Central Administrative Tribunal
Principal Bench, New Delhi

M.A. No.400/2015 in O.A.No.4158/2013
With
M.A.No.396/2015 in O.A.No.2945/2014
With
M.A. No.408/2015 in O.A.No.3193/2014
With
M.A. No.395/2015 in O.A.No.3476/2013
With
O.A.No.1453/2015
With
M.A.No.3192/2015 in O.A.No.2116/2015
With
O.A. No.2128/2014

Reserved on 07th December 2015

Pronounced on 4th March 2016

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

M.A. No.400/2015 in O.A.No.4158/2013

Virender Pratap Singh & others

..Applicants

(Mrs. Meenu Mainee, Advocate)

Versus

Union of India through & others

..Respondents

(Mr. VSR Krishna, Advocate for official respondents –
Mr. Gaya Prasad, Advocate for private respondents)

M.A. No.396/2015 in O.A. No.2945/2014

Mr. Rohit Srivastava & others

..Applicants

(Mrs. Meenu Mainee, Advocate)

Versus

Union of India through & others

..Respondents

(Mr. Shailendra Tiwary, Advocate for official respondents –
Mr. Gaya Prasad, Advocate for private respondents)

M.A. No.408/2015 in O.A.No.3193/2014

Hari Om Srivastava & others

..Applicants

(Mrs. Meenu Mainee, Advocate)

Versus

Union of India through & others

..Respondents

(Mr. VSR Krishna, Advocate for official respondents –
Mr. Gaya Prasad, Advocate for private respondents)

M.A. No.395/2015 in O.A.No.3476/2013

Ram Pher Yadav & others

..Applicants

(Mrs. Meenu Mainee, Advocate)

Versus

Union of India through & others

..Respondents

(Mr. VSR Krishna & Mr. Shailendra Tiwary, Advocates for official respondents – Mr. Gaya Prasad, Advocate for private respondents)

O.A.No.1453/2015

Neelabh Saxena & others

..Applicants

(Mrs. Meenu Mainee, Advocate)

Versus

Union of India through & others

..Respondents

(Mr. VSR Krishna, Advocate for official respondents –
Mr. Gaya Prasad, Advocate for private respondents)

M.A. No.3192/2015 in O.A.No.2116/2015

Rajesh Kumar & another

..Applicants

(Mrs. Meenu Mainee, Advocate)

Versus

Union of India through & others

..Respondents

(Mr. Kripa Shanker Prasad, Advocate for official respondents –
Mr. Abhinandan Banerjee for Mr. Amit Anand Tiwary, Advocate for private respondents)

O.A.No.2128/2014

Amit Sharma & others

..Applicants

(Mr. Yogesh Sharma, Advocate)

Versus

Union of India through & others

..Respondents

(Mr. R N Singh, Advocate for official respondent Nos. 1 to 3–
Mr. Gaya Prasad, Advocate for private respondent Nos. 4 to 7 –
Nemo for respondent No.8)

O R D E R (on interim)

Mr. A.K. Bhardwaj:

M.A.No.400/2015 in O.A. No.4158/2013 (for vacation of stay)

On 28.11.2013 when the Original Application came up for hearing, this Tribunal passed the following Order:-

"The applicant is seeking the following reliefs in this OA:-

> "8.1 That the Hon'ble Tribunal may be graciously be pleased to allow the application and quash the impugned order No.561E/642/Pas.Gd./P-1 dated 19.11.2013 issued by the Divisional Personnel Officer, Northern Railway, New Delhi in so far as the junior SC/ST category employees are included and the Applicants who are senior have been illegally excluded.
>
> 8.2 That the Hon'ble Tribunal may further be graciously pleased to direct the respondents to promote the Applicants as Senior Passenger Guards from the date from which the colleagues of the applicants including juniors have been promoted and given all consequential benefits.
>
> 8.3 That any other or further relief which the Hon'ble may deem fit and proper on the facts and circumstances of the case may kindly be awarded in favour of the Applicants.
>
> 8.4 That the cost of the proceedings may kindly be granted in favour of the Applicants."

It is seen that this case is identical to OA No.3476/2013 in which the following order has been passed on 01.10.2013:-

> "Heard the learned counsel for the applicants.

2. The applicants are Loco Pilots (Goods) belonging to general category (un-reserved). Their grievance is that the respondents are giving reservation in promotion to the posts of Loco Pilot (Passenger) in violation of the law laid down by the Apex Court in the case of M. Nagaraj v. Union of India, (2006) 8 SCC 212, wherein it has been held that the provisions of Article 16 (4) of the Constitution of India can be applied only when fulfilling certain conditions. However, according to the applicant's counsel, contrary to the aforesaid law, by the impugned order dated 2.9.2013, the respondents have taken the stand that SC/ST candidates will be given reservation whether it is by way of promotion/selection or non-selection method. In other words, they are submitting that irrespective of provisions contained under Article 16 (4A) of the Constitution of India, the SC/ST candidates are to be given reservation in promotion.

3. In this regard, learned counsel for the applicant has further submitted that this issue was already considered in detail by the Full Bench of this Tribunal in OA No.2211/2008 decided on 2.12.2010. The operative part of the said order reads as under:-

> "37. We have applied our mind to the pleadings and the contentions raised by the learned counsel representing the applicants on the issues as mentioned above, but are of the view that once, in brevity, it is the case of the applicants that when no compliance of pre-conditions as spelled out in M. Nagaraj's case has been done, reservation in promotion with accelerated seniority shall have to be worked in 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 in terms of instructions contained in Boards letter dated 8.3.2002 and 13.1.2005, has to be quashed. There is a specific prayer to quash instructions dated 8.3.2002 and 13.1.2005 as well, but there would be no need to do so as the same have been discussed in the case of railways itself in the matter of Virpal Singh Chauhan (supra), and commented upon. While setting aside instructions dated 29.2.2008, our directions would be to not to give accelerated seniority to Scheduled Caste and Scheduled

> Tribe category employees till such time pre-conditions on which alone Article 16(4A) of the Constitution is to operate, are complied with. No directions in this case can be given as regards seniority of the applicants vis-a-vis those who were appointed with them and have stolen a march over them because of reservation and have obtained accelerated seniority. No such specific prayer has been made either. However, it would be open for the parties to this lis or any one else to seek determination of their proper seniority for which legal proceedings shall have to be resorted to. It would be difficult to order across the board that all those who have obtained the benefit of reservation and have also been accorded accelerated seniority be put below general category candidates who may have been senior to the reserved category employees and became below in seniority on the promoted posts because of conferment of accelerated seniority to the reserved category employees. Surely, for seeking seniority over and above Scheduled Caste and Scheduled Tribe employees, number of things shall have to be gone into, as for instance, as to when was the promotion made and seniority fixed, and whether the cause of general category employees would be within limitation. There can be number of issues that may arise. We have mentioned only one by way of illustration.
>
> 38. Present Original Application is disposed of in the manner fully indicated above. In view of the nature of the controversy involved in the case, costs of the litigation are made easy."

4. On our instruction, Shri Shailendra Tiwary, learned counsel, who is in the panel of the respondents, accepted notice in this matter. However, he has submitted that he was the counsel in the aforesaid Full Bench matter and according to information available to him, the aforesaid order has been challenged before the Hon'ble High Court of Delhi and the same is pending adjudication. He has also submitted that a Contempt Petition has been filed in the said OA but the same was dismissed subject to outcome of the said Writ Petition on the ground that the matter was pending under consideration before the High Court.

5. In view of the above position, the learned counsel for the respondents is directed to take instructions in the matter from the respondents for consideration of the interim relief sought by the applicants.

6. In the meanwhile, the respondents are directed to maintain status quo as on date. However, it is made clear if the applicants/applicants' counsel is not available on the next date

of further hearing on interim relief, the aforesaid interim order is liable to be vacated.

7. List it for further hearing on interim relief on 9.10.2013."

The aforesaid order shall apply in this case also. Accordingly, issue notice to the respondents returnable on 07.01.2014.

Order dasti.

(Shekhar Agarwal) Member (A)

(G. George Paracken) Member (J)"

2. Thereafter the hearing in the Original Application was deferred from time to time. In the meantime, the Tribunal has been flooded with the Original Applications on the issue of fate of reservation in promotion. To resolve the controversy once and for all, we passed Order dated 13.10.2015 directing the Registry to list all the Original Applications involving the issue of implementation of the law declared by Hon'ble Supreme Court on the issue of reservation in promotion. The Order passed by us on said date reads thus:-

"The issue involved in the present OA is regarding implementation of the law declared by the Hon'ble Supreme Court in M. Nagaraj & others v. Union of India & others (Writ Petition (Civil) No.61/2002) decided on 19.10.2006 and U.P. Power Corporation Limited v. Rajesh Kumar & others (Civil Appeal No.2608/2011 with connected Appeals) decided 27.4.2012.

Registry is directed to list all the OAs involving such issues on 31.10.2015."

3. When on 24.11.2015 all the Original Applications were listed for hearing, Mr. Gaya Prasad, Advocate for private respondents created an unpleasant situation by submitting that the Principal Bench of the Tribunal should not hear the matters. When the Bench proposed to recuse from hearing the matters, he specifically stated that his intention was only to procure adjournment and not to make the Bench to recuse from hearing the

cases. In view of his conduct in the Court, he was required to give his request in writing. He submitted the following note:-

> "Item No.31
>
> Kindly adjourned the matter till the final disposal of pending SLP before Hon'ble Supreme Court.
>
> Sd/-
> (Gaya Prasad)
> Adv.
> 24/11/15"

4. With his such written request, learned counsels present in the Court for different parties espoused that once it is not the request of Mr. Gaya Prasad, Advocate even, the Tribunal should not recuse from hearing the matters. In the wake, we passed the following Order:

> "When OA 1848/2015 listed as item No.14 of the cause list was taken up for hearing, Mr. Gaya Prasad, learned counsel for private respondent Nos. 7 to 10 submitted that he had already filed his reply to the OA and the same should be taken up along with batch matters listed at Sl. No.31.
>
> He made similar request in OA 3264/2015 listed at Sl.No.16 of the cause list wherein Mr. Gaya Prasad represented respondent No.5.
>
> When OA 2466/2015 listed as item No.31 was taken up for hearing, Mr. Gaya Prasad, who is counsel for certain private respondents, i.e., in OA No.4158/2013, 2945/2014, 3193/2014 and 3476/2013, submitted that the matter should not be taken up for disposal as he has already made a representation / complaint to Hon'ble Chief Justice of India against the Tribunal on 19.11.2015 (received on 20.11.2015), alleging therein that the Central Administrative Tribunal, Principal Bench, new Delhi is disregarding the extension of benefits to SC/ST employees in matter of promotions and several other issues afflicting the Tribunal and requested for adjournment.
>
> We could go through the copy of the complaint produced by him. The salient allegations made by Mr. Gaya Prasad, Advocate in the complaint are:

i) The Tribunal blocked the career prospects of several SC/ST employees and such an action has damaged the career of SC/ST employees, who have been impleaded as private respondents,

ii) The matters being regularly listed are adjourned on one excuse or the other and are not heard properly and the plea for vacating the stay citing latest judgments of Hon'ble Supreme Court has been of no avail.

iii) Such action of the Tribunal apparently in collusion with the homegrown Advocates without any cogent reason has damaged the career of SC/ST employees.

iv) He being an Advocate of the private respondents had to make a vehement appeal for transfer of the Original Applications to a different Bench where he could get justice for these marginalized employees.

When the emphasis in the complaint is that the Tribunal could adjourn the matters without hearing, today Mr. Gaya Prasad, Advocate himself requested for adjournment of present OAs till disposal of the pending SLPs before the Hon'ble Supreme Court. In view of his peculiar attitude, Mr. Gaya Prasad was asked to make such request in writing and the written request made by him reads thus:-

"Item No.31

Kindly adjourned the matter till the final disposal of pending SLP before Hon'ble Supreme Court.

Sd/-
(Gaya Prasad)
Adv.
24/11/15"

We fail to understand that when it is the prayer made by Mr. Gaya Prasad, Advocate himself that the hearing of the aforementioned OAs should be deferred till disposal of the pending SLPs before the Hon'ble Supreme Court, how could he espouse that the Tribunal could adjourn the matters on one pretext or the other without hearing him. When it is his allegation that his request for transfer of OAs to a different Bench is not entertained, he could not bring to our notice any of such instance where he requested the Bench to transfer the matters to a different Bench. From the date of complaint being 19.11.2015 and being received in the Registry of Hon'ble Supreme Court on 20.11.2015, we are fully convinced that the complaint is made with ulterior motive to ensure that the OAs are not taken up for disposal. In any case, once such allegations are made, we proposed to recuse from taking up the OAs for disposal.

Nevertheless, Mr. Ajesh Luthra, learned counsel for applicants in some of the matters submitted that such tactics and attitude of the

Advocates or parties should not be encouraged, as by making the captioned complaint, Mr. Gaya Prasad has tried to scandalize the institution and his conduct is grossly contemptuous. Mr. S M Arif, learned counsel for respondents in some of the matters adopted the arguments advanced by Mr. Luthra and submitted that this Bench should not recuse from hearing these matters as if all the Benches would recuse from hearing the matters being pressurized by the motivated tactics of the counsels or the parties, the judicial system would completely wreck. Such is also the submission made by all the other counsels appearing in their respective matters in the batch.

Finally, Mr. Luthra, learned counsel submitted that once it is not even the request made by Mr. Gaya Prasad that this Bench should recuse from hearing the matters and his request is only for deferment of the hearing, the Bench should not recuse from hearing the matters, as the recusal should be only in such cases where the Bench has semblance that it would not be able to adjudicate the matter impartially and when such is not the semblance of the Bench, there can be no ground for passing the order of recusal.

We have already noted the written request made by Mr. Gaya Prasad, learned counsel for private respondents in some of the matters.

In the circumstances, the hearing in these matters should be deferred.

After we dictated the aforementioned order, learned counsels for the parties, except Mr. Gaya Prasad, Advocate, again submitted that with the adjournment in these OAs, Mr. Gaya Prasad, Advocate has achieved the object, which he wanted to achieve by scandalizing the judicial proceedings by making unsubstantiated, frivolous and contemptuous representation/ complaint and they are not aware whether any SLP on the issue is listed before the Apex Court or not, as in his written request Mr. Gaya Prasad, Advocate has not mentioned the particulars of any SLP.

Mr. Ajesh Luthra, learned counsel also submitted that Mr. Gaya Prasad, Advocate should produce the documents to substantiate his plea regarding listing of the SLPs before the Hon'ble Supreme Court today or on the next date of hearing as also the order of any superior Court staying the proceedings before the Tribunal. He also submitted that frivolous complaint made by Mr. Gaya Prasad, Advocate cannot stand against the faith of all other Advocates /litigants, present in the Court in all the matters in this Bench and Hon'ble Tribunal.

Mr. Hanu Bhasker, learned senior standing counsel, who is appearing in item No.18, specifically endorsed the plea of all the counsels and in his capacity as senior standing counsel submitted that the Union of India would have no difficulty in addressing the arguments in the matters and would emphasize that the matters are

heard by this Bench. He also emphasized that since the allegations have been made against certain members of the Bar without naming them, this Tribunal should take a view in this regard also.

All the Advocates, concerning these matters, present in the Court, emphasized that they all have full faith in all the Benches of the Tribunal and have serious objection to the stand taken by Mr. Gaya Prasad, Advocate.

