadres, the question of reservation will not arise – Not to interfere with the order of the Tribunal.

B. Service Law – Upgradation of posts – If amounts to promotion attracting reservation – This appeal has to be allowed as the Tribunal has taken a contrary view.”

(iii) **Contempt Petition (C) No. 304 of 1999 in CA No. 1481 of 1996 titled All India Non-SC/ST Employees' Association (Railway)** decided on 31.1.2001 wherein it has been held as under:-

“Reservation – Upgradation of existing posts – Total number of posts remained unaltered, though in different scales of pay, as a result of regrouping and the effect of which may be that some of the employees will go into the higher scales, it would be a case of upgradation of posts and not a case of additional vacancy or post being created to which the reservation principle would apply – Hence, the principle of reservation would not be applicable in such a case unless some additional posts are created in respect of which the same principle could be applied.”

(iv) **Union of India Vs. Pushpa Rani & Others, 2009(1) SCT** decided on 29.07.2008 wherein it has been held as under:-

“53. The point remains to be considered is whether the order of the Tribunal, which has been confirmed by the High Court, can be

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maintained by applying the ratio of M. Nagaraj's case. Dr. Rajiv Dhawan, learned senior counsel appearing for some of the respondents, made strenuous efforts to convince us that the policy of reservation cannot be applied at the stage of making promotions because the Railway Administration did not produce any evidence to show that Scheduled Castes and Scheduled Tribes were not adequately represented in different cadres and that the efficiency of administration will not be jeopardized by reserving posts for Scheduled Castes and Scheduled Tribes, but we have not felt persuaded to accept this submission. In the applications filed by them, the respondents did not plead that the application of the policy of reservation would lead to excessive representation of the members of Scheduled Castes and Scheduled Tribes, or that the existing policy of reservation framed by the Government of India was not preceded by an exercise in relation to the issue of adequacy of their representation. Rather, the thrust of their claim was that restructuring of different cadres in Group C and D resulted in upgradation of posts and the policy of reservation cannot be applied qua upgraded posts. Therefore, the Union of India and the Railway Administration did not get opportunity to show that the employees belonging to Scheduled Castes and Scheduled Tribes did not have adequate representation in different cadres; that the outer limit of reservation i.e. 50% will not be violated by applying the policy of reservation and that the efficiency of administration will not be jeopardized by applying the policy of reservation. Therefore, it is neither possible nor desirable to entertain a totally new plea raised on behalf of the respondents, more so, because adjudication of such plea calls for a detailed investigation into the issues of facts."

(v) **Bharat Sanchar Nigam Ltd. Vs. R. Santhakumari Velusamy**

decided on 6.9.2011, 2012(1) SCT 230 wherein it has been held as under:-

"B. Constitution of India 1950, Article 16(4) – Whether Rules of Reservation will apply to upgradation of posts ? – Held, Article 16(4) enables state to make any provision for reservation in matter of promotion with consequential seniority, to any class or classes of posts in favour of Scheduled Castes and Scheduled Tribes – But upgradation involves neither appointment nor promotion, therefore, will not attract reservation – Upgradation involves mere benefits by providing a higher

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scale of pay – if there is mere upgradation of posts as contrasted from promotion, reservation provisions would not apply – 2001 (10) SCC 165: 2008(9) SCC 283 relied on.

Further, in paras 20 and 21, it has been recorded as follows:-

“20. In Union of India vs. Pushpa Rani - 2008 (9) SCC 242, this Court examined the entire case law and explained the difference between upgradation and promotion thus :

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21. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge :

(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both – that is advancement to a higher position and advancement to a higher pay scale - are described by the common term 'promotion', does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where

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the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

(v) Where the process is an upgradation simplicitor, there is no need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(v) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation."

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(vi) In **R.K. Sabharwal Vs. State of Punjab** decided on 10.2.1995, 1995(2) SCT, it has been held as follows:-

“A. Constitution of India, Article 16(4) – Punjab Service of Engineers Class I P.W.D. (Irrigation Branch) Rules, 1964, Rule 9 – Reservation for Scheduled Castes/Backward Classes – when a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points – It has to be taken that the posts shown as the reserve points are to be filled from amongst members of reserve categories and the candidates belonging to general category are not entitled to be considered for reserve posts – The reserve category candidates can compete for non-reserve posts. In the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out percentage of reservation – When the State Government after doing the necessary exercise makes the reservation, provides the extent of percentage of posts to be reserved for said backward class, then the percentage cannot be varied or changed simply because some of members of backward class have already been appointed/promoted against general seats – Roster point which is reserved follow a backward class – Has to be filled by way of appointment/promotion of the member of the said class – No general category candidate can be appointed against a slot in the roster which is reserved for backward class.”

