

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3623/2015

Reserved on: 13.01.2017
Pronounced on: 09.08.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)**

1. S. S. Singh Rautela S/o M. S. Rautela,
R/o H. No.120, Sector-VIII, R. K. Puram,
New Delhi-110022.
Working as : Assistant Director/Executive
C/o Joint Director (Est.), Intelligence Bureau,
Ministry of Home Affairs, Govt. of India,
35 S. P. Marg, New Delhi (IB Hqrs.).
2. Chandra Prakash Singh S/o D. S. Negi,
R/o H. No.327, Sector-III, R. K. Puram,
New Delhi-110022.
Working as : Assistant Director/Executive
C/o Joint Director (Est.), Intelligence Bureau,
Ministry of Home Affairs, Govt. of India,
35 S. P. Marg, New Delhi (IB Hqrs.).
3. Suresh Kadiyan S/o D. P. S. Kadiyan,
H. No.591, Sector-III, R. K. Puram,
New Delhi-110022.
Working as : Assistant Director/Executive
C/o Joint Director (Est.), Intelligence Bureau,
Ministry of Home Affairs, Govt. of India,
35 S. P. Marg, New Delhi (IB Hqrs.). ... Applicants

(By Advocate : Mr. R. V. Sinha)

Versus

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi.

2. Intelligence Bureau,
Ministry of Home Affairs,
35, S. P. Marg, New Delhi
through its Director.
3. Shri K. T. Bhutia,
Joint Deputy Director,
SIB (MHA) Govt. of India,
Monastery, Kalimpong,
Distt. Darjiling-734301
through respondent No.2.
4. Shri Albert Kullu,
Joint Deputy Director,
SIB (MHA), Govt. of India,
01 Booti Road, Ranchi (Jharkhand),
through respondent No.2.
5. Shri Vum Suan,
Joint Deputy Director (Est.),
Intelligence Bureau,
Ministry of Home Affairs (Govt. of India),
35, S.P. Marg, New Delhi
through respondent No.2.
6. Shri Ghanshyam Dhal,
Joint Deputy Director,
SIB (MHA), Govt. of India,
Unit-5, Bidut Marg, Near Circuit House,
Bhubaneswar (Odisha),
through respondent No.2.
7. Sh. Leela Archana Kachhap,
Joint Deputy Director, Intelligence Bureau,
Ministry of Home Affairs (Govt. of India),
35, S. P. Marg, New Delhi
through respondent No.2.
8. Sh. Minoo Targain, Joint Deputy Director,
SIB (MHA) Govt. of India,
Chandralok Building,
Near Durphin, Monastery,
Kalimpong, Distt. Darjiling-734301
through respondent No.2.

9. Sh. Valentine Kullu,
Joint Deputy Director,
SIB (MHA) Govt. of India,
01 Booti Road, Ranchi (Jharkhand),
through respondent No.2.
10. Urgain Dorje,
Joint Deputy Director, Intelligence Bureau,
Ministry of Home Affairs (Govt. of India),
35, S. P. Marg, New Delhi (IB Hqrs),
through respondent No.2.
11. Sh. Asim Mandal,
Joint Deputy Director,
SIB, Ministry of Home Affairs
Govt. of India, 9/1 Garihat Road,
Ballyganj, Kolkata (West Bengal),
through respondent No.2.
12. Sh. Chander Shekhar,
Joint Deputy Director,
SIB, Ministry of Home Affairs,
Govt. of India, 9th Floor, KHB Building,
Kaveri Bhawan, K. G. Road,
Bangluru-9, through respondent No.2.
13. Sh. Rajender Kumar,
Joint Deputy Director,
SIB, Ministry of Home Affairs,
Govt. of India, S.V.P. Enclave,
Behind Sagar Apartments,
Sandesh Presh Road, Bodukdev,
Ahmedabad (Gujarat),
through respondent No.2. ... Respondents

(By Advocates: Mr. Gyanendra Singh)

O R D E R**Justice Permod Kohli, Chairman :**

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for following reliefs:

- “(a) Hold and declare the practice being adopted by the Respondents No.1 and 2 in not maintaining the prescribed roster for promotional post and further giving the seniority to the Scheduled Caste/Scheduled Tribes candidates even in the promotional post, ignoring the law declared by the Apex Court and further giving the Scheduled Caste/Scheduled Tribes candidates en bloc promotion in the promotional post contrary to the law and ignoring the claim of the General candidates like applicants as illegal and unconstitutional.
- (b) Hold and declare the impugned promotion order to the post of JDD/Exe. vide number 16/C-III/2015 (03)-18550-629 dated 30.06.2015 (Annexure-A Impugned) to the extent the respondents no.1 and 2 has given the promotion from the post of Assistant Director/Exe. to the post of JDD/Exe. to the SC/ST candidates including the respondent No.3 to respondent no.13, ignoring the original seniority of the applicants in the cadre of ACIO-II under the respondent No.2 as arbitrary and illegal and consequently quash the same;
- (c) Hold and declare the seniority list dated 11.9.2014 vide no.2/Seniority(C)/14(9)-3660 issued by respondent no.2 to the extent, it gives seniority to the reserved category candidates giving accelerated promotion applying the reservation policy and the same being contrary to the catch-up rule and thus being illegal and nullity in the eyes of law as laid down by the Apex Court in case of M. Nagaraj & Ors. Vs. Union of India reported as 2006 (8) SCC 212, Suraj Bhan Meena Vs. State of Rajasthan reported

as 2011 (1) SCC 467 and recently in the order and judgment dated 27.08.2015 in Civil Appeal No.6631-67632 of 2015 titled S. Paneer Selvam & Ors Vs. Govt. of Tamil Nadu Etc.;

- (d) restrain the respondent no.1 and 2 from filling up the higher post of JDD/Executive, Add/Executive by applying Rule of reservation in promotion and accelerated seniority;
- (e) Hold and declare that the applicants are entitled for seniority over the reserved category in the cadre of DCIO/AD by application of Catch-up rule of seniority in these grades and consequently direct the respondent no.1 and 2 to consider the applicants for promotion from the dates such juniors have been promoted in the grade of DCIO/AD/JDD and consequently direct the respondent no.1 and 2 to hold review DPC;
- (f) Issue appropriate writ, direction and declaration in their favour and against the respondents no.1 and 2 requiring them to finalise the seniority list for the post of Assistant Director/Exe. under respondent no.2 in terms of the law declared by the Apex Court on the point of Catch-up Rule regarding seniority qua General Candidates and reserved candidates.
- (g) Award cost of this application and proceedings against the Respondent Nos.1 and 2 and in favour of the Applicants.
- (i) May also pass further order(s) as be deemed just and proper to meet the ends of justice."

2. The applicants are working as Assistant Directors (AD)

w.e.f. 18.12.2012, 23.09.2013 and 26.12.2012 respectively with the Intelligence Bureau, Ministry of Home Affairs (respondent No.2).

The hierarchy of service in the respondent No.2 is as under:

Sl. No.	Name of Post	Grade Pay (Rs.)
1.	ACIO-II	4200
2.	ACIO-I	4600
3.	DCIO	5400
4.	AD	6600
5.	JDD	7600
6.	ADD	8700
7.	DD	8900

The post of ACIO-II is in Grade Pay of Rs.4200/-; ACIO-I in Grade Pay of Rs.4600/-; DCIO in Grade Pay of Rs.5400/-; AD in Grade Pay of Rs.6600/-; JDD in Grade Pay of Rs.7600/-; ADD in Grade Pay of Rs.8700/-; and DD in Grade Pay of Rs.8900/-.

The post of ACIO-II at the bottom of the aforesaid chart is the feeder grade for the post of ACIO-I. Similarly, the post of ACIO-I is the feeder grade for DCIO; DCIO is the feeder grade for AD; AD is the feeder grade for JDD; JDD is the feeder grade for ADD; and ADD is the feeder grade for the post of DD.

The posts of DCIO onwards are gazetted cadre posts in terms of the recruitment rules notified vide memorandum dated 08.04.2010.

Respondents 3 to 13 belong to Scheduled Castes and Scheduled Tribes. All of them were junior to the applicants at the time of their recruitment. Being from the reserved categories, they got accelerated promotion based upon the reservation policy of the respondents no.1 and 2.