List all these matters on 07.12.2015 when Mr. Gaya Prasad, Advocate should give the particulars of SLPs pending before the Hon'ble Supreme Court.

Interims order to continue till the next date of hearing."

5. On 07.12.2015 when the matters came up again for hearing, Mr. Gaya Prasad, Advocate produced the list and reiterated his plea that the matters should be taken up for hearing after 16.02.2016. The said list and copy of Order enclosed with it, read thus:

"List

SLP(C) NO. 5160/2007 IVA A/N-H	PAPAMMA & ORS. VS. SEC.DEPT.OF REVENUE & ORS. (WITH APPLN. (S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND PERMISSION TO FILE REJOINDER AFFIDAVIT AND RAISING ADDITIONAL GROUNDS AND VACATING INTERIM ORDER AND INTERIM RELIEF AND OFFICE REPORT)	MR. GAUTAM AWASTHI MR. AJAY PAL DR. SUSHIL BALWADA MS. ANITHA SHENOY
SLP(C) NO. 31547/2008 IVA A/N-O	AIRCRAFT EMPLOYEES HSG.COOP SOC.LTD. VS. SECRETARY DEPT OF REVENUE & ORS. (WITH OFFICE REPORT)	MR. PRADEEP KUMAR BAKSHI MR. K. K. MANI

SLP(C) NO. 30621/2011 IVB A/N-I	JARNAIL SINGH & ORS. VS. LACHHMI NARAIN GUPTA & ORS. (WITH APPLN. (S) FOR IMPLEADMENT AND INTERIM RELIEF AND OFFICE REPORT)	MR. CHANDRA BHUSHAN PRASAD MS. N. ANNAPOORANI MRS. ANIL KATIYAR MS. RUCHI KOHLI MR. SATYA MITRA GARG
WITH SLP(C) NO. 31735/2011 IVB A/N-H	JARNAIL SINGH AND ORS VS. UNION OF INDIA & ANR. (WITH APPLN. (S) FOR PERMISSION TO BRING ADDITIONAL FACTS AND DOCUMENTS ON RECORD AND INTERIM RELIEF AND OFFICE REPORT	MR. CHANDRA BHUSHAN PRASAD MRS. ANIL KATIYAR
SLP(C) NO. 35000/2011 IVB A/N-H	INCOME TAX SC/ST/OBC EMP.WELF.ASSN.MUMBI VS. UNION OF INDIA & ORS. (WITH OFFICE REPORT)	MR. ASHOK K. MAHAJAN MS. N. ANNAPOORANI MS. RUCHI KOHLI MRS. ANIL KATIYAR
SLP(C) NO. 2839/2012 IX A/N-H	RAJEEV KESARWANI & ORS. VS. ALL INDIA INCOME TAX SC/ST EMPLOYEES WEL (WITH APPLN.(S) FOR PERMISSION TO FILE SYNOPSIS AND LIST OF DATES AND PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS AND INTERIM RELIEF AND OFFICE REPORT)	MR. K. N. RAI MR. CHANDRA BHUSHAN PRASAD

SLP(C) NO. 4831/2012 XV A/N-O	ASHOK KUMAR SHARMA AND ORS VS. UNION OF INDIA AND ORS (WITH OFFICE REPORT)	MR. MOHAN PANDEY MR. B. KRISHNA PRASAD
SLP(C) NO. 5859/2012 IX A/N-H	CHOWALLOOR VINCENT JOSEPH & ANR VS. UNION OF INDIA & ORS. (WITH INTERIM RELIEF AND OFFICE REPORT)	MS. RUCHI KOHLI MR. CHANDRA BHUSHAN PRASAD MRS. ANIL KATIYAR
SLP(C) NO. 5860/2012 IX A/N-H	CHOWALLOR VINCENT JOSEPH & ANR VS. UNION OF INDIA & ORS. (WITH INTERIM RELIEF AND OFFICE REPORT)	MS. RUCHI KOHLI MR. CHANDRA BHUSHAN PRASAD MR. K. N. RAI MRS. ANIL KATIYAR
SLP(C) NO. 30841/2012 IX A/N-O	UNION OF INDIA & ORS. VS. ALL INDIA I.T SC/ST.EMP.WELF.FED.& ANR (WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND C/DELAY IN REFILING SLP AND EXEMPTION FROM FILING C/C OF THE IMPUGNED ORDER AND OFFICE REPORT)	MRS. ANIL KATIYAR MR. CHANDRA BHUSHAN PRASAD
SLP(C) NO. 6915/2014 IVB A/N-O	U.O.I & ORS VS. LACHHMI NARAIN GUPTA & ORS (WITH OFFICE REPORT	MRS. ANIL KATIYAR MS. N. ANNAPOORANI
SLP(C) NO. 8327/2014 IVB A/N-O	UNION OF INDIA & ORS. VS. RAKESH KUMAR JINDAL & ORS. (WITH OFFICE REPORT)	MR. B. V. BALARAM DAS
SLP(C) NO. 16710-16711/2014	UOI & ORS VS.	MRS. ANIL KATIYAR

IVB A/N	BALRAJ SINGH & ORS (WITH APPLN. (S) FOR C/DELAY IN FILING	MR. CHANDRA BHUSHAN PRASAD
SLP(C) NO. 23344/2014 IVB A/N	UNION OF INDIA & ANR. VS. A.K. PASSI & ORS. (WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND C/DELAY IN REFILING SLP AND OFFICE REPORT)	MRS. ANIL KATIYAR
SLP(C) NO. 23339-23340/2014 IVB A/N	UNION OF INDIA & ORS VS. DEV RAJ PAUL (WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND OFFICE REPORT)	MRS. ANIL KATIYAR
Xx	Xx	xx

Order

SUPREME COURT OF INDIA

Case Status Status: PENDING

Status of: Special Leave Petition (Civil) 30621 of 20121
JARNAIL SINGH & ORS. VS. LACHHMI NARAIN GUPTA & ORS.

Pet.Adv.: MR. CHANDRA BHUSHAN PRASAD
Res.Adv."MS. N. ANNAPOORANI

Subject Category: SERVICE MATTERS – PROMOTION

Listed 7 times earlier Likely to be Listed on : 16/02/2016

Last updated on Dec 5 2015"

When the Bench asked him to point out the particulars of the cases in which the Hon'ble Supreme Court is examining the issue of reservation in promotion, he maintained that whatever the documents he could produce he had produced and the Tribunal may pass its order. However, with the obstructive and scandalizing attitude as well as the conduct of Mr. Gaya

Prasad, Advocate, we could not proceed to adjudicate the issue of ramification of various judgments of Hon'ble Supreme Court on reservation in promotion and had to pass the following Order:

"OA 2466/2015

Mr. Ajesh Luthra, learned counsel for applicant sought to produce the law to establish that even when the ramification of the outcome of the OA if in favour of the applicant and the review DPC may revert promotees, they need not be party in the present proceedings, as only the legal principle is required to be adjudicated. Mr. Gaya Prasad, Advocate produced certain papers and asked the court to defer the hearing of the OA to a date beyond 16.02.2016. His aggressive stand is opposed by Mr. Luthra with the plea that he is not party to the OA.

At his request, hearing is deferred to 14.12.2015.

OA 1453/2015

Mr. Gaya Prasad, Advocate appeared and referred to the papers produced by him in OA No.2466/2015 and submitted that this Court should not take up this matter for hearing till 16.02.2016. Despite our repeating asking he could not produce his Power on behalf of either of the parties to the proceedings and submitted that he is appearing on behalf of the private respondents and Court has appointed him to appear in the matter. We do not find anything on record to show that court ever appointed him to represent either of the parties. on 07.05.2015, this Tribunal allowed him to make submissions in support of the impugned seniority list. In terms of the CAT (Rules of Practice) Rules, 1993 i.e. Rule 61 no legal practitioner shall be entitled to appear and act in any proceedings before the Tribunal unless he files into Tribunal a vakalatnama in the prescribed form duly executed by or on behalf of the party for whom he appears. Rule 61 reads thus :-

> "61. Subject as hereinafter provided no legal practitioner shall be entitled to appear and act in any proceedings before the Tribunal unless he files into Tribunal a vakalatnama in the prescribed form duly executed by or on behalf of the party for whom he appears."

At this stage, Shri Gaya Prasad, submitted that he does not want to file any vakalatnama on behalf of any of the respondents and now he does not wish to appear in the matter. When asked to make his plea regarding pendency of the issue of reservation in promotion before Supreme Court good he could show obstinate attitude and expressed that he had given the document and this Tribunal should pass order on those.

Order reserved.

OA 1545/2015

Though initially Mr. Gaya Prasad, advocate, entered appearance in the matter but after hearing the order passed in OA No.1543/2015, he submitted that he is not the counsel in the matter and is not representing either of the parties therein.

As prayed by Ms. Meenu Mainee, learned counsel for applicant, two weeks time is granted for filing rejoinder to the reply filed on behalf of respondents. Though the reply on record is shown to have been filed on behalf of respondents but the same is only by the official respondents i.e. by respondent Nos.1to3.

There is no appearance on behalf of respondent Nos.4&5.

Issue fresh notice to the said respondents returnable on 18.01.2016. It would be open to private respondents to file reply if any before the next date of hearing.

OA 1848/2015

As prayed by Mr. V.S.R. Krishna, learned counsel for respondent Nos.1 to 3 , further four weeks' time is granted to file reply. Counter reply filed on behalf of respondents Nos.7&10 is on record. There is no appearance on behalf of respondent Nos.5, 6 & 8. Mr. Gaya Prasad, advocate, submitted that he is representing respondent Nos.7 & 10 and has filed Vakalatnama on behalf of the said respondents. It is seen that other besides the private respondents, he has filed vakalatnama in respect of one Mr. Lokesh Kumar Meena also. He could not point out that in what capacity Mr. Lokesh Kumar Meena has authorized him to appear in the present OA. Nevertheless, he submitted that since Hon'ble Supreme Court is seized on the issue of reservation in promotion, the present OA should be taken up for hearing after 16.02.2016. The request made by him for deferment of hearing beyond 16.02.2016 is opposed by Mr. Yogesh Sharma, learned counsel for applicant. Nevertheless, since the pleadings in the OA are not complete, let the same be listed on 01.03.2016.

I.R. to continue till then.

OA 2116/2015

Counter reply filed on behalf of respondent Nos.1to3 is on record. Ms. Meenu Maine, learned counsel for applicant sought an opportunity to file rejoinder to the reply filed on behalf of respondent Nos.1to3 within two weeks.

The affidavit filed on behalf of respondent No.4 by Mr. Amit Anand Tiwari is also on record. It would be open to the applicant to file rejoinder/response to said affidavit also.

Mr. Gaya Prasad, advocate submitted that he has already withdrawn his Power on behalf of respondent No.4 in this matter.

List for completion of pleadings on 02.03.2016. Registry is directed to display the name of counsels for the parties in future cause lists properly.

Interim order to continue till the MA No.3192/2015 is decided

MA 3192/2015 in OA 2116/2015 (for vacation of stay order)

Arguments heard. Order reserved.

OA 2436/2015

As prayed by Mr. Kripa Shanker Prasad, learned counsel for respondents, four weeks' time is granted for filing reply.

List on 04.03.2016.

OA 2593/2015

As prayed by Mr. Kripa Shanker Prasad, learned counsel for respondents, four weeks' time is granted for filing reply.

List on 04.03.2016.

OA 2859/2015

Reply stated to have been filed on behalf of respondent Nos. 1 to 4 is not on record. Learned counsel for said respondents is directed to ensure that the same is placed on record before the next date of hearing. Mrs. Meenu Mainee, learned counsel for applicant also denied to have received a copy of the reply. Let a copy of the same be made available to her also within two days. She will have one week's time to file rejoinder thereafter.

Nemo for respondent No.5.

List on 08.01.2016. In the meantime, it would be open to respondent No.5 also to file his reply, if any.

OA 2972/2015

Nemo for respondents.

Issue fresh notice to the respondents, returnable on 07.03.2016.

OA 3264/2015

Counter reply filed on behalf of respondent No.5 is on record. As prayed by learned counsel for respondent Nos. 1 to 3, further four

weeks' time is granted for filing reply. Rejoinder, if any, may be filed within two weeks thereafter.

Nemo for respondent No.4. Issue fresh notice to said respondent, returnable on 07.03.2016.

Interim order to continue till next date of hearing.

OA 3279/2015

Nemo for respondents.

Issue fresh notice to the respondents, returnable on 07.03.2016.

OA 3612/2015

Nemo for respondents.

Issue fresh notice to the respondents, returnable on 07.03.2016.

OA 3694/2015

Nemo for respondents.

Issue fresh notice to the respondents, returnable on 07.03.2016.

OA 3713/2015

As prayed by learned counsel for the parties jointly, hearing is deferred to 11.12.2015.

Interim order to continue till next date of hearing.

OA 3895/2015

As prayed by learned counsel for respondent Nos. 1 to 3, four weeks' time is granted for filing reply.

Nemo for respondent Nos. 4 to 9. Issue fresh notice to said respondents, returnable on 07.03.2016.

Interim order to continue till next date of hearing.

OA 3896/2015

As prayed by learned counsel for respondent Nos. 1 to 3, four weeks' time is granted for filing reply.

Nemo for respondent Nos. 4 to 7. Issue fresh notice to said respondents, returnable on 07.03.2016.

OA 3897/2015

As prayed by learned counsel for respondent Nos. 1 to 3, four weeks' time is granted for filing reply.

Nemo for respondent Nos. 4 to 6. Issue fresh notice to said respondents, returnable on 07.03.2016.

OA 3999/2015

As prayed by learned counsel for respondent Nos. 1 to 3, four weeks' time is granted for filing reply.

Nemo for respondent Nos. 4 to 10. Issue fresh notice to said respondents, returnable on 07.03.2016.

Interim order to continue till next date of hearing.

OA 4185/2015

Nemo for respondent Nos. 1 to 3. Issue fresh notice to said respondents, returnable on 07.03.2016.

Counter reply stated to have been filed on behalf of respondent No.4 is not on record. Learned counsel for said respondent is directed to ensure that the same is placed on record before next date of hearing. Rejoinder, if any, may be filed within two weeks thereafter.

Interim order to continue till then.

OA 681/2014

Mrs. Meenu Mainee, learned counsel for applicant submitted that the pleadings in this OA are complete and requested for disposal of the same. Learned proxy counsel for official respondents submitted that the arguing counsel is busy elsewhere and prayed for short adjournment. Allowed.

List on 14.12.2015.

OA 2042/2014

As prayed by learned counsel for respondents, one last opportunity is granted to file reply within four weeks. Rejoinder, if any, may be filed within two weeks thereafter.

List on 08.03.2016.

Interim order to continue till next date of hearing.

OA 2044/2014

As prayed by learned counsel for respondents, one last opportunity is granted to file reply within four weeks. Rejoinder, if any, may be filed within two weeks thereafter.

List on 08.03.2016.

Interim order to continue till next date of hearing.

OA 2128/2014

Counter replies filed on behalf of respondent Nos. 1 to 3 and 4 to 7 are on record. There is no appearance on behalf of respondent No.8. Learned counsel for respondent Nos. 4 to 7 submitted that in view of the pendency of certain SLPs before the Hon'ble Supreme Court on the issue "whether there should be reservation in promotion till the exercise as directed by the Hon'ble Supreme Court is completed", the matter should be taken up for disposal after 16.02.2016.

In view of the opposition of learned counsel for applicant, the plea would be examined.

Orders reserved.