(vii) **U.P. Power Corporation Ltd. Vs. Rajesh Kumar** decided on 27.4.2012, 2012(4) SCT 258 wherein it has been held as follows:-

“C. Constitution of India, Article 16(4), (4A)(4B) – Uttar Pradesh Public Servants (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, Section 3(7) – U.P. Government Servants Seniority Rules, 1991, Rule 8A- Reservation in promotion – Seniority – State has to form its opinion on the quantifiable data regarding adequacy of representations – State can provide reservation only if there exists backwardness of class and inadequacy of representations – State to undertake exercise as per direction in M. Nagaraj case – It is mandatory – State cannot either directly or indirectly, circumvent or ignore or refuse to undertake the exercise by taking recourse to the Constitution (85th Amendment) Act providing for

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reservation for promotion with consequent seniority – Section 3(7) of the 1994 Act and Rule 8-A of the 2007 Rules run counter to the dictum in M. Nagaraj case-They are ultra vires- Promotion that has been given on the dictum of Indra Sawhney case and without the aid or assistance or Section 3(7) and Rule 8(A) shall remain undisturbed.”

(viii) In **Suraj Bhan Meena and another Vs. State of Rajasthan and**

others decided on 7.12.2010, 2011(2) SCT 260, it has been held as

follows:-

“Constitution of India, Articles 16(4-A) and 335 – Rajasthan Administrative Service Rules, 1954, Rule 33 – Promotion-Reservation-Seniority-Notifications dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan providing for consequential seniority and promotion to the members of Scheduled Castes and Scheduled Tribes communities – No exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the SC/ST communities in public services – High Court quashed the notifications – Same does not call for any interference.”

(ix) In CWP No. 13218 of 2009 titled **Lacchmi Narain Gupta and**

others Vs. Jarnail Singh and others decided on 15.7.2011, it has been

held as follows:-

“39. The net result is that no reservation in promotion could be made in pursuance to office memorandum dated 2.7.1997. We are not dealing with many other contentions raised by the learned counsel for the petitioners for the reason that the core issue going to the roots of the matter has been determined in their favour and such a necessity is obviated.

40. As a sequel to the above discussion, the judgment of the Tribunal is set aside. The instructions dated 31.1.2005 (R-2) stands withdrawn on 10.8.2010 (P-10). Therefore, no order is required to be passed in respect of those instructions dealing with the subject of reservation in promotion and the treatment of SC/ST candidates promoted on their own merit.

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Likewise, the instructions dated 10.8.2010 (P-16) are hereby quashed because they are in direct conflict with the view taken by the Constitution Bench in M. Nagaraj's case Nagaraj's case 's case (supra) (supra) (supra) and Suraj Bhan Meena's case (supra) Suraj Bhan Meena's case (supra) Suraj Bhan Meena's case (supra). It is further directed that the seniority and promotion of the Income Tax Inspectors shall be made without any element of reservation in promotion"

16. Sh. G.S. Sathi, learned counsel for respondents No. 1-4 in both OAs, asserted that since there had been increase in the number of posts available in the category of Senior Technicians as a result of restructuring of the cadre of Diesel Technicians, reservation in promotion was applicable keeping in view the judgement in Pushpa Rani (supra). He also referred to subsequent judgements in Civil Writ Petition No. 9467/2005 titled The Railway Board & Ors. Vs. Suresh Chand Sharma & Ors. decided on 10.5.2013 and Special Civil Applications No. 10111 & 10124/2007 wherein reliance has been placed on Pushpa Rani (supra) and it had been held that reservation had to be allowed while promoting persons to the higher posts on account of restructuring of cadres.

17. Sh. Jagdeep Jaswal, learned counsel for Respondents No. 5-8 in OA No. 060/00468/14 & and for Respondents No. 7 & 17 in OA No. 060/00494/14 stated that even if the placement in higher posts was to be treated as upgradation, the bar on not allowing reservation in promotion would not apply while keeping in view the judgement in

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Sabharwal(supra). The reservation had to be allowed while placing the persons who were at the level of Technician Grade I as Senior Technicians. Since the post-based roster has to be utilized in view of Sabharwal (supra), the private respondents would only be filling the posts that were being vacated by SCs who had earlier been promoted as per the roster points for SCs. Hence there was no merit in this OA.

18. We have given our thoughtful consideration to the matter. The material on record and the judgements cited by the learned counsel for the parties have been perused. It is also noted that the Full Bench of the CAT at Lucknow in order dated 4.12.2014 in OA No. 94/2006 titled Ram Chabbile Tewari Vs. UOI considered the following questions:-

- (i) Is upgradation of posts within the same cadre tantamount to promotion.
- (ii) Is reservation allowed in the case of such upgradation under the various reservation rules of DOP&T.