A seniority list of Assistant Directors (ADs) was published on 11.09.2014. Applicant No.1 is shown at serial number 731, whereas names of applicant Nos.2 and 3 figure at serial numbers 950 and 655

respectively of the aforesaid seniority list. These applicants were appointed as ACIO-II on 04.08.1986, 29.07.1986 and 10.06.1986 respectively. The private respondents 3 to 13 were lower in seniority than the applicants. The private respondents were promoted as ACIO-I, DCIO, AD and JDD on the basis of reservation policy on account of accelerated promotion from time to time. Vide order dated 30.06.2015, the private respondents were promoted from the post of AD/Exe. to the rank of JD/Exe. from the dates they assumed charge. In the aforesaid order, the private respondents were placed *en bloc* over and above the general category candidates. It is alleged that respondents 1 and 2 are granting accelerated promotion and consequential seniority on the promotional posts to the reserved category candidates. No vacancy roster and roster points for SC/ST are maintained. The catch-up rule is not being followed. It is also alleged that promotions of the private respondents are in excess of the quota for SC/ST, i.e., 15% and 7.5% respectively. In sum and substance, the grievance of the applicants is that for grant of accelerated promotion and consequential seniority, respondents No.1 and 2 are required to collect the data, and if it is found that such reserved categories are inadequately represented, they may be granted accelerated promotion and consequential seniority in promotion. Promotion of the private respondents and seniority given to them on promotional posts are said to be violative of the

judgments of the Apex Court in *M. Nagaraj & others v Union of India* [(2006) 8 SCC 212]; *Uttar Pradesh Power Corporation Ltd. v Rajesh Kumar* [(2012) 7 SCC 1]; *Suraj Bhan Meena v State of Rajasthan* [(2011) 1 SCC 467]; and *S. Panneer Selvam & others v Government of Tamil Nadu* [(2015) 10 SCC 292].

3. The respondents in their counter-affidavit have denied the allegations. It is stated that the respondents 3 to 13 belong to SC/ST category. They were promoted as DCIO/Exe. vide DPC 2006-07, whereas applicants 1 and 3 were promoted vide DPC 2007-08 and applicant No.2 was promoted by DPC 2008-09. It is, however, admitted by the respondents that respondents 3 to 13 were junior to the applicants in the ranks of ACIO-II/Exe. Relevant observations are contained in para II. Same is reproduced hereunder:

“II. That the respondents R3 to R13, belonging to reserve category (SC/ST), though were junior to the petitioners in the rank of ACIO-II/Exe as well as in the rank of ACIO-I/Exe, were given the benefit of reservation policy of Government of India issued by DoP&T, whereby reservation is applicable upto the lowest Group A post in PB-3+GP of Rs.5400, which in IB is that of DCIO.”

The respondents have relied upon DOP&T OMs dated 10.04.1989, 19.01.2007 and 23.01.2014. It is stated that promotions are strictly in accordance with the existing instructions as contained in the aforesaid OMs. As regards applicability of the catch-up rule, it is

stated that catch-up rule has not been enforced having not been notified by DOP&T. It is also mentioned that respondent No.2 is maintaining the reservation roster for all ranks up to DCIO and the vacancies are filled up as per the respective reservation rosters only. It is further the case of the respondents that no reservation is applicable in the ranks of AD/Exe., JDD/Exe., ADD/Exe. and DD. It is further stated that the private respondents were not promoted giving them benefit of reservation but by their *en bloc* placement in the seniority list of AD/Exe.

4. Office memorandum dated 10.04.1989 contains consolidated instructions on DPCs and related matters. The instructions pertaining to the reservation for SCs/STs are as under:

“4.6 Instructions have been issued from time to time by the Department of Personnel and Training regarding reservations and concessions to SCs and STs in the matter of promotions and confirmations. These instructions should be duly taken into account by the appointing authorities while formulating proposals for promotion/confirmation for consideration of the DPC.”

“6.3.2.(i) In promotions by selections to posts/services within Group ‘A’ which carry an ultimate salary of Rs.5700/- p.m. in the revised scale, the SCs/STs officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would notwithstanding the prescription of ‘benchmark’ be included in that list provided they are not considered unfit for promotion.