OA 2290/2014

Nemo for the respondents. In the interest of justice, hearing is deferred to 07.01.2016.

Interim order to continue till next date of hearing.

OA 2945/2014, 3193/2014, 3476/2013 & 4158/2013

Mrs. Meenu Mainee, learned counsel for applicants insisted for final hearing of these matters. However, Mr. Gaya Prasad, learned counsel for private respondent submitted that since the issue having bearing on the controversy involved in these OAs is pending consideration before Hon'ble Supreme Court and the next date of hearing in the SLPs is 16.02.2016, these OAs may be adjourned to a date beyond said date.

In view of the opposition of learned counsel for applicants, the plea would be examined.

Orders reserved."

6. The question "how the reservation should be applied in promotion" is a very vital issue and has far reaching ramification. There cannot be any two opinions that if the issue is being examined by Hon'ble Apex Court all

the subordinate Courts/Tribunals should await the Orders of their Lordships while examining the similar issue. To seek adjournment to a date beyond 16.02.2016, what Mr. Gaya Prasad, Advocate was required to do was to give the particulars of the case pending before the Apex Court wherein the issue is pending and there was no need to hatch a designed plan to scandalize the court proceedings to draw/manufacture the complaint dated 19.11.2015 submitted in the Registry of Hon'ble Supreme Court, wherein the allegations are made against the Principal Bench, C.A.T., New Delhi for being produced in the proceedings before Tribunal just to seek adjournment. It is not so that the allegations have been made against any single Member but the allegations are made against the C.A.T., Principal Bench itself and then against four of its Members. The relevant excerpt of the written representation dated 19.11.2015 produced by Mr. Gaya Prasad, Advocate reads thus:-

> "Sub:- Disobeying the orders of the Hon'ble Supreme Court by Members of the Central Administrative Tribunal, (PB), New Delhi regarding the extension of benefits to SC/ST employees in matter of promotions and several other issues afflicting the CAT (PB).
>
> Respected Sir,
>
> I am constrained to approach your goodself for taking valuable few minutes of your busy schedule.
>
> Several aggrieved private respondents belonging to SC/ST community had impleaded in OA's - NO.3476/2013, 4158/2013, 2044/2014, 2128/2014, 2945/2014, 3193/2014, 1545/2015, 3896/2015, 1453/2015, 3264/2015 and 1848/2015, pending before the Hon'ble CAT (PB) filed by the employees of Railways belonging to unreserved category represented by the home grown Advocates for a stay on the process initiated to promote the SC/ST employees. **The CAT (PB) in the aforesaid OAs stayed the process thereby blocking the career prospects of several SC/ST employees. This unwarranted action of the CAT (PB) has damaged the career of SC/ST employees who have impleaded as private respondents**. The matter is being regularly listed but adjourned with one excuse or the other / not heard properly, although plea for vacating the stay citing latest Hon'ble Supreme Court judgments have been of no avail. By this malafide action of the CAT (PB) apparently in collusion with the home grown Advocates without any cogent reason has damaged the career of SC/ST employees that I being the Advocate of the said private respondents had to make a vehement appeal for transfer of these OAs to the different Bench where I could get justice for these marginalized employees.
>
> As stated above in the earlier paragraph, it is obvious that there is an urgent need to look into the problems which is ailing atmosphere against SC/ST

> as prevalent in the CAT (PB). **At many times an ungullible litigant is hit the hardest when he becomes a victim of this type of justice system, whence he / she approaches the CAT (PB) for redressal of his grievances**. As an Advocate having been authorized to bring this illegality to your kind knowledge wherein all the rules and regulations are being openly flouted and only home grown Advocates whose number is miniscule are properly entertained during the court proceedings, also handed out the favorable orders while as other lawyers frequently frowned upon in some of the benches. The analysis of the available data / orders of several years will obviously prove the above point."
>
> (emphasis supplied)

7. From the text of the written representation/complaint, it is explicit that Mr. Gaya Prasad, Advocate has alleged class bias against the Tribunal and its Members. He has alleged bias in favour of homegrown Advocates (the term not understood) and against SC/ST. As can be seen from the aforementioned Orders when the intention of Mr. Gaya Prasad, Advocate was just to seek adjournment, he *prima facie* obstructed the administration of justice and scandalized the court proceedings. Even when the hearing was deferred for a day to await the improvement in behavior, conduct and attitude of Mr. Gaya Prasad, Advocate before the Court, it was of no avail. The measures to deal with such situation and to prevent undermining of dignity of judicial system have been provided in Section 14 of Contempt of Courts Act read with Section 17 of the A.T. Act, 1985. The Section 14 of the Contempt of Courts Act and Section 17 of A.T. Act are reproduced hereinbelow:-

> "Section 14 of Contempt of Courts Act:
>
> 14. Procedure where contempt is in the face of the Supreme Court or a High Court.—
>
> (1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall— —(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—"

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify: Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court: Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid."

Section 17 of A.T. Act:

17. Power to punish for contempt –

A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971) shall have effect subject to the modifications that –

(a) the reference therein to a High Court shall be constructed as including a reference to such Tribunal;

(b) the reference to the Advocate-General in section 15 of the said Act shall be construed, -

(i) in relation to the Central Administrative Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor-General; and

> (ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established."

8. As can be seen from Section 2 (c) of Contempt of Courts Act, the "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which; (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner". In the present cases, Mr. Gaya Prasad, Advocate *prima facie* tried to scandalize and lower the authority of the Court on two successive occasions / dates and interfered with the due course of judicial proceedings.

9. In **S.K. Sundaram** (suo motu Contempt Petition (Crl.) No.5/2000 decided on 16.12.2000, Hon'ble Supreme Court held that an advocate to be guilty of contempt for sending a telegram to the Chief Justice of India containing highly defamatory and derogatory allegations against the Chief Justice imputing that he had made a false declaration of his age.

10. The illustrative cases relating to scandalize the Court can be conveniently classified under the four categories, viz.

(1) Allegations of incompetency;

(2) Attributing improper motive;

(3) Alleging partiality;

(4) Scurrilous abuse.

11. In **E.M. Sankaran Namboodripad** v. **T. Narayanan Nambiar**, (1970) 2 SCCC 325, the Apex Court ruled that the law of contempt stems from the right of the courts to punish by imprisonment or fines persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice and the right is exercised in India by all courts when contempt is committed in *facie curaie* and by the superior courts on their own behalf or on behalf of courts subordinate to them even if committed outside the courts. **In the said case, it was also ruled that to charge the judiciary as an instrument of oppression, the Judge as guided and dominated by class hatred, class interests and class prejudices, instinctively favoring the rich against the poor is to draw a very distorted and poor picture of the judiciary and is an attack upon judges which is calculated to raise in the minds of the people a general dissatisfaction with and distrust of all judicial decisions. It weakens the authority of law and law courts. Their Lordships further ruled that the law punishes not only acts which do in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say, axe likely to produce a particular result**. Paragraphs 32 to 34 of the judgment read thus:-

> "32. The question thus in this case, is whether the appellant has said anything which brings him out of the protection of Art. 19 (I) (a) and exposes him to a charge of contempt of court. It is obvious that the appellant has misguided himself about the true teachings of Marx, Engels and Lenin. He has misunderstood the attack by them On state and the laws as involving an attack on the judiciary. No doubt the courts, while upholding the laws and enforcing them, do give support to the state but they do not do so out of any impure motives. They do not range themselves on the side of the exploiting classes and indeed resist them when the law does not warrant an encroachment. **To charge the judiciary as an instrument of oppression, the**

judge as guided and dominated by class hatred, class interests and class prejudices, instinctively favoring the rich against the poor is to draw a very distorted and poor picture of the judiciary. It is clear that it is an attack upon judges which is calculated to raise in the minds of the people a general dissatisfaction with, and distrust of all judicial decisions. It weakens the authority of law and law courts.

33. Mr. V. K. Krishna Menon tried to support the action of the appellant by saying that judges are products of their environment and reflect the influences upon them of the society in which they move. He contended that these subtle influences enter into decision making and drew our attention to the writings of Prof. Laski, Justice Cordozo, Holmes and others where the subtle influences, of one's upbringing are described. This is only to say that judges are as human as others. But judges do not consciously take a view against the conscience or their oaths. What the appellant, wishes to say is that they do. In this he has been guilty, of a great calumny. We do not find it necessary to refer to these writings because in our judgment they do not afford any justification for the contempt which has patently been committed. We agree with Justice Raman Nair that some of them have the exaggerations of the confessional. Others come from persons like the appellant, who have no faith in institutions hallowed by age and respected by the people.

34. Mr. V. K. Krishna Menon exhorted us to give consideration to the purpose for which the statement was made, the position of the appellant as the head of a State, his sacrifices, his background and his integrity. On the other hand, we cannot ignore the occasion (a press conference), the belief of the people in his word as a Chief Minister and the ready ear which many in party and outside would to him. The mischief that his words would cause need not be assessed to find him guilty. **The law punishes not only acts which do in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say, axe likely to produce a particular result. Judged from the angle of courts and administration of justice, there is not a semblance of doubt in our minds that the appellant was guilty on contempt of court. Whether he misunderstood the teachings to Marx and Engels or deliberately distorted them is not to much purpose. The likely effect of his words must be seen and they have clearly the effect of lowering the prestige of judges and courts in the eyes of the people**. That he did not intend any such result may be a matter for consideration in the sentence to be imposed on him but cannot serve as a justification. We uphold the conviction."

(emphasis supplied)

In the present case, Mr. Gaya Prasad, Advocate has certainly indulged in an act, which is calculated one to raise in the minds of the people a general dissatisfaction with and distrust about the Principal Bench of the Tribunal.

12. In **Rustom Cowasjee Cooper** v. **Union of India** (1970) 2 SCC 298, it could be ruled by the Apex Court that while fair and temperate criticism of this Court or any other Court even if strong, may not be actionable, attributing improper motives, or tending to bring Judges or Courts into hatred and contempt or obstructing directly or indirectly with the functioning of Courts is serious contempt of which notice must and would be taken. Paragraph 6 of the judgment reads thus:-

> "6. There is no doubt that the Court like any other institution does not enjoy immunity from fair criticism. This Court does not claim to be always right although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the Judges. They do not think themselves in possession of all truth or hold that wherever others differ from them, it is so far error. No one is more conscious of his limitations and fallibility than a Judge but because of his training and the assistance he gets from learned counsel he is apt to avoid mistakes more than others. Further the supremacy of a legislature under a written Constitution is only within what is in its power but what is within its power and what is not, when any specific act is challenged, it is for the Courts to say. If that were realized much of the misunderstanding would be avoided and the organs of Government would function truly in their own spheres. We are constrained to say also that while fair and temperate criticism of this Court or any other Court even if strong, may not be actionable, **attributing improper motives, or tending to bring Judges or Courts into hatred and contempt or obstructing directly or indirectly with the functioning of Courts is serious contempt of which notice must and will be taken. Respect is expected not only from those to whom the judgment of the Court is acceptable but also from those to whom it is repugnant. Those who err in their criticism by indulging in vilification of the institution of Courts, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril. We think this will be enough caution to persons embarking on the path of criticism**. With these words we order the papers to be filed. Order accordingly."
>
> (emphasis supplied)

In these cases, having made a general complaint against the Principal Bench of the Tribunal, by naming few Members specifically, just to use the same to seek adjournment in batch matters beyond 16.02.2016, Mr. Gaya Prasad, Advocate certainly committed an act of scandalizing the judiciary and obstructing the administration of justice. By alleging that the Principal Bench is class biased against the members of SC/ST, he tried to diminish confidence in the minds of the people towards the judiciary, which act cannot be ignored lightly.

13. In **Vinay Chandra Mishra**, AIR 1995 SC 2348, the Apex Court ruled that to **resent the questions asked by a Judge, to be disrespectful to him, to question his authority to ask the questions, to shout at him, to threaten him with transfer and impeachment, to use insulting language and abuse him, to dictate the order that he should pass, to create scenes in the Court, to address him by losing temper, are all acts calculated to interfere with and obstruct the course of justice. Such acts tend to overawe the court and to prevent it from performing its duty to administer justice. Such conduct brings the authority of the court and the administration of justice into disrespect and disrepute and undermines and erodes the very foundation of the judiciary by shaking the confidence of the people in the ability of the court to deliver free and fair justice. Their Lordships ruled that if the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very**

cornerstone of our constitutional scheme will give way and with it would disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted disservice with the extra-ordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties without fear or favour. **When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalized, but to uphold the majesty of the law and of the administration of justice**. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded. Paragraphs 13, 18 and 20 of the judgment read thus:-

> "13. Normally, no Judge takes action for in facie curiae contempt against the lawyer unless he is impelled to do so. It is not the heat generated in the arguments but the language used, the tone and the manner in which it is expressed and the intention behind using it which determine whether it was calculated to insult, show disrespect, to overbear and overawe the court and to threaten and obstruct the course of justice. After going through the report of the learned Judge and the affidavits and the additional affidavits filed by the contemner and after hearing the learned Counsel appearing for the contemner, we have come to the conclusion that there is every reason to believe that notwithstanding his denials, and disclaimers, the contemner had undoubtedly tried to browbeat, threaten, insult and show disrespect personally to the learned Judge. This is evident from the manner in which even in the affidavits filed in this Court, the contemner has tried to justify his conduct. He has started narration of his version of the incident by taking exception the learned Judge's taking charge of the court proceedings. We are unable to understand what exactly he means thereby. Every member of the Bench is on par with the other member or members of the Bench and has a right to ask whatever

questions he wants to, to appreciate the merits or demerits of the case. It is obvious that the contemner was incensed by the fact that the learned Judge was asking the questions to him. This is clear from his contention that the learned Judge being a junior member of the Bench, was not supposed to ask him any question and if any questions were to be asked, he had to ask them through the senior member of the Bench because that was the convention of the Court. We are not aware of any such convention in any court at least in this country. Assuming that there is such a convention, it is for the learned Judges forming the Bench to observe it inter se. No lawyer or a third party can have any right or say in the matter and can make either an issue of it or refuse to answer the questions on that ground. The lawyer or the litigant concerned has to answer the questions put to him by any member of the Bench. The contemner has sought to rely on the so-called convention and to spell out his right from it not to have been questioned by the learned Judge This contention coupled with his grievance that the learned Judge had taken charge of the proceedings, shows that the contemner was in all probability perturbed by the fact that the learned Judge was asking him questions. The leaned Judge's version, therefore, appear to be correct when he states that the contemner lost his temper when he started asking him questions. The contemner has further admitted that he got "emotionally perturbed" and his "professional and institutional sensitivity got deeply wounded" because the learned Judge, according to him, apparently lost his temper and told him in no unconcealed terms that he would set aside the order in toto disregarding what he had said. The learned Judge's statement that the contemner threatened him with transfer and impeachment proceedings also gets corroboration from the contemner's own statement in the additional affidavit that he did tell the learned Judge that a Judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence. No one expects a lawyer to be subservient to the Court while presenting his case and not to put forward his arguments merely because the Court is against him. In fact, that is the moment when he is expected to put forth his best effort to persuade the Court. However, if, in spite of it, the lawyer finds that the court is against him, he is not expected to be discourteous to the court or to fling hot words or epithets or use disrespectful, derogatory or threatening language or exhibit temper which has the effect of overbearing the court. **Cases are won and lost in the court daily. One or the other side is bound to lose. The remedy of the losing lawyer or the litigant is to prefer an appeal against the decision and not to indulge in a running battle of words with the court. That is the least that is expected of a lawyer. Silence on some occasions is also an argument. The lawyer is not entitled to indulge in unbecoming conduct either by showing his temper or using unbecoming language.**

The incident had undoubtedly created a scene in the court since even according to the contemner, the exchange between the learned Judge and him was "a little heated up" and the contemner asked the

learned Judge **"whether he was creating scene to create conditions for getting himself transferred as also talked earlier". He had also to remind the learned Judge that "a Judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence". He has further stated in his affidavit that "the entire Bar at Allahabad" knew that he was unjustly "roughed" by the Judge and was being punished for taking "a fearless and non-servile stand" and that he was being prosecuted for "asserting" a right of audience and "using the liberty to express his views when a Judge takes a course which in the opinion of the Bar is irregular**". He has also stated that any punishment meted out to the "outspoken" lawyer will completely emasculate the freedom of the profession and make the Bar a subservient tail wagging appendage to the judicial branch which is an anathema to a healthy democratic judicial system. He has further stated in his petition for taking contempt action against the learned Judge that the incident was "witnessed by a large number of advocates".