While deciding these issues, the Full Bench held as follows:-

- (i) Where the advancement to a higher pay scale is as a result of some process which has the element of selection, then it would tantamount to promotion.
- (ii) Where the upgradation involves selection process, reservation rules of DOPT&T would be applicable.

19. In the instant OAs, it is seen that due to the restructuring of the technical cadres in different trades, the number of posts of Senior

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Technicians had increased substantially since the percentage of posts at this level prior to restructuring was 8% and after restructuring, this is 16%. The persons who are Technicians Grade I in the scale of Rs. 5200-20200 plus Grade Pay of Rs. 2800 would move as Senior Technician in the scale of Rs. 9300-34800 plus Grade Pay of Rs. 4200. Thus, there is an improvement in designation as well as pay scale when the numbers of posts available as a result of increasing the ratio of Senior Technicians in the Diesel trade are filled. As per the Circular dated 8.10.2013, the filling of the vacancies is to be effected as follows:-

“4. The existing classification of the posts covered by these orders as ‘selection’ and ‘non-selection’, as the case may be remains unchanged. However, for the purpose of implementation of these orders, if any individual Railway servant becomes due for promotion to a post classified as a ‘selection’ post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and/or viva voce test. The modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation in view of the numbers involved, with the objective of expediting the implementation of these orders. Similarly for posts classified as ‘non-selection’ at the time of this restructuring, the promotion will be based only on scrutiny of service records and confidential reports. In the case of artisan staff, the benefit of restructuring under these orders will be extended only on passing the requisite trade test.”

Thus, there would only be scrutiny of service reports and confidential reports of the persons considered for placement as Senior Technicians

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which would imply that only those with adverse entries in their service records would not be upgraded to the higher posts and the upgradation would be on the basis of seniority i.e. on non-selection basis.

20. It is also observed that in Pushpa Rani (supra), the policy regarding restructuring of the Group 'C' cadre issued in 2003 was discussed and decided. The judgements in Civil Writ Petition No. 9467/2005 titled The Railway Board & Ors. Vs. Suresh Chand Sharma & Ors. decided on 10.5.2013 and Special Civil Applications No. 10111 & 10124/2007 relate to the restructuring of the cadre effected in 2003 while the present OA relates to restructuring of cadres in 2013. There is nothing on record to show that the Railways/Government of India have carried out any study regarding adequacy of representation of SCs/STs in the services and it has even been pointed out in the OA that if the reservation is allowed in the restructuring, the number of posts in the cadre of Senior Technicians belonging to SC cadre will far exceed the quantum of reservation provided. This contention of the applicants has not been rebutted by the respondents.

21. Be that as it may, since the designation as well as the scale of pay improves when a person moves from the level of Technician Grade I to Senior Technician, this has to be construed as promotion.

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The DLMW, Patiala, falls within the jurisdiction of Punjab and Haryana High Court and it has clearly been held in *Lacchmi Narain Gupta* (supra) that reservation is not applicable in promotion. In *Karan Singh* (supra), the Principal Bench had held as follows:-

“19. As far as OA No. 3623/2011 is concerned, we quash and set aside the impugned orders dated 09.08.2011 and 23.08.2011. We also declare that the action of the respondents in applying reservation against the upgraded posts on account of the restructuring of Group B and C cadre is illegal and wrong. Consequently, the respondents are directed to restore the promotion of the applicants existed before passing the aforesaid impugned orders. The respondents shall also pass appropriate order in implementation of the aforesaid directions.”

While recording its order dated 13.1.2015 in *Ravi Shankar Singh Vs.*

UOI, the Principal Bench has observed in para 7 as follows:-

“7. 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 the 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 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 to 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

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OA. 060/00468/14
OA. 060/00494/14

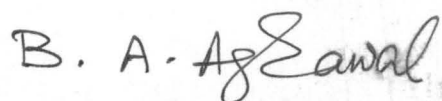
in terms of instructions contained in Board's letter dated 8.3.2002 and 13.1.2005, has to be quashed."

Hence, the provision of reservation (Para 9 of RBE No. 102/103 dated 8.10.2013) cannot be applied by the respondents. Therefore, these OAs succeed and the respondents are directed to carry out the restructuring of the technical cadres in DMW, Patiala, without giving effect to reservation while placing the eligible Technicians Grade I in the cadre of Senior Technicians to fill the vacancies in this cadre.

22. MAs No. 060/00888/14, 060/00907/14, 060/01143/14, 060/01232/14 and 060/00494/14 are also disposed of.

23. No costs.


(RAJWANT SANDHU)
MEMBER(A)


(DR. BRAHM A. AGRAWAL)
MEMBER(J)

Dated: 27.7.2015
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