(ii) In promotion by selection to posts/services in Group 'B' within Group 'B' and from Group 'B' to the lowest rung of Group 'A', selection against vacancies reserved for SCs and STs will be made only from those SC/STs officers, who are within normal zone of consideration prescribed vide the Department of Personnel and Training and A.R. O.M. No.22011/3/76-Estt.(D) dated 24th December, 1980. Where adequate number of SCs/STs candidates are not available within the normal field of choice, it may be extended to five times the number of vacancies and the SCs/STs candidates coming within the extended field of choice should also be considered against the vacancies reserved for them. If candidates from SCs/STs obtain on the basis of merit with due regard to seniority, on the same basis as others, lesser number of vacancies than the number reserved for them, the difference should be made up by selecting candidates of these communities, who are in the zone of consideration, irrespective of merit and 'benchmark' but who are considered fit for promotion."

Office memorandum dated 19.01.2007 insofar as it is relevant for purposes of the reservation for SCs/STs, reads as under:

"The term 'cadre strength' referred to in this Department's O.M. No.36012/2/96-Estt.(Res) dated 2.7.1997 in relation to calculation of reservation/maintenance of reservation registers/rosters means the number of posts required to be filled by a particular mode of recruitment in terms of applicable Recruitment Rules. In a grade comprising 200 posts, where the Recruitment Rules prescribe a ratio of 40:40:20 for direct recruitment, promotion and deputation respectively, the cadre strength for direct recruitment and promotion shall be 80 each. Since there is no reservation for posts to be filled by deputation, 40 posts will not be subject to reservation. The O.M. dated 2.7.97 also provides that if there is any increase or decrease in the cadre strength, size of the reservation roster will change and the number of

reserved posts will also increase or decrease accordingly.

When recruitment is made vacancy-based, it is possible that at any given point of time, the share of direct recruitment may increase and the share of promotion may correspondingly decrease, or vice versa. In such cases, cadre strength for direct recruitment and cadre strength for promotion would change from year to year. Consequently, the number of reserved posts in direct recruitment quota and promotion quota will also change from year to year."

5. The applicants have relied upon the judgment of the Hon'ble Supreme Court in *M. Nagaraj & others (supra)*. Vide Eighty-fifty Amendment, clause (4A) of Article 16 of the Constitution of India was amended providing for consequential seniority to Scheduled Castes and Scheduled Tribes on accelerated promotion. This provision was challenged before the Apex Court in a number of writ petitions and while upholding the *vires* of the Constitutional Amendment, the Hon'ble Supreme Court in *M. Nagaraj (supra)* held as under:

"Conclusion

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* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , the concept of post-based roster with inbuilt concept of replacement as held in *R.K. Sabharwal* [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] .

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 excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely."

6. The issue was further considered by the Apex Court in

Uttar Pradesh Power Corporation Ltd. v Rajesh Kumar (supra),

wherein the question of reservation in promotion with consequential seniority as prescribed under the Uttar Pradesh Public Services

(Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 was examined. The Hon'ble Supreme Court relying upon its earlier judgment in *Ajit Singh Janjua (II) v State of Punjab* [(1999) 7 SCC 209] and *Suraj Bhan Meena v State of Rajasthan & others* [(2011) 1 SCC 467], laid down following principles:

“81. From the aforesaid decision in *M. Nagaraj case* [(2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013 : AIR 2007 SC 71] and the paragraphs we have quoted hereinabove, the following principles can be carved out:

(i) Vesting of the power by an enabling provision may be constitutionally valid and yet “exercise of power” by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure the backwardness and inadequacy keeping in mind the efficiency of service as required under Article 335.

(ii) Article 16(4) which protects the interests of certain sections of the society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonised because they are restatements of the principle of equality under Article 14.

(iii) Each post gets marked for the particular category of candidates to be appointed against it and any subsequent vacancy has to be filled by that category candidate.

(iv) The 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 the upper ceiling limit of 50% is not violated. Further, roster has to be post-specific and not vacancy based.

(v) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4-A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4-A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4-A). Therefore, clause (4-A) 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 be enforced.