We have reproduced the contents of the letter written by the learned judge and his reply to the affidavits filed by the contemner The learned Judge's version is that when he put the question to the contemner as to under which provision, the lower court had passed the order in question, the contemner started shouting and said that no question could have been put to him. The contemner also stated that he would get him transferred or see that impeachment motion was brought against him in Parliament. He further said that he had "turned up" many judges and created a good scene in the Court. The contemner further asked him to follow the practice of the Court. The learned Judge has stated that in sum and substance, it was a matter where except "to abuse of his mother and sister", he had insulted him "like anything". The learned Judge has further stated that the contemner wanted to convey to him that admission of every matter was as a matter of course and no arguments were heard at the admission stage. He has reiterated the said version in his reply to the affidavits and in particular, has denied the allegations made against him by the contemner. He has defended his asking the question to the contemner since he was a member of the Bench. The learned judge has stated that the contemner I took exception to his asking the said question as if he had committed some wrong and started shouting. He has further stated that he had asked only the question referred to above and the contemner had created the scene on account of his putting the said question to him, and made it difficult to continue the court's proceedings. Ultimately when it became impossible he hear all the slogans and insulting words and threats, he requested the senior learned member of the Bench to list the case before another Bench and to retire to the chamber. Accordingly, an order was made by the senior member of the Bench and both of them retired to the chamber. The learned Judge has denied that he had conveyed to the contemner that he was going to set aside the entire order against a portion of which the contemner had come in appeal. He has stated that it was a

case where the contemner did not permit the court proceedings to be proceeded and both the members of the Bench had ultimately to retire to the chambers. The learned Judge has stated that the defence of the conduct of the contemner in the counter affidavit "was a manufactured" one. He has then dealt with each paragraph of the contemner's counter affidavit. He has also stated that there was no question of his having directed the stenographer to take down the order for setting aside of the whole order since that function was performed by the senior member of the Bench. He has also stated that the contemner has made absolutely wrong allegations when he states that he had made the following remarks : "I am from the bar and if need be I can take to goondaism". He has also denied that he had said : "I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place, which I never liked". He has stated that the contemner has made false allegations against him.

We have, by referring to the relevant portions of the affidavit and the counter affidavit filed by the contemner, pointed out the various statements made in the said affidavits which clearly point to the veracity of the version given by the learned Judge and the attempted rationalisation of his conduct by the contemner. The said averments also lend force and truthfulness to the content of the learned Judge's letters. We are, taking into consideration all the circumstances on record, of the view that the version of the incident given by the learned Judge has to be accepted as against that of the contemner.

To resent the questions asked by a Judge, to be disrespectful to him, to question his authority to ask the questions, to shout at him, to threaten him with transfer and impeachment, to use insulting language and abuse him, to dictate the order that he should pass, to create scenes in the Court, to address him by losing temper, are all acts calculated to interfere with and obstruct the course of justice. Such act tend to overawe the court and to prevent it form performing its duty to administer justice. Such conduct brings the authority of the court and the administration of justice into disrespect and disrepute and undermines and erodes the very foundation of the judiciary by shaking the confidence of the people in the ability of the court to deliver free and fair justice.

The stance taken by the contemner is that he was performing his duty as an outspoken and fearless member of the Bar. He seems to be labouring under a grave misunderstanding. **Brazenness is not outspokenness and arrogance is not fearlessness. Use of intemperate language is not assertion of right nor is a threat an argument. Humility is not servility and courtesy and politeness are not lack of dignity. Self-restraint and respectful attitude towards the Court, presentation of correct facts and law with a balanced mind and without**

overstatement, suppression, distortion or embellishment are requisites of good advocacy. A lawyer has to be a gentlemen first. His most valuable asset is the respect and goodwill he enjoys among his colleagues and in the Court.

The rule of law is the foundation of the democratic society. The judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted disservice with the extra-ordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

It cannot be disputed and was not disputed before us that the acts indulged into by the contemner in the present case as stated by the learned Judge per se amount to criminal contempt of court. What was disputed, was their occurrence. We have held above that we are satisfied that the contemner did indulge in the said acts.

As held by this Court in the matter of Mr. 'G', a Senior Advocate of the Supreme Court [1955] 1 SCR 490;

> "...the Court, in dealing with cases of professional misconduct is not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character....**He (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action.**

In L.M. Das v. Advocate General, Orissa [1957] SCR 167, this Court observed :-

> "A member of the Bar undoubtedly owes a duty to his client and must place before the Court all that can fairly and reasonably be submitted on behalf of his client. He may even submit that a particular order is not correct and may ask for a review of that order. **At the same time, a member of the Bar is an officer of the Court and owes a duty to the court in which he is appearing. He must uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute. The appellant before us grossly overstepped the limits of propriety when he made imputations of partiality and unfairness against the Munsif in open Court. In suggesting that the Munsif followed no principle in his orders, the appellant was adding insult to injury,** because the Munsif had merely upheld an order of his predecessor on the preliminary point of jurisdiction and Court fees, which order had been upheld by the High Court in revision. **Scandalising the Court in such manner is really polluting the very fount of justice; such conduct as the appellant indulged in was not a matter between an individual member of the Bar and a member of the judicial service; it brought into disrepute the whole administration of justice. From that point of view, the conduct of the appellant was highly reprehensible.**

The contemner has obviously misunderstood his function both as a lawyer representing the interests of his client and as an officer of the court. Indeed, he has not tried to defend the said acts in either of his capacities. On the other hand, he has tried to deny them. Hence, much need not be said on this subject to remind him of his duties in both the capacities. It is, however, necessary to observe that by indulging in the said acts, he has positively abused his position both as a lawyer and as an officer of the Court, and has done distinct disservice to the litigants in general and to the profession of law and the administration of justice in

particular. It pains us to note that the contemner is not only a senior member of the legal profession, but holds the high offices of the Chairman of the Bar Council of India, Member of the Bar Council of U.P., Chairman and Member, Executive Council and Academic Council of the National Law School University of India at Bangalore and President of the High Court Bar Association, Allahabad. Both as a senior member of the profession and as holder of the said high offices, special and additional duties were cast upon him to conduct himself as a model lawyer and officer of the court and to help strengthen the administration of justice by upholding the dignity and the majesty of the court. It was in fact expected of him to be zealous in maintaining the rule of law and in strengthening the people's confidence in the judicial institutions. To our dismay, we find that he has acted exactly contrary to his obligations and has in reality set a bad example to others while at the same time contributing to weakening of the confidence of the people in the courts.

The contemner has no doubt tendered an unconditional apology on 7th October, 1994 by withdrawing from record all his applications, petitions, counter affidavits, prayers and submissions made at the Bar and to the court earlier. We have reproduced that apology verbatim earlier. **In the apology he has pleaded that he has deeply and regretfully realised that the situation, meaning thereby the incident, should never have arisen and the fact that it arose has subjected him to anguish and remorse and a feeling of moral guilty. That feeling has been compounded with the fact that he was a senior advocate and was holding the elective posts of the President of the High Court Bar Association and the Chairman of the Bar Council of India which by their nature show that he was entrusted by this professional fraternity to set up an example of an ideal advocate. He has guiltily realised his failure to approximate to this standard resulting in the present proceedings and he was, therefore, submitting his unconditional apology for the incident in question, we have not accepted this apology, firstly because we find that the apology is not a free and frank admission of the misdemeanor he indulged in the incident in question. Is there a sincere regret for the disrespect he showed to the learned Judge and the Court, and for the harm that he has done to the judiciary**. On the other hand, the apology is couched in a sophisticated and garbed language exhibiting more an attempt to justify his conduct by reference to the circumstances in which he had indulged in it and to exonerate himself from the offence by pleading that the condition in which the "situation" had developed was not an ideal one and were it ideal, the 'situation' should not have arisen. It is a clever and disguised attempt to refurbish his image and get out of a tight situation by not only not exhibiting the least sincere remorse for his conduct but by trying to blame the so-called circumstances which led to it. At the same time, he has attempted to varnish and re-establish himself as a valiant defender of his "alleged duties" as a lawyer. Secondly, from the very inception his attitude has been defiant and

belligerent. In his affidavits and application, not only he has not shown any respect for the learned Judge, but has made counter-allegations against him and has asked for initiation of contempt proceedings against him. **He has even chosen to insinuate that the learned Judge by not taking contempt action on the spot and instead writing the letter to the Acting Chief Justice of the High Court, had adopted a devious way and that he had also come to Delhi to meet "meaningful" people. These allegations may themselves amount to contempt of court. Lastly, to accept any apology for a conduct of this kind and to condone it, would tantamount to a failure on the part of this Court to uphold the majesty of the law, the dignity of the court and to maintain the confidence of the people in the judiciary. The Court will be failing in its duty to protect the administration of justice from attempts to denigrate and lower the authority of the judicial officers entrusted with the sacred task of delivering justice. A failure on the part of this Court to punish the offender on an occasion such as this would thus be a failure to perform one of its essential duties solemnly entrusted to it by the Constitution and the people. For all these reasons, we unhesitatingly reject the said so called apology tendered by the contemner.**

xx xx xx xx

18. What is further, the jurisdiction and powers of this Court under Article 142 which are supplementary in nature and are provided to do complete justice in any matter, are independent of the jurisdiction and powers of this Court under Article 129 which cannot be trammeled in any way by any statutory provision including the provisions of the Advocates Act or the Contempt of Courts Act. As pointed out earlier, the Advocates Act has nothing to do with the contempt jurisdiction of the court including of this Court and the Contempt of Courts Act, 1971 being a statute cannot denude, restrict or limit the powers of this Court to take action for contempt under Article 129. **It is not disputed that suspension of the advocate from practice and his removal from the State roll of advocates are both punishments. There is no restriction or limitation on the nature of punishment that this Court may award while exercising its contempt jurisdiction and the said punishments can be the punishments the Court may impose while exercising the said jurisdiction.**

xx xx xx xx

20. For the reason discussed above, we find the contemner, Shri Vinay Chandra Mishra, guilty of the offence of the criminal contempt of the Court for having interfered with and obstructed the course of justice by trying to threaten, overawe and overbear the court by using insulting, disrespectful and threatening language, and convict him of the said offence. Since the contemner is a senior member of the Bar and also adorns the high offices such as those of the Chairman of the

> Bar Council of India, the President of the U.P. High Court Bar Association, Allahabad and others, his conduct is bound to infect the members of the Bar all over the country. We are, therefore, of the view that an exemplary punishment has to be meted out to him."
>
> (emphasis supplied)

14. In **S. P. Sawhney** v. **Life Insurance Corporation of India**, (1991) 2 SCC 318, the Apex Court ruled that the allegations made by the petitioner in his petition against the Judges, who decided his cases. There was no doubt in mind of their Lordships that the statements cast aspersions on Courts and prima facie amount to their contempt and would justify initiation of contempt proceedings against the petitioner. Relevant excerpt of said judgment reads thus:-

> "11. The respondent-Corporation has made a grievance with regard to certain statements made by the petitioner in his petition and has pointed out that they are sufficiently malicious to invoke contempt proceedings against the petitioner. **A perusal of the relevant allegations shows that the petitioner has in his, vitriolic not spared even the judges at all levels who have decided his cases. He has made unfounded and uncalled for allegations against them.** There is no doubt in our mind that these statements cast aspersions on Courts and prima facie amount to their contempt and will justify initiation of contempt proceedings against the petitioner. Taking into consideration, however, the advanced age of the petitioner, his physical condition and his obsession with his claim which has obviously made him lose balance of his mind, we are of the view that no useful purpose will be served by taking contempt proceedings against him. Hence, we feel that the best course in the circumstances is to ignore his vituperations and not to invoke our contempt-jurisdiction against him."
>
> (emphasis supplied)

15. In **Dulal Chandra Bhar & others** v. **Sukumar Banerjee & others**, AIR 1958 474 (V 45 C 120), Hon'ble High Court of Calcutta ruled that jurisdiction in contempt is a very special jurisdiction and is certainly a jurisdiction which it is necessary for the superior Courts to have and exercise whenever it is found that something has been done which tends to affect the administration of justice or which tends to impede its course or

tends to affect public confidence in the ability of the Courts to enforce their orders. At the same time, it is a jurisdiction of a drastic character and its very usefulness depends on the restraint with which it is used and on the refusal of the Courts to use it except when they find that, in addition to failure to comply with their orders which may be punished under the ordinary laws, obstruction has been caused to their primary function of administering justice as authorities charged with that function. While it was necessary to exercise the jurisdiction in contempt on proper occasions, it was of equal importance that the integrity of the proceedings in contempt ought to be maintained by taking the utmost care that it is not used on occasions or in cases to which it is not appropriate.

In the present case, by making allegation of bias against the the Principal Bench of Tribunal towards SC/ST categories, Mr. Gaya Prasad, Advocate has tried to pollute the minds of the Members of the Tribunal in adjudication of such proceedings where interest of SC/ST categories is involved.

16. The purpose, object and necessity of the law of contempt is welfare of the people, which is supreme law and can be attained only where there is justice administered lawfully, judicially without fear or favour, and those, who are responsible for the administration of such justice, and those who seek for justice as parties, and those who help in the administration of justice by giving out what they know about the contentions between the parties, all these have necessarily to be protected from insults, annoyance or even obstruction. If the authority importance and dignity of those that administer justice between man and man by true and proper interpretation

of the law of the land, if the freedom to seek that justice and the satisfaction of the litigants by that justice and, if the liberty of persons who have seen or heard or known the contentions of the parties to give out their observations, informations and knowledge without fear, if these are considered to be necessary factors for the well-being and existence of the society, it is necessary that a law of contempt must exist. It may appear harsh, summary, arbitrary, penal and evil but still it is necessary affording a protection to all Judges, parties and witnesses and the public. The object of the contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the Court is lowered and the sense of confidence which people have in the administration of justice by it is weakened. The purpose of contempt proceedings is only to preserve and maintain the flow of the stream of justice in its unsullied form and purity. The law of contempt is intended to be a protection to the public. Those interests would be very much affected if by the act or the conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it, is weakened. Action for contempt is not for the purpose of placing Judges in a position of immunity from criticism but is aimed at protection of the freedom of individuals and the orderly and equal administration of laws. In **Brahma Prakash Sharma** v. **State of Uttar Pradesh**, AIR 1954 SC 10, the Apex Court ruled thus:-

> "It admits of no dispute that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and

> for maintaining the authority of law as is administered in the courts. It would be only repeating what has been said so often by various judges that **the object of contempt proceedings is not to afford protection to judges, personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened**."
>
> (emphasis supplied)

17. The word 'Court' has been defined by the Hon'ble Allahabad High Court in **Nihaluddin** v. **Tej Pratap Singh**, 1966 All LJ 460 and it includes the Tribunal or authority, which has been permanently constituted for the administration of justice. Relevant excerpt of the judgment reads thus:-

> "9. Unfortunately the words 'Court' or the court subordinate to the High Court have not been defined in the Contempt of Courts Act or the Civil Procedure Code. Learned Counsel for the respondent has however, urged that the word 'court' as defined in Section 3 of the Evidence Act, should be accepted for the purposes of proceedings under Section 3 of the Contempt of Courts Act. Under Section 3 of the Evidence Act "court includes all Judges and Magistrates and all persons, except arbitrators, legally authorised to take evidence". This argument is wholly fallacious because the word 'court' as defined in the Evidence Act is only for the purposes of that Act, as held by the Supreme Court in the cases to be mentioned instantly. For the purpose of Contempt of Courts Act, broadly speaking: **(a) a Court is that person, Tribunal or authority which has been permanently constituted by the State for the administration of Justice;** (b) the pronouncement of such person. Tribunal or authority must be a decisive judgment binding on the parties; (c) such person, authority or Tribunal must arrive at its decision on the evidence which the parties have a right to adduce; (d) he or it must possess authority to summon parties and their witnesses, to compel production of documents and to take evidence; and (e) he or it must possess power to have his or its judgment, decree or order enforced against the parties."
>
> (emphasis supplied)

18. It is *stare decisis* that it is paramount duty of the Court to uphold the majesty of law and upkeep the faith of the public in judiciary. In the present case, the way Mr. Gaya Prasad, Advocate misbehaved with the Court on

two successive dates, i.e., on 24.11.2015 and 07.12.2015 and espoused the allegations of class bias against the Principal Bench of the Tribunal just to seek an adjournment beyond 16.02.2016, we are of the considered view that if he is not proceeded against under Section 14 of Contempt of Courts Act, there would be failure on our part to discharge aforementioned duty. There is need to emphasize that all actions of a Judge must be judicious in character. Erosion of credibility of the judiciary in the public mind for whatever reason is the greatest threat to the independence of the judiciary. Eternal vigilance by the Judges to guard any such erosion is, therefore, necessary lest we suffer from self inflicted moral wounds. In this case, ignoring the conduct of Mr. Gaya Prasad, Advocate would amount to exercise of a discretion in arbitrary manner at the cost of independence of judiciary, while bringing him to book would be discharge of moral responsibility to uphold the independence of the judiciary. Since Mr. Gaya Prasad, Advocate made a deliberate attempt to scandalize the proceedings of the Court on two consecutive dates with an intention to shake the confidence of the litigants and public in the judicial system as also to damage the reputation of the judiciary, we issue notice to Mr. Gaya Prasad, Advocate under Section 14 of Contempt of Courts Act, 1971 to show cause as to why the action should not be taken against him for committing criminal contempt of the Court. His personal presence is not dispensed with. Nevertheless, his plea for being enlarged on bail would be considered on his appearance.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

19. The plea of the applicants (original private respondents) in M.A.

No.400/2015 is for vacation of the interim Order (ibid). According to him, once the order of promotion of certain SC/ST candidates had been issued, the interim Order should not have been passed. They further submitted that the interim Order relied upon by the Tribunal while passing the Order dated 28.11.2013 in the present case was in different facts, in which the issue of seniority at the time of consideration for promotion was to be examined and while the applicants in the present Original Applications are not even in the zone of consideration. In the M.A. filed by them, the applicants (private respondents) have given their own interpretation of the judgments of Hon'ble Supreme Court in **M. Nagaraj & others** v. **Union of India & others** (Writ Petition (Civil) No.61/2002) decided on 19.10.2006. Various contentions raised by the private respondents (applicants in the M.A.) in M.A 400/2015 with reference to judicial precedence read thus:-

> "1. Backward of SCs/STs
>
> A close reading of the judgment of M. Nagaraj case make it amply clear that none of the petitioner, had challenged the backwardness of SCs/Sts and it had been done, some data might have been produced to that they were now no more backward within the meaning of Clause 16 (4), the learned Counsel of UOI or for that matter the other Respondents had no occasion to put forward the data or majority view in Indra Sawhney's case holding that they were undisputedly backward for purpose of Clause 16(4). It is important to mention here that the attentions of 5 Judge Bench, been drawn towards Para 796-797 of 9 Judges Bench decision in Mandal case, the Hon'ble Judges would not have mandated for retesting the backwardness of SC/ST, before extending the benefit under Clause 16(4).
>
> The judgment of M. Nagaraj case asking for a basis for backwardness does not match with the provisions of the Constitution. As far as SCs/STs are concerned, it is clear that in terms of Article 341 and 342 of the Constitution, "backwardness" relates to Castes and not persons. But in M.Nagaraj case, the Hon'ble Supreme Court has tried to define backwardness to in relates to person/Govt. Servant, whereas in Indra Sawhney Case the Apex Court in Para 779 specifically observed that :-
>
> "Lowlier the occupation, lowlier the social standing of the class in the graded hierarchy. In rural India, occupation and caste nexus is true even today. A few members may have gone to cities or even abroad but when they return they too, barring a few exceptions go into the same fold again. It does not matter if he has earned money. He may not follow the particular occupation but still the label remains. His identity is not changed for the purpose of marriage, death, and all other social functions. It is this social class that is still relevant."

It is clear from the above that no need to judge the backwardness again and again.

In Para 788 at page 720 in Indra Sawhney case (1992 Suppl. 3SCC 217), Justice B.P. Jeevan Reddy observed that:-

"The Scheduled Castes and Scheduled Tribes are without a doubt backward for the purpose of the Clause; no one has suggested that they should satisfy the test of social and educational backwardness."

In Para 797 at page 727, it further observed that :-

"It is not correct to say that the Backward class contemplated by Article 16(4) is limited to the social and educationally backward classes referred to in Article 15(4) and Article 340, it is much wider. The test requirement of social and educational backwardness cannot be apply to Scheduled Casts and Scheduled Tribes, which indubitably falls the expression backward calls of citizens."

The Hon'ble Supreme Court in M. Nagaraj Case has also expressed a view that exclusion of creamy layer in reservation in promotion is the Constitutional requirement. Apparently decision of 9 Judge Bench in Indra Sawhney case was not brought to the notice of Hon'ble Supreme Court during the hearing in M. Nagaraj case.

The bracketed portion in para 792 of the Indra Sawnhney judgment delivered by 9 judges Bench in 1992 clearly states that the discussion about creamy layer has no relevance to SCs and STs. It is not under stood as how it was made relevant to SCs/Sts in 2006 by a judgment in M. Nagaraj case which was delivered by smaller bench of 5 judges only. At least M. Nagaraj case does not enlighten us on this important point. The decision taken in M. Nagaraj case without considering the law of the land as enunciated earlier by the 9 judges Bench judgment in Indra Sawhney case is per in curium and not enforceable.

In the matter of Ashok Kumar Thakur Vs UOI (2008-6 SCC I), it was held that creamy layer is not applicable to SCs/STs. Hon'ble Chief Justice K.G. Balakrishanan discussed in length and in the conclusion in Para 228 observed that :-

"Creamy layer principle is not applicable to the Scheduled Castes and Scheduled Tribes."

Therefore, the observation in Para 122 in M. Nagraj case that creamy layer is a Constitutional requirement, was specifically held to be not applicable to the members of the Scheduled Castes. Consequently there can be no exclusion of a section of SCs in the name of creamy layer, and for all purposes the entire community of Scheduled Castes and Scheduled Tribes is treated as one and backward.

The surveys undertaken by the Govt. NSS and other agencies have brought out clearly that majority of the poor or people below poverty line belong to Scheduled Castes and Scheduled Tribes. The economic reforms implemented by successive Governments have widen the gap between the SCs/STs and others not only in economic terms, but even in subtle forms of discrimination in modern sectors of employment. Therefore, the backwardness of SCs/STs in India has remained not only in relative terms but in an absolute fact of life today as before.

"The survey was reported in Times of India on 12.04.2011 and stated as follows."

50% of India's poor belong to SCs/STs
75% of SCs/STs is under BPL.

SCs/STs are not poor but also score high on Kachcha Housing. Homelessness and Landlessness with agricultural wages as the main source of income.

There is 10.69% literacy gap between the SCs/STs and others castes.
The level of mal-Nutrition amongst SCs/STs is still very high.

The mere fact that SCs/STs are notified by the President of India under Article 341 and 342 of the Constitution implies "backwardness" as observed by the Hon'ble Supreme Court in the Indra Sawhney case. There should be no question of proving their social backwardness again and again. In this context one can reply upon the observation in Indra Sawhney case particularly para 796-797 at page 727 which is given below :-

"The test of social educational backwardness cannot be applied to SCs and STS who indubitably fall within the expression of 'backward class of citizens."

Thus, it is absolutely clear that backwardness among SCs/STs is beyond doubt. It is stuck to these castes and the total SCs/Sts Communities as a whole. To ask these communities to separately prove their backwardness is to add insult to injury.

2. Inadequacy of representation.
Article 16(4) clearly states that in the services of the States, SCs/STs are to be provided opportunity where they are not adequately represented. Constitution commands the State to make reservation for SCs/STs.

Therefore, if the State makes reservation in the service upto 15% in the Central Govt. service, it is not open to the Court to say as to whether SCs/STs are adequately represented or not. It is not out of place to mention here that 15% reservation is provided for SCs/STs in the services since the advent of the Constitution in 1950 through various executive instructions issued by the Government of India and by different States, but still the minimum prescribed percentage of reservation has not achieved. If 15 representation is achieved and this much percentage is continued, it shall never be as more than adequate. There are backlogs and vacancies meant for SCs/STs still remain vacant. The court should, therefore, not be unduly concerned about the adequacy or inadequacy of representation. There is a Constitutional authority like the UPSC with functions to implement Constitutional obligations. Further, the question whether it is open to the court to make observations or finding on its own without any pleadings, arguments on behalf of petitioners of Govt. of India, needs

deliberation and also, whether such observations or findings are binding on those who were not even party to petitions and were not afforded the opportunity to defend their Constitutional Rights.

This has happened in this case. Therefore these observations in M.Nagraj case as per in curium.

It is absolutely clear that the representation of SCs/STs in States and central Govt./UTs has not reached the minimum required level. Keeping in view the inadequacy of the representation in services, direct recruitment through special recruitment and also filling up of posts though reservation of SC and ST in services in the States is undoubtedly inadequate and has also not reached the minimum required level, it is of utmost necessity that the existing dispensation of providing reservation in promotion is continued. Further, as per extant practice, Roster points are followed before any promotion can be effected which ensures that post going to the Share of SC/ST don't exceed the percentage fixed by the Govt. Hon'ble Supreme Court ought not to have any apprehension on this count.

3. Effect of Reservation on Administrative Efficiency.

The Hon'ble Supreme Court in M.Nagraj case has interpreted the following Article 335 and stipulated this as one of the condition before the benefit of reservation in promotion is available to the members of the Scheduled Castes/Scheduled Tribes in the Indian Constitution, could actually be passed on them:

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

*"provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of education, for reservation in the matters of promotion to any class or classes of services or posts in connection with the affairs of Union or of a state.

*The above para was inserted by the Constitution in Article 335.
Title of Article 335 is "claims of SCs/STs to services and posts" is the real essence of the matter and the phrase "consistently with the maintenance of efficiency and administration" is just supportive and explanatory provision.

Scope of Article 335 is not unlimited and cannot be applied universally in individual and specific cases. This relates to fixing of overall policy parameters. It is just to avoid the possibility of appointing anyone without any merit or qualification because the

vacancies are available. The proviso added to Article 335 w.e.f 08.09.2000 stipulates minimum qualifying standard and relaxation in those qualifying standard was provided for members of scheduled castes/Scheduled Tribes. When the provisions are being followed in letter and spirit, there is hardly any scope left for judicial intervention in such matters. And it is very strange to link this issue of reservation in promotion to those members of SCs/STs who are already in service and are promoted on the basis of their past performance or merit and only those are promoted who are otherwise found fit.

When the state provided reservation for SCs/STs either in appointments or in promotions exercising its Constitutional powers, scope for suo-motto judicial scrutiny is very limited because courts cannot put restriction on the exercise of such Constitutional powers of the State. It is for the aggrieved persons to challenge such action, and also to show that provision of reservation in appointments or in promotions, is adversely affecting the administrative efficiency by placing material evidence on record. As per the settled Constitutional principles, the presumption is always in favour of the validity of the legislation/statute/ Article 335 of Constitution is part of the scheme of equality of opportunity in governance of the State in Chapter XVI, by a special provision, which enjoins upon the State that the claims of the members of the SCs/STs shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of the appointments to public service and posts in connection with the affairs of the Union or of a State. It is pertinent to mention here that the reservation in promotion is provided to the members of SCs/STs who are already in service and by satisfying the minimum qualifying standard for such members of SCs/STs. The separate relaxation in standard for the members of SCs/STs is prescribed by keeping in view the minimum standard required for a particular hob, to meet the deficiency in the reservation quota provided they are otherwise found fit for such post. Article 335 is meant to provide jobs for members of SCs/STs and not restrict it in the garb of efficiency or merit.

Justice O. Chinnappa Reddy, in K.C.Vasant Kumar Vs State of Karnataka [1985 (Supp. SCC 714-740] had stated as under:-

“Efficiency is very much on the lips of the privileged whenever reservation is mentioned. Efficiency, it seems, will be impaired if the total reservation exceeds 50%;, it seems, will suffer if the 'carry forward' rule is adopted; efficiency, it seems, will be injured if the rule of reservation is extended to promotional posts. from the protests against reservation exceeding 50 per cent or extending to promotional posts and against the carry-forward rule, one would think that the civil service is a Heavenly Paradise into which only the archangels, the chosen of the elite, the very best may enter and may be allowed to go higher up the ladder. But the truth is otherwise. The truth is that the civil service is no paradise and the upper echelons belonging to the chosen classes are not necessarily models of efficiency. The underlying assumption that those belonging to the

upper castes and classes, who are appointed to the non-reserved castes will, because of their presumed merit, 'naturally' perform better than those who have been appointed to the reserved posts and that the clear stream of efficiency will be polluted by the infiltration of the latter into the sacred precincts is a vicious assumption, typical of the superior approach of the elitist classes.

“There is neither statistical basis nor expert evidence to support these assumptions that efficiency will necessarily be impaired if reservation exceeds 50%, if reservation is carried forward or if reservation is extended to promotional posts. Arguments are advanced and opinions are expressed entirely on an ad hoc presumptive basis. The age long contempt with which the 'superior' or 'forward' castes have treated the 'inferior' or 'backward' casts is now transforming and crystalising itself into an unfair prejudice, conscious and sub-conscious, ever since the 'inferior' casts and classes started claiming their legitimate share of the cake, which naturally means, for the 'superior' castes parting with a bit of it.

“Although in actual practice their virtual monopoly on elite occupations and posts is hardly threatened, the forward castes are nevertheless increasingly afraid that they might lose this monopoly in the higher ranks of Government service and the profession.”

Administrative efficiency is adjudged on the basis of service record, which includes Annual Confidential Reports. The reserved category candidates are in no way to be adjudged differently. Moreover, no example has ever come to notice that officers belonging to SC and ST were found inefficient.