(vi) If the ceiling limit on the carry over of unfilled vacancies is removed, the other alternative time factor comes in and in that event, the timescale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the timescale is not kept, then posts will continue to remain vacant for years which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact situation.

(vii) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335, then this Court will certainly set aside and strike down such legislation.

(viii) 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 the facts of each case.

(ix) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercise depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimise these conflicting claims can

only be done by the administration in the context of local prevailing conditions in public employment.

(x) Article 16(4), therefore, creates a field which enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist in Article 16(1). It is only when these reasons are satisfied that a State gets the power to provide for reservation in the matter of employment."

7. Similar issue was further examined by the Apex Court in case of *S. Paneel Selvam & others v Government of Tamil Nadu (supra)*, wherein the Hon'ble Court held as under:

"36. In the absence of any provision for consequential seniority in the rules, the "catch-up rule" will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16(4-A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained."

8. In the present case, the respondents in their counter-affidavit have not justified the grant of consequential seniority to the reserved category candidates on the promotional posts. As a matter of fact, no law has been enacted by the respondents to justify the consequential seniority on promotional posts where the reserved category candidates have been granted accelerated promotions

against roster points. In absence of any valid law enacted on the basis of data indicating inadequate representation of reserved category candidates on promotional posts, the catch-up rule will apply as laid down in *Ajit Singh Janjua (II) v State of Punjab (supra)*. Under the catch-up rule, the general category candidates who were promoted later in point of time than the reserved category candidates who were promoted on accelerated promotion, will be entitled to their seniority on their promotion over and above the reserved category candidates who were promoted on accelerated promotion but were junior to the general category candidates in the feeding channel. This principle is now a settled law. The respondents in their counter-affidavit have stated that since no instructions have been issued by the DOP&T for the application of catch-up rule, same is not applicable. We are of the considered view that instructions or no instructions, the catch-up rule is the law laid down by the Apex Court and the respondents are bound by such law and are also under constitutional obligation to implement the same under Article 144 of the Constitution of India.

9. The next question raised by the applicants is challenge to the seniority of the private respondents and other reserved category candidates at the level of AD, JD and JDD. It is an admitted position that the reservation is applicable up to the level of DCIO. The private

respondents were promoted as DCIO/Exe. in the DPC held in the year 2006-2007, whereas applicant Nos. 1 and 3 were promoted in the DPC held in the year 2007-2008 and applicant No.2 was promoted in the DPC held in the year 2008-2009. On the promotion of the applicants to the post of DCIO, they never claimed the benefit of catch-up rule and accepted the seniority of the reserved category candidates over and above them. The private respondents were later promoted to the ranks of AD/Exe. and ADD/Exe. No reservation is prescribed for the ranks of AD/Exe. and above. Seniority of the applicants *qua* the private respondents at the level of DCIO came to be settled. The applicants never challenged the same. The private respondents and other reserved category candidates became senior to them and earned further promotions to the posts of AD and JDD. This OA has been filed in the year 2015 challenging the seniority at the level of AD which was published on 11.09.2014. As a matter of fact, seniority of the private respondents in this seniority list at the level of AD has been carried forward from the post of DCIO. The grievance of the applicants should have been at the level of DCIO and not at the level of AD. The applicants having accepted their seniority *qua* the reserved category candidates at the level of DCIO are not entitled to challenge the seniority at the level of AD at this belated stage, notwithstanding the fact that the catch-up rule applies and the applicants were entitled to claim their seniority over and

above the reserved category candidates on their promotion to the post of DCIO. It is settled law that settled seniority cannot be disturbed. Since we are not interfering in the impugned seniority, no directions can be issued in respect to promotions based upon impugned seniority list.

10. In view of the above circumstances, even though the benefit of catch-up rule may be available to the applicants, no relief can be granted to them at this belated stage. However, we direct the respondents to apply the catch-up rule as and when the general category candidates are promoted to the higher posts up to the level where reservation is applicable, and grant them the benefit of catch-up rule wherever it is applicable. This direction will not apply to the cases where seniority has already been settled at the first promotional level.

11. The OA is accordingly dismissed. No costs.

(**Nita Chowdhury**)
Member (A)

(**Justice Permod Kohli**)
Chairman

/as/