It is evidently clear that the existing system does not allow inefficient official to get promoted even through reservations. So, the propositions that reservation in promotion will affect efficiency in administration is highly misplaced and untenable.

It is very much relevant to take note that Indira Sawhney case was decided by the 9 judges Bench whereas M. Nagaraj case was decided by 5 judges Bench only, and, therefore, the decision in M. Nagaraj case cannot Supersede the decision taken in the Indira Sawhney case. This decision taken in the Indira Sawhney case. This decision was given per incurium as it was given in ignorance of earlier decision taken by the larger Bench which dealt with the Indra Sawhney case. If there is a perceived conflict between to decisions of Hon’ble Supreme Court, the decision of larger Bench alone will prevail. Therefore, Indra Sawhney case is the valid law of the land, which does not permit any further jurisdiction of Backwardness of SCs/STs.

In view of the above humble submissions, it is clear that the matter of reservation in promotion to SCs/STs, is not covered with the judgment of M. Nagaraj case.

11. That as per law laid down by the Hon'ble Apex Court in Civil Appeal No.5987 & 5982 of 2007, in the matter of Public Service Commission, Uttarakhand Vs. Mamta Bist & others decided on 03.06.2010, has held that the horizontal reservation is also to be applied as vertical reservation in favour of reserved category candidate (social). Para 10 to 11 of this judgment of the Hon'ble Supreme Court are reproduced as under:-

"10. The High Court decided the case on the sole ground that as the last selected candidate, receiving the benefit of horizontal reservation had secured marks more than the last selected general category candidate, she ought to have been appointed against the vacancy in general category in view of the judgment of this Court in Indra Sawhney Vs. Union of India, AIR 1993 SC 477, and the Division Bench judgment of High Court of Uttaranchal in Writ Petition No.816/2002 (M/B) (Km. Sikha Agarwal Vs. State of Uttaranchal & Ors.) decided on 16.4.2003, and respondent no.1 ought to have appointed giving benefit of reservation thus, allowed the writ petition filed by respondent No.1.

11. In fact, the High Court allowed the writ petition only on the ground that the horizontal reservation is also to be applied as vertical reservation in favour of reserved category candidates (social) as it held as under. "In view of above, Neetu Joshi (Sl.No.9, Roll No.12320) has wrongly been counted by the respondent No.3/Commission against five seats reserved for Uttaranchal Women General Category as she has competed on her own merit as general candidate and as 5th candidate the petitioner should have been counted for Uttaranchal Women General Category Seats."

Copy of said judgment dated 03.06.2010 of Hon'ble Supreme Court is annexed herewith as Annexure M-3.

12. That Govt. of India/DOPT and Ministry of Railway. Railway Board have clarified vide their letter No. 99-E/SCT/25/13 dated 01.09.2010 on the basis of instructions of Department of Personnel and Training in the light of CAT, Madras's order in OA No. (900/2005). Kalugsalamoorthy Vs UOI and others uphold by High Court, Madras that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against un-reserved posts irrespective of the fact whether promotion is made by selection method or non-selection method. These orders have come into force with effect from 21.08.1997.

A copy of DoPT and Railway Board Letters dated 10.08.2010 & 01.09.2010 are annexed as ANNEXURE M-4 (Colly).

13. That the Hon'ble High Court of judicature at Bombay vide judgment dated 08.11.2011 in the Writ Petition No. 8986/2011 in the matter of All India Income Tax SC/ST Employees Welfare Federation and Others, upheld the DOPT's OM dated 10.08.2010. While passing

the order, the Hon'ble Bombay High court has referred to the Punjab and Haryana High Court's judgment.

14. That despite being aware that Hon'ble Punjab and Haryana High Court vide judgment dated 15.07.2011, has quashed the DOPT's order dated 10.08.2010, whereas the Hon'ble High Court of judicature at Bombay vide judgment dated 08.11.2011 has upheld the DOPT's order dated 10.8.2010.

15. That the Hon'ble Delhi High Court vide detailed judgment dated 14.05.2012, in writ Petition No. 3646/1999 in the mater of A.K. Gautam Vs U.O.I & Ors. Decided on 14.05.2012, upheld the validity of reservation in the matter of promotion to SCs/STs.

Copy of said detailed judgment dated 14.05.2012 of Hon'ble Delhi High court is filed as ANNEXURE M-5.

16. That the Hon'ble High Court of Punjab and Haryana vide decision dated 15.7.2011 in civil Writ Petition No. 13218/2009 in the matter of Lachhmi Narayan V/s Jaimal Singh has quashed the DOPT's order dated 10.8.2010 stating that they are in direct conflict with the view taken by the Hon'ble Apex Court in M. Nagaraj matter.

In this regard it is submitted that an SLP has already been filed against the order of Hon'ble High Court of Punjab and Haryana, the same has already been admitted by the Hon'ble Supreme Court and pending for disposal.

In this regard, it is also important to mention here that some other Applicants belonging to unreserved category, have already filed several OAs, challenging impugned circular No. RBE No. 126/2010 dated 01.09.2010 stating that similar controversy came before the Division Bench of the CAT^, Jaipur Bench in OA No. 63/2011 and while dealing with the controversy in the case of Income Tax Department. The divisional Bench considering the different judgments of the Hob'ble Supreme Court pronounced in the case of Ajit Singh Januja Vs State of Punjab, (1996)2 SLR 71. K. Manorma, 2010 (10) SCALE 304, r.K. Sabharwal SLJ 1995 (2) 227, M. Nagaraj, (2006) 8 SCC 212, Suraj Bhan Meena (2011) 1 SCC 467; Union of India Vs Virpal singh Chauhan, (1995) 6 SCC 684 and the judgment rendered by Hon'ble Punjab and Haryana High Court in the case of Lachhmi Narain Gupta and Ors. And in the recent judgment rendered by the Hon'ble Supreme Court in Civil Appeal No. 2608/2011 in the case of U.P. Power Corporation Limited. Vs Rajesh Kumar and Ors. Decided on 27.04.2012, directed the Income Tax Department to proceed with the exercise of promotion subject to the final disposal of the SLP pending before the Hon'ble Supreme Court against the judgment of the Hon'ble Punjab and Haryana High Court in the case of Lachhmi Narayan Gupta & Ors. Vs Jaimal Singh & Ors.

17. That in OA No. 271/2013 and 484/2012 vide common judgment dated 18.12.2013, the Hon'ble CAT, Jodhpur Bench has held in identical issue that:-

a. The Railway Department may complete the exercise undertake by it for promotion to the post of Loco Pilot Goods and the official Respondents i.e. Railway Department shall promote officials after considering their candidature as per law;
b. The promotions so made shall be subject to the out come of SLP pending in Hon'ble Supreme Court against the judgment of the Punjab and Haryana High Court in the case of Lachhi Narayan Gupta & Ors. Vs Jaimal Singh & Ors.
c. The seniority list prepared by the official Respondents shall also be subject to the final out come of the above SLP pending in the Hon'ble Supreme Court.
d. The Respondents shall consider the case of the applicant as per the prevailing circulars and rules in force particularly letter dated 24.05.2013, RB/Estt. No.51/2013;
e. The applicants shall be at liberty to redress their grievances after the final outcome of the above SLP.

18. That moreover, Hon'ble Apex Court in Civil Appeal Nos. 6046-6047 of 2004 in the matter of Rohtas Bhankhar & Ors. Vs. U.O.I & Ors. Decided by five judges Constitutional Bench on 15.07.2014, has held that clause (4A) of Article 16 is carved out of clause (4) of Article 16. Clause (4-A) provides benefit of reservation in the matter of promotion only to SCs and STs. vide Para 7 and 8 of this judgment of the Constitution Bench reproduced as under:-

> 7. It is important to note here that constitutional validity of Article 16(4A) came up for consideration before the Constitution Bench in the case of M. Nagaraj4. In paras 97 to 99 (page 267) of the report, the Constitution Bench observed:
>
> > 97. As stated above, clause (4-A) of Article 16 is carved out of clause (4) of Article 16. Clause (4-A) provides benefit of reservation in promotion only to SCs and STs. In S. Vinod Kumar v. Union of India this Court held that relaxation of qualifying marks and standards of evaluation in matters of reservation in promotion was not permissible under Article 16(4) in view of Article 335 of the Constitution. This was also the view in Indra Sawhney.
> >
> > 98. By the Constitution (Eighty-second Amendment) Act, 2000 a proviso was inserted at the end of Article 335 of the Constitution which reads as under :
> >
> > "Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of

promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."

99. This proviso was added following the benefit of reservation in promotion conferred upon SCs and STs alone. This proviso was inserted keeping in mind the judgment of this Court in Vinod Kumar which took the view that relaxation in matters of reservation in promotion was not permissible under Article 16(4) in view of the command contained in Article

335. Once a separate category is carved out of clause (4) of Article 16 then that category is being given relaxation in matters of reservation in promotion. The proviso is confined to SCs and STs alone. The said proviso is compatible with the scheme of Article 16(4-A).

8. The conclusions recorded by the Constitution Bench in M. Nagaraj4 are also relevant and they read as under:

121. The impugned constitutional amendments by which Articles 16(4-A) and 16(4-B) 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 OBCs on one hand and SCs and STs on the other hand as held in Indra Sawhney, the concept of post-based roster with inbuilt 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 above, the main issue concerns the "extent of reservation". In this regard the State concerned 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 SCs/STs in matters 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 with 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 excursiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

124. Subject to the above, we uphold the constitutional validity of the Constitution(Seventy-Seventh (Amendment) Act;1995: the Constitution (Eighty- first Amendment) Act, 2000; the Constitution (Eighty-second Amendment) Act, 2000 and the Constitution (Eighty-fifth Amendment) Act, 2001.

Copy of said judgment dated 15.07.2014 of Hon'ble Supreme Court is annexed herewith as ANNEXURE M-6.

19. That judgment of Hon'ble Supreme Court dated 09.01.2015 in Civil Appeal No. 209 of 2015 [arising out of SLP (C) No. 4385 of 2010 & Ors.] in the matter of Chairman & Managing Director, Central Bank of India & Ors. Vs Central Bank of India SC/ST Employees Welfare Association & Ors., upheld the benefit of reservation in the matter of promotion to SCs and STs employees. Relevant/Operative Para of this judgment is reproduced as under:-

"Therefore, to carry out promotions from Scale-I upwards upto Scale-VI, reservation in promotion in favour of SC/ST employees has to be given. It would have the effect of allowing the writ petitions filed by the respondents/unions partly with directions to the appellant Banks to make provision for reservations while carrying out promotions from Scale-I to to Scale-II and upward upto Scale-VI."

20. In **M. Nagaraj's** case (supra), the Apex Court commented upon the concept of reservation in the following words:-

"31. Reservation as a concept is very wide. Different people understand reservation to mean different things. One view of reservation as a generic concept is that reservation is anti-poverty measure. There is a different view which says that reservation is merely providing a right of access and that it is not a right to redressal. Similarly, affirmative action as a generic concept has a different connotation. Some say that reservation is not a part of affirmative action whereas others say that it is a part of affirmative action.

32. Our Constitution has, however, incorporated the word 'reservation' in Article 16(4) which word is not there in Article 15(4).

> Therefore, the word 'reservation' as a subject of Article 16(4) is different from the word 'reservation' as a general concept.
>
> 33. Applying the above test, we have to consider the word 'reservation' in the context of Article 16(4) and it is in that context that Article 335 of the Constitution which provides for relaxation of the standards of evaluation has to be seen. We have to go by what the Constitution framers intended originally and not by general concepts or principles. Therefore, schematic interpretation of the Constitution has to be applied and this is the basis of the working test evolved by Chandrachud, J. in the Election Case14."

21. In paragraph 43 of the judgment, it was ruled that the reserved category candidates are entitled to compete for the general category posts but the fact that the considerable number of members of backward class have been appointed/promoted against general seats in the State services may be a relevant factor for the State Government to review the question of continuing reservation for the said class. Paragraph 43 of the judgment reads thus:-

> "43. In Indra Sawhney Reddy, J. noted that reservation under Article 16(4) do not operate on communal ground. Therefore if a member from reserved category gets selected in general category, his selection will not be counted against the quota limit provided to his class. Similarly, in R.K. Sabharwal8 the Supreme Court held that while general category candidates are not entitled to fill the reserved posts; reserved category candidates are entitled to compete for the general category posts. The fact that considerable number of members of backward class have been appointed/ promoted against general seats in the State services may be a relevant factor for the State Government to review the question of continuing reservation for the said class."

22. In paragraphs 48 to 55 of the judgment, their Lordships commented upon the 'catch-up' rule. In paragraphs 57 to 64 of the judgment, amendment in the constitution concerning the scope of reservation was noted. Paragraphs 57 to 64 read thus:

"57. Before dealing with the scope of the constitutional amendments we need to recap the judgments in Indra Sawhney and R.K. Sabharwal. In the former case the majority held that 50% rule should be applied to each year otherwise it may happen that the open competition channel may get choked if the entire cadre strength is taken as a unit. However in R.K. Sabharwal, this court stated that the entire cadre strength should be taken into account to determine whether the reservation up to the quota-limit has been reached. It was clarified that the judgment in Indra Sawhney was confined to initial appointments and not to promotions. The operation of the roster for filling the cadre strength, by itself, ensure that the reservation remains within the ceiling-limit of 50%.

58. In our view, appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that upper ceiling-limit of 50% is not violated. Further, roster has to be post- specific and not vacancy based. With these introductory facts, we may examine the scope of the impugned constitutional amendments.

59. The Supreme Court in its judgment dated 16.11.92 in Indra Sawhney stated that reservation of appointments or posts under Article 16(4) is confined to initial appointment and cannot extend to reservation in the matter of promotion. Prior to the judgment in Indra Sawhney reservation in promotion existed. The Government felt that the judgment of this court in Indra Sawhney adversely affected the interests of SCs and STs in services, as they have not reached the required level. Therefore, the Government felt that it was necessary to continue the existing policy of providing reservation in promotion confined to SCs and STs alone. We quote hereinbelow Statement of Objects and Reasons with the text of the Constitution (Seventy-Seventh Amendment) Act, 1995 introducing clause (4A) in Article 16 of the Constitution:

> "THE CONSTITUTION (SEVENTY-SEVENTH AMENDMENT) ACT, 1995 STATEMENT OF OBJECTS AND REASONS The Scheduled Castes and the Scheduled Tribes have been enjoying the facility of reservation in promotion since 1955. The Supreme Court in its judgment dated 16th November, 1992 in the case of Indra Sawhney v. Union of India, however, observed that reservation of appointments or posts under Article 16(4) of the Constitution is confined to initial appointment and cannot extent to reservation in the matter of promotion. This ruling of the Supreme Court will adversely affect the interests of the Scheduled Castes and the Scheduled Tribes. Since the representation of the Scheduled Castes and the Scheduled Tribes in services in the States have not reached the required level, it is necessary to continue the existing dispensation of providing reservation in promotion in the case of the Scheduled Castes and the Scheduled Tribes. In view of the commitment of the Government to protect the interests of the Scheduled Castes

> and the Scheduled Tribes, the Government have decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this, it is necessary to amend Article 16 of the Constitution by inserting a new clause (4A) in the said Article to provide for reservation in promotion for the Scheduled Castes and the Scheduled Tribes.
>
> 2. The Bill seeks to achieve the aforesaid object.
>
> THE CONSTITUTION (SEVENTY- SEVENTH AMENDMENT) ACT, 1995 [Assented on 17th June, 1995, and came into force on 17.6.1995] An Act further to amend the Constitution of India BE it enacted by Parliament in the Forty- sixth Year of the Republic of India as follows:-
>
> 1. Short title.- This Act may be called the Constitution (Seventy-seventh Amendment) Act, 1995.
>
> 2. Amendment of Article 16. - In Article 16 of the Constitution, after clause (4), the following clause shall be inserted, namely:- "(4A) Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

The said clause (4A) was inserted after clause (4) of Article 16 to say that nothing in the said Article shall prevent the State from making any provision for reservation in matters of promotion to any class(s) of posts in the services under the State in favour of SCs and STs which, in the opinion of the States, are not adequately represented in the services under the State.

Clause (4A) follows the pattern specified in clauses (3) and (4) of Article 16. Clause (4A) of Article 16 emphasizes the opinion of the States in the matter of adequacy of representation. It gives freedom to the State in an appropriate case depending upon the ground reality to provide for reservation in matters of promotion to any class or classes of posts in the services. **The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4). Therefore, clause (4A) will be governed by the two compelling reasons - "backwardness" and "inadequacy of representation**", as mentioned in Article 16(4). If the said two reasons do not exist then the enabling provision cannot come into force. The State can make provision for reservation only if the above two circumstances exist. Further in Ajit Singh (II)3 , this court has held that **apart from 'backwardness' and 'inadequacy of**

representation' the State shall also keep in mind 'overall efficiency' (Article 335). Therefore, all the three factors have to be kept in mind by the appropriate Government by providing for reservation in promotion for SCs and STs.

60. After the Constitution (Seventy-Seventh Amendment) Act, 1995, this court stepped in to balance the conflicting interests. This was in the case of Virpal Singh Chauhan1 in which it was held that a roster-point promotee getting the benefit of accelerated promotion would not get consequential seniority. As such, consequential seniority constituted additional benefit and, therefore, his seniority will be governed by the panel position. According to the Government, the decisions in Virpal Singh and Ajit Singh (I) bringing in the concept of "catch-up" rule adversely affected the interests of SCs and STs in the matter of seniority on promotion to the next higher grade. In the circumstances, clause (4A) of Article 16 was once again amended and the benefit of consequential seniority was given in addition to accelerated promotion to the roster-point promotees. Suffice it to state that, the Constitution (Eighty-Fifth Amendment) Act, 2001 was an extension of clause (4A) of Article 16. Therefore, the Constitution (Seventy-Seventh Amendment) Act, 1995 has to be read with the Constitution (Eighty-Fifth Amendment) Act, 2001.

61. We quote hereinbelow Statement of Objects and Reasons with the text of the Constitution (Eighty-Fifth Amendment) Act, 2001:

> "THE CONSTITUTION (EIGHTY-FIFTH AMENDMENT) ACT, 2001 STATEMENT OF OBJECTS AND REASONS The Government servants belonging to the Scheduled Castes and the Scheduled Tribes had been enjoying the benefit of consequential seniority on their promotion on the basis of rule of reservation. The judgments of the Supreme Court in the case of Union of India v. Virpal Singh Chauhan (1995) 6 SCC 684 and Ajit Singh Januja (No.1) v. State of Punjab AIR 1996 SC 1189, which led to the issue of the O.M. dated 30th January, 1997, have adversely affected the interest of the Government servants belonging to the Scheduled Castes and Scheduled Tribes category in the matter of seniority on promotion to the next higher grade. This has led to considerable anxiety and representations have also been received from various quarters including Members of Parliament to protect the interest of the Government servants belonging to Scheduled Castes and Scheduled Tribes.
>
> 2. The Government has reviewed the position in the light of views received from various quarters and in order to protect the interest of the Government servants belonging to the Scheduled Castes and Scheduled Tribes, it has been decided to negate the effect of O.M. dated 30th January 1997 immediately. Mere withdrawal of the O.M. dated 30th will not meet the desired purpose and review or revision of seniority of the Government servants and grant of consequential benefits to such Government servants will also be necessary. This will require

amendment to Article 16(4A) of the Constitution to provide for consequential seniority in the case of promotion by virtue of rule of reservation. It is also necessary to give retrospective effect to the proposed constitutional amendment to Article 16(4A) with effect from the date of coming into force of Article 16(4A) itself, that is, from the 17th day of June, 1995.

3. The Bill seeks to achieve the aforesaid objects.

THE CONSTITUTION (EIGHTY-FIFTH AMENDMENT) ACT, 2001 The following Act of Parliament received the assent of the President on the 4th January, 2002 and is published for general information:-

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty- second Year of the Republic of India as follows:-

1. Short title and commencement.- (1) This Act may be called the Constitution (Eighty-fifth Amendment) Act, 2001.

(2) It shall be deemed to have come into force on the 17th day of June 1995.

2. Amendment of Article 16.- In Article 16 of the Constitution, in clause (4A), for the words "**in matters of promotion to any class", the words "in matters of promotion, with consequential seniority, to any class" shall be substituted."**

Reading the Constitution (Seventy-Seventh Amendment) Act, 1995 with the Constitution (Eighty- Fifth Amendment) Act, 2001, clause (4A) of Article 16 now reads as follows:

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

The question in the present case concerns the width of the amending powers of the Parliament. The key issue is - whether any constitutional limitation mentioned in Article 16(4) and Article 335 stand obliterated by the above constitutional amendments.

62. In R.K. Sabharwal, the issue was concerning operation of roster system. This court stated that the entire cadre strength should be taken into account to determine whether reservation up to the required limit has been reached. It was held that if the roster is prepared on the basis of the cadre strength, that by itself would

ensure that the reservation would remain within the ceiling-limit of 50%. In substance, the court said that in the case of hundred-point roster each post gets marked for the category of candidate to be appointed against it and any subsequent vacancy has to be filled by that category candidate alone (replacement theory).

The question which remained in controversy, however, was concerning the rule of 'carry-forward'. In Indra Sawhney this court held that the number of vacancies to be filled up on the basis of reservation in a year including the 'carry-forward' reservations should in no case exceed the ceiling-limit of 50%.

However, the Government found that total reservation in a year for SCs, STs and OBCs combined together had already reached 49=% and if the judgment of this court in Indra Sawhney had to be applied it became difficult to fill "backlog vacancies". According to the Government, in some cases the total of the current and backlog vacancies was likely to exceed the ceiling- limit of 50%. Therefore, the Government inserted clause (4B) after clause (4A) in Article 16 vide the Constitution (Eighty-First Amendment) Act, 2000.

63. By clause (4B) the "carry-forward"/"unfilled vacancies" of a year is kept out and excluded from the overall ceiling-limit of 50% reservation. The clubbing of the backlog vacancies with the current vacancies stands segregated by the Constitution (Eighty-First Amendment) Act, 2000. Quoted hereinbelow is the Statement of Objects and Reasons with the text of the Constitution (Eighty-First Amendment) Act, 2000:

> "THE CONSTITUTION (EIGHTY FIRST AMENDMENT) ACT, 2000 (Assented on 9th June, 2000 and came into force 9.6.2000) STATEMENT OF OBJECTS AND REASONS Prior to August 29, 1997, the vacancies reserved for the Scheduled Castes and the Scheduled Tribes, which could not be filled up by direct recruitment on account of non- availability of the candidates belonging to the Scheduled Castes or the Scheduled Tribes, were treated as "Backlog Vacancies". These vacancies were treated as a distinct group and were excluded from the ceiling of fifty per cent reservation. The Supreme Court of India in its judgment in the Indra Sawhney versus Union of India held that the number of vacancies to be filled up on the basis of reservations in a year including carried forward reservations should in no case exceed the limit of fifty per cent. As total reservations in a year for the Scheduled Castes, the Scheduled Tribes and the other Backward Classes combined together had already reached forty-nine and a half per cent and the total number of vacancies to be filled up in a year could not exceed fifty per cent., it became difficult to fill the "Backlog Vacancies" and to hold Special Recruitment Drives. Therefore, to implement the judgment of the Supreme Court, an Official Memorandum dated August 29, 1997 was issued to provide that the fifty per cent limit shall apply to current as well as "Backlog

Vacancies" and for discontinuation of the Special Recruitment Drive.

Due to the adverse effect of the aforesaid order dated August 29, 1997, various organisations including the Members of Parliament represented to the central Government for protecting the interest of the Scheduled castes and the Scheduled Tribes. The Government, after considering various representations, reviewed the position and has decided to make amendment in the constitution so that the unfilled vacancies of a year, which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) of Article 16 of the Constitution, shall be considered as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent, reservation on total number of vacancies of that year. This amendment in the Constitution would enable the State to restore the position as was prevalent before august 29, 1997.

The Bill seeks to achieve the aforesaid object.

> THE CONSTITUTION (EIGHTY- FIRST AMENDMENT) ACT, 2000 (Assented on 9th June, 2000 and came into force 9.6.2000) An Act further to amend the Constitution of India.
>
> BE it enacted by Parliament in the Fifty- first Year of the Republic of India as follows:-
>
> 1. Short title: This Act may be called the Constitution (Eighty-first Amendment) Act, 2000.
>
> 2. Amendment of Article 16: In Article 16 of the Constitution, after clause (4A), the following clause shall be inserted, namely: - "(4B) Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year."

The Constitution (Eighty-First Amendment) Act, 2000 gives, in substance, legislative assent to the judgment of this Court in R.K. Sabharwal. Once it is held that each point in the roster indicates a post which on falling vacant has to be filled by the particular category of candidate to be appointed against it and any subsequent vacancy has to be filled by that category

candidate alone then the question of clubbing the unfilled vacancies with current vacancies do not arise. Therefore, in effect, Article 16(4B) grants legislative assent to the judgment in R.K. Sabharwal. If it is within the power of the State to make reservation then whether it is made in one selection or deferred selections, is only a convenient method of implementation as long as it is post based, subject to replacement theory and within the limitations indicated hereinafter.

As stated above, clause (4A) of Article 16 is carved out of clause (4) of Article 16. Clause (4A) provides benefit of reservation in promotion only to SCs and STs. In the case of S. Vinod Kumar and another v. Union of India and others this court held that relaxation of qualifying marks and standards of evaluation in matters of reservation in promotion was not permissible under Article 16(4) in view of Article 335 of the Constitution. This was also the view in Indra Sawhney.

64. By the Constitution (Eighty-Second Amendment) Act, 2000, a proviso was inserted at the end of Article 335 of the Constitution which reads as under:

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

This proviso was added following the benefit of reservation in promotion conferred upon SCs and STs alone. This proviso was inserted keeping in mind the judgment of this court in Vinod Kumar21 which took the view that relaxation in matters of reservation in promotion was not permissible under Article 16(4) in view of the command contained in Article 335. Once a separate category is carved out of clause (4) of Article 16 then that category is being given relaxation in matters of reservation in promotion. The proviso is confined to SCs and STs alone. The said proviso is compatible with the scheme of Article 16(4A).”

23. In paragraph 69 of the judgment, it could be held that there is no violation of the basic structure by any of the impugned amendments, including the Constitution (Eighty-Second) Amendment Act, 2000. Paragraph reads thus:-

“69. Applying the above tests to the present case, there is no violation of the basic structure by any of the impugned amendments,

> including the Constitution (Eighty-Second) Amendment Act, 2000. The constitutional limitation under Article 335 is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on facts of each case. In our view, the field of exercise of the amending power is retained by the impugned amendments, as the impugned amendments have introduced merely enabling provisions because, as stated above, merit, efficiency, backwardness and inadequacy cannot be identified and measured in vacuum. Moreover, Article 16(4A) and Article 16(4B) fall in the pattern of Article 16(4) and as long as the parameters mentioned in those articles are complied-with by the States, the provision of reservation cannot be faulted. Articles 16(4A) and 16(4B) are classifications within the principle of equality under Article 16(4).
>
> In conclusion, we may quote the words of Rubenfeld:
>
> "ignoring our commitments may make us rationale but not free. It cannot make us maintain our constitutional identity".

24. Nevertheless, in paragraph 71 of the judgment, their Lordships ruled that if the State has quantified data to show backwardness and inadequacy then the State can make reservations in promotions keeping in mind maintenance of efficiency which is held to be a constitutional limitation on the discretion of the State in making reservation as indicated by Article 335. It was in terms of the view taken by the Apex Court in paragraph 71 of the judgment that a plea is raised by a segment of government employees that in the absence of there being quantifiable data regarding backwardness, inadequacy of representation and efficiency of service, there should be no reservation in promotion. The concerned Departments or the machinery associated with promotion of various posts is not in a position to have the data regarding backwardness of the categories and inadequacy on their representation, thus a vital question arises that “till the quantifiable data is collected regarding backwardness of the SC/ST categories, inadequacy of representation and efficiency of service, whether reservation in promotion

should be held or whether till then reservation should be given on the basis of the existing provisions. Pressure is built up by the candidates from unreserved categories that in view of the law declared by the Apex Court in **M. Nagaraj's** case (supra) in paragraph 71 of the judgment, the interim orders should be passed to stay the reservation in promotion.

25. On the other hand, it is espoused on behalf of the reserved category candidates that once there are provisions in the Constitution providing for reservation, it should be made in favour of the categories already classified as reserved categories. Besides the aforementioned judgment of Hon'ble Supreme Court, reliance is placed on behalf of the applicant on the judgment of Apex Court in **Suraj Bhan Meena & another** v. **State of Rajasthan & others**, (2011) 1 SCC 467 wherein their Lordships reiterated the law declared by themselves in **M. Nagaraj**'s case (supra). Paragraph 46 of the judgment reads thus:-

> "46. The position after the decision in M. Nagaraj's case (supra) is that reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition of ascertaining as to whether such reservation was at all required. The view of the High Court is based on the decision in M. Nagaraj's case (supra) as no exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Schedule Castes and Scheduled Tribes communities in public services. The Rajasthan High Court has rightly quashed the 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 the Scheduled Castes and Scheduled Tribes communities and the same does not call for any interference. Accordingly, the claim of Petitioners Suraj Bhan Meena and Sriram Choradia in Special Leave Petition (Civil) No.6385 of 2010 will be subject to the conditions laid down in M. Nagaraj's case (supra) and is disposed of accordingly. Consequently, Special Leave Petition (C) Nos. 7716, 7717, 7826 and 7838 of 2010, filed by the State of Rajasthan, are also dismissed."

26. The position was further reiterated in **U.P. Power Corporation Ltd.** v. **Rajesh Kumar & others**, (2012) 7 SCC 1 and it could be ruled that once no exercise had been undertaken to prepare the quantifiable data, as has been held in **M. Nagaraj's** case (supra), the State cannot make provisions for reservation in promotion. Paragraph 41 of the judgment reads thus:-

> "41. As has been indicated hereinbefore, it has been vehemently argued by the learned senior counsel for the State and the learned senior counsel for the Corporation that once the principle of reservation was made applicable to the spectrum of promotion, no fresh exercise is necessary. It is also urged that the efficiency in service is not jeopardized. Reference has been made to the Social Justice Committee Report and the chart. We need not produce the same as the said exercise was done regard being had to the population and vacancies and not to the concepts that have been evolved in M. Nagaraj (supra). It is one thing to think that there are statutory rules or executive instructions to grant promotion but it cannot be forgotten that they were all subject to the pronouncement by this Court in Vir Pal Singh Chauhan (supra) and Ajit Singh (II) (supra). We are of the firm view that a fresh exercise in the light of the judgment of the Constitution Bench in M. Nagaraj (supra) is a categorical imperative. The stand that the constitutional amendments have facilitated the reservation in promotion with consequential seniority and have given the stamp of approval to the Act and the Rules cannot withstand close scrutiny inasmuch as the Constitution Bench has clearly opined that Articles 16(4A) and 16(4B) are enabling provisions and the State can make provisions for the same on certain basis or foundation. The conditions precedent have not been satisfied. No exercise has been undertaken. What has been argued with vehemence is that it is not necessary as the concept of reservation in promotion was already in vogue. We are unable to accept the said submission, for when the provisions of the Constitution are treated valid with certain conditions or riders, it becomes incumbent on the part of the State to appreciate and apply the test so that its amendments can be tested and withstand the scrutiny on parameters laid down therein."

27. In **Sushil Kumar Singh & others** v. **The State of Bihar & others** (Civil Writ Jurisdiction Case No.19114/2012) decided on 04.05.2015, following the law declared by the Apex Court (ibid), the Hon'ble High Court of Patna ruled thus:-

"50. During the course of submission the respondents have laid emphasis by referring to different datas in the report that the quota reserved for S.Cs. and S.Ts. in different class (s) of services has not even been filled up. This submission cannot be accepted for the simple reason that the issue of adequate representation of Scheduled Castes/Scheduled Tribes government servants has to be determined by considering representation of Scheduled Castes/Scheduled Tribes government servants irrespective of the fact as to whether they are holding the posts on their own merits or on the basis of reservation. The data is to be considered cadre wise to find out the adequacy of representation of Scheduled Castes/Scheduled Tribes government servants. Article 16 (4-A) prescribes the test of adequate representation of Scheduled Castes/Scheduled Tribes government servants in the class (s) of services and not the adequacy of Patna High Court CWJC No.19114 of 2012 dt.04-05-2015 representation in the quota reserved for such government servants. A Scheduled Caste/Scheduled Tribe candidate might have got the appointment on merit and may be occupying unreserved post in the roster but if at any point in his service he has taken the benefit meant for reserved category candidate then he cannot be treated as a candidate of unreserved category. The report contains no data with regard to such government servants. From the perusal of the data as contained in the report, it appears that in a number of cadres in different services the representation of Scheduled Castes/Scheduled Tribes government servants is adequate e.g. table 3.4 (department of industry), Table 3.5 (Department of Water Resources), Table 3.6 (Department of Home), Table 3.8 (Department of Public Health and Engineering) and in some cases the representation is cent percent. In the report, though the observation has been made that the adequacy of representation of Scheduled Castes/Scheduled Tribes government servants in those cadres have been achieved only because of the policy of reservation but that cannot be the basis for the decision to continue the reservation for all the class(s) of services, the requirement notwithstanding. The individual right of equality as envisaged under Art. 14 and 16 (1) of the Constitution cannot be overlooked by deducing the conclusion by combining together the datas of representation in different services /departments. In the Patna High Court CWJC No.19114 of 2012 dt.04-05-2015 present case exactly the same course has been adopted. If there is adequate representation in promotional posts in a particular service, the decision to continue the benefit of reservation to Scheduled Castes/Scheduled Tribes government servants in that service on the ground that there is inadequate representation in other service (s) cannot be legally countenanced for it would be also violating the 'numerical bench mark'. The respondent-State before coming to the conclusion to grant benefit of reservation in promotional posts with consequential seniority to Scheduled Castes/Scheduled Tribes employees was required to consider the adequacy of representation of such government servants in each class or classes of posts in government services and thereafter to take appropriate decision in terms of Article 16 (4-A) with respect to that class or classes of services. By issuing the impugned resolution in general and sweeping terms the State

Government has clearly abdicated its function as required by Art. 16 (4-A) of the Constitution and the law laid down by the Constitution Bench in M. Nagaraj.

51. For the aforesaid reasons and discussions this Court comes to the conclusion that the impugned resolution dated 21.08.2012 (Annexure-13) cannot be legally sustained. The writ application is accordingly allowed and the impugned resolution dated 21.08.2012 (Annexure-13) is quashed with necessary consequences. Patna High Court CWJC No.19114 of 2012 dt.04-05-2015 The interlocutory applications also accordingly stand disposed of. It is, however, observed that in case the State Government proposes to invoke the power to grant benefit of reservation in promotion with consequential seniority to Scheduled Castes/Scheduled Tribes government servants, it will have to act strictly in accordance with the requirements of Article 16(4-A) of the Constitution as well as the parameters and conditions laid down by the Constitution Bench in M. Nagaraj case as aforediscussed in this judgment."

28. In **Rajbir Singh** v. **State of Haryana & others** (C.W.P. No.25512/2012) (O&M) decided on 14.11.2014 again, the Hon'ble Punjab and Haryana High Court set aside the provisions regarding reservation in promotion and ruled thus:-

"26. The plea of the private respondents regarding locus of the petitioners to file the writ petitions is also merely to be noticed and rejected for the reason that in the bunch of petitions, challenge is to the policy framed by the Government, which runs contrary to the law laid down by Hon'ble the Supreme Court in M. Nagaraj's case (supra). Large number of employees are affected and the action of the State has been found to be in violation of the law laid down by Hon'ble the Supreme Court, hence, the petitions are held to be maintainable. All the employees, who may be affected have already been informed about the pendency of the present petitions in terms of the order dated 6.8.2013.

27. The contention of some of the counsels for the private respondents that promotions already granted to some of them should not be disturbed as they may be entitled to accelerated promotion after new policy is framed by the Government is also totally misconceived, as any promotion granted in terms of the 2006 and 2013 policies, which have been quashed, certainly deserves to be recalled. Acceptance of this argument would mean putting cart before the horse. As and when any policy is framed by the Government, whosoever will be entitled to any benefit thereunder, may claim and get the same. The benefit cannot be granted in anticipation as the provisions of Article 1 (4A) of the Constitution of India are merely enabling and not mandatory.

> 28. For the reasons mentioned above, the writ petitions are allowed. The 2013 policy, issued on 28.2.2013, providing for reservation in promotion is set aside. The 2006 policy, issued on 16.3.2006, had already been set aside by this court in Prem Kumar Verma's case (supra). Any accelerated promotion/seniority granted on the basis of the aforesaid policies, is liable to be reversed. Ordered accordingly. Necessary action be taken within a period of 3 months from the date of receipt of a copy of the judgment. From the facts of the case in hand, it is evident that the 2013 policy was issued by the then Chief Secretary, Haryana, despite being in knowledge of the judgments of Hon'ble the Supreme Court in M. Nagaraj's case (supra) and this court in Prem Kumar Verma's case (supra), I deem it appropriate to initiate proceedings for contempt against him. Let notice be issued to him to show cause as to why proceedings for contempt be not initiated against him. For that purpose, the present petition be listed on 28.1.2015. It shall be the duty of the learned counsel for the State to apprise the then Chief Secretary about the order passed by this court."

29. Recently in **Chairman & Managing Director, Central Bank of India & others** v. **Central Bank of India SC/ST Employees Welfare Association & others** (Review Petition (Civil) No.891/2015 in Civil Appeal No.209/2015 with connected petitions) dated 08.01.2016. The plea put-forth on behalf of the applicant with reference to various judicial precedence mentioned in M.A. No.400/2015 has already been taken note of. Now we may proceed to note the view taken by the Hon'ble Supreme Court relied upon by Mrs. Meenu Mainee, learned counsel for original applicants.

> "13) We would be candid in our remarks that once an error is found in the order/judgment, which is apparent on the face of record and meets the test of review jurisdiction as laid down in Order XLVII Rule (1) of the Supreme Court Rules, 2013 read with Order XLVII Rule (1) of the Code of Civil Procedure, 1908, there is no reason to feel hesitant in accepting such a mistake and rectify the same. In fact, the reason for such a frank admission is to ensure that this mind of patent error from the record is removed which led to a wrong conclusion and consequently wrong is also remedied. For adopting such a course of action, the Court is guided by the doctrine of ex debito justitiae as well as the fundamental principal of the administration of justice that no one should suffer because of a

mistake of the Court. These principles are discussed elaborately, though in a different context, in A.R. Antulay v. R.S. Nayak.

14) We would also like to reproduce the following observations in S. Nagaraj v. State of Karnataka:-

> "18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue."

15) The argument of public policy pressed by the respondents is of no avail. We are conscious of the fervent plea raised by the respondent employees that employees belonging to SC/ST category should be made eligible for promotion by providing the reservation in the promotional posts as well, as their representation is abysmally minimal. However, whether there is any such justification in the demand or not is for the State to consider and make a provision in this behalf. This was so recorded in the judgment itself in the following manner:

> "24. In the first instance, we make it clear that there is no dispute about the constitutional position envisaged in Articles 15 and 16, insofar as these provisions empower the State to take affirmative action in favour of SC/ST category persons by making reservations for them in the employment in the Union or the State (or for that matter, public sector/authorities which are treated as State under Article 12 of the Constitution). The

> laudable objective underlying these provisions is also to be kept in mind while undertaking any exercise pertaining to the issues touching upon the reservation of such SC/ST employees. Further, such a reservation can not only be made at the entry level but is permissible in the matters of promotions as wells. At the same time, it is also to be borne in mind that Clauses 4 and 4A of Article 16 of the Constitution are only the enabling provisions which permit the State to make provision for reservation of these category of persons. Insofar as making of provisions for reservation in matters of promotion to any class or classes of post is concerned, such a provision can be made in favour of SC/ST category employees if, in the opinion of the State, they are not adequately represented in services under the State. Thus, no doubt, power lies with the State to make a provision, but, at the same time, courts cannot issue any mandamus to the State to necessarily make such a provision. It is for the State to act, in a given situation, and to take such an affirmative action. Of course, whenever there exists such a provision for reservation in the matters of recruitment or the promotion, it would bestow an enforceable right in favour of persons belonging to SC/ST category and on failure on the part of any authority to reserve the posts, while making selections/promotions, the beneficiaries of these provisions can approach the Court to get their rights enforced. What is to be highlighted is that existence of provision for reservation in the matter of selection or promotion, as the case may be, is the sine qua non for seeking mandamus as it is only when such a provision is made by the State, a right shall accrue in favour of SC/ST candidates and not otherwise."

16) Once we find an error apparent on the face of the record and to correct the said error, we have to necessarily allow these review petitions.

17) In view of the foregoing, the review petitions are allowed by deleting paragraph Nos. 33 to 36 of the judgment and the directions contained therein, as well as the directions contained in paragraph No. 37. Instead, after paragraph No. 32, following paragraph shall be inserted and numbered as 33, and paragraph No. 38 should be re-numbered as 34:

> "33. Result of the aforesaid discussion would be to allow these appeals and set aside the judgment of the High Court. While doing so, we reiterate that it is for the State to take stock of the ground realities and take a decision as to whether it is necessary to make a provision for reservation in promotions from Scale I to Scale II and upward, and if so, up to which post. The contempt petition also stands disposed of.
>
> 34. In the peculiar facts of this case, we leave the parties to bear their own costs."

> 18) All the interlocutory applications for impleadment/ intervention also stand disposed of.
>
> 19) Before we part with, we would like to observe that we have mentioned in para 15, which was also recorded in the main judgment, that the grievance of the employees belonging to SC/ST category is that there is negligible representation of employees belonging to their community in the officers' category at all levels. Keeping in view the statistical figures which have been placed on record showing their representation in officers' scales, it would be open to the concerned authority, namely, the State and the Banks to consider whether their demand is justified and it is feasible to provide reservation to SC/ST category persons in the matter of promotion in the officers' category and if so, upto which scale/level."

30. From the aforementioned judgments, it is amply clear that before giving reservation in promotion the quantified data regarding backwardness, inadequacy of representation and efficiency of service need to be available. Nevertheless, the ramification of the law declared by the Apex Court, relied upon by learned counsels for the parties on a particular case, need to be assessed at the time of disposal of the controversy. In order to determine the controversy finally in all the cases, we had summoned the Joint Secretary from the concerned Department and we thought to evolve some instant formula with his assistance regarding satisfaction of three conditions to control the flood of litigations on the issue. Nevertheless, Mr. Gaya Prasad, Advocate for private respondents scandalized the Court proceedings on two consecutive dates of hearing and did not restrain himself even after our request and the request of members of the Bar.

31. The yardsticks to be applied for grant of interim stay are different from those to be applied at the time of final disposal of the controversy. At the time of passing interim orders, we need to be conscious about the balance of convenience and apprehension of irreparable loss. It is not gainsaid that there are constitutional provisions providing for reservation

in promotion and the same can be applied only on fulfillment of certain conditions, i.e., availability of quantifiable data regarding backwardness and inadequacy of representation other categories to which the individual belong and the impact of reservation on efficiency of service. It may not be advisable to take a view regarding the condition at the threshold, i.e., on filing a petition by the UR category candidates.

32. The entitlement of the applicants (private respondents) in M.A. No.400/2015 for reservation in promotion would be examined at the time of final disposal of the Original Application. In the meantime, the interim order dated 28.11.2013 is modified to the extent the promotion to the post of Senior Passenger Guard made in terms of the impugned order would remain subject to the final outcome of the Original Application.

M.A.No.396/2015 in O.A.No.2945/2014

33. When learned counsel for private respondent Nos. 4 to 7 sought deferment of hearing to a date beyond 16.02.2016 on the ground that the issue is being considered by Hon'ble Supreme Court in certain SLPs, he did not give the particulars of the SLPs and handed over a list (ibid). The list was disputed by the learned counsel for applicants. In the wake, learned counsel for respondent Nos. 4 to 7 is directed to file affidavit giving particulars of SLPs wherein, according to him, the issue of reservation in promotion is involved, with advance copy to learned counsel for applicants, who would have liberty to file their response thereto.

M.A. No.408/2015 in O.A.No.3193/2014

34. In terms of the aforementioned order passed in M.A. No.400/2015 in O.A. No.4158/2013, the interim order dated 09.09.2014 is modified to the

extent that promotion made shall remain subject to the final outcome of the present Original Application.

M.A. No.395/2015 in O.A.No.3476/2013

35. In terms of the aforementioned order, the interim order dated 01.10.2013 is modified to the extent that promotion made shall remain subject to the final outcome of the present Original Application.

O.A.No.1453/2015

36. When learned counsel for private respondents sought deferment of hearing to a date beyond 16.02.2016 on the ground that the issue is being considered by Hon'ble Supreme Court in certain SLPs, he did not give the particulars of the SLPs and handed over a list (ibid). The list was disputed by the learned counsel for applicants. In the wake, learned counsel for private respondents is directed to file affidavit giving particulars of SLPs wherein, according to him, the issue of reservation in promotion is involved, with advance copy to learned counsel for applicants, who would have liberty to file their response thereto.

M.A.No.3192/2015 in O.A.No.2116/2015

37. In terms of the aforementioned order, the interim order dated 29.05.2015 is modified to the extent that promotion made shall remain subject to the final outcome of the present Original Application.

O.A. No.2128/2014

38. When learned counsel for private respondent Nos. 4 to 7 sought deferment of hearing to a date beyond 16.02.2016 on the ground that the

issue is being considered by Hon'ble Supreme Court in certain SLPs, he did not give the particulars of the SLPs and handed over a list (ibid). The list was disputed by the learned counsel for applicants. In the wake, learned counsel for respondent Nos. 4 to 7 is directed to file affidavit giving particulars of SLPs wherein, according to him, the issue of reservation in promotion is involved, with advance copy to learned counsel for applicants, who would have liberty to file their response thereto.

List on 27.05.2016.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

/sunil/