

**Central Administrative Tribunal
Principal Bench**

**OA No.3142/2012
MA No.2636/2012**

New Delhi, this the 11th day of October, 2017

**Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Asha Ram Meena,
S/o Shri Heera Lal Meena,
Permanent r/o Vill & PO Bookana,
Tehsil Sapotara, Distt. Karoli (Rajasthan)

...Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi.
2. The Director General,
All India Radio,
Sansad Marg, New Delhi.
3. Chief Engineer-I,
Civil Construction Wing,
All India Radio, 6th Floor,
Suchna Bhawan, New Delhi.

...Respondents

(By Advocate : Shri S.M. Arif)

ORDER (ORAL)

Mr. V. Ajay Kumar, Member (J) :-

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For the reasons stated therein, the MA filed for condonation of delay in filing the OA is allowed.

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2. The applicant who is presently working as Assistant Engineer on *insitu* basis filed the OA seeking the following reliefs:-

- (i) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the whole action of the respondent not considering the case of the applicant for his promotion to the post of Assistant Engineer against vacant reserved posts in ST quota is illegal, arbitrary and discriminatory and consequently pass an order directing the respondent to consider the case of the applicant for his promotion to the post of Assistant Engineer w.e.f. 17.04.2000 with all consequential benefits including the arrears of pay and allowances and including further promotion to the higher posts.
- (ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant.”

3. It is the short case of the applicant that a vacancy meant for ST roster quota was in existence w.e.f. 17.04.2000 in Assistant Engineer category and that the applicant was fully eligible and qualified for consideration of his case under ST roster quota, to the said post. But the respondents have not considered his case till date.

4. On the other hand, respondents contended that no vacancy of Assistant Engineer was in existence on 17.04.2000, that too under ST roster quota. They have further submitted that no junior of the applicant was considered or promoted to the said post till date.

5. In ***M. Nagaraj*** (supra), the Hon'ble Apex Court held as under :-

"The impugned constitutional amendments by which Articles 16(4A) and 16(4B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling-limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBC on one hand and SCs and STs on the other hand as held in *Indra Sawhney*, the concept of post-based Roster with in-built concept of replacement as held in *R.K. Sabharwal*.

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.

However, in this case, as stated, the main issue concerns the "extent of reservation". In this regard the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall

administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.”

6. It is an admitted fact that the Respondent – Railways have not conducted any exercise as prescribed in ***M. Nagaraj*** (supra) and without the same cannot provide reservation in promotions.
7. It is not the case of the applicant that he is entitled for consideration for promotion on merit or as per seniority. On the other hand he is seeking a direction to consider his case by applying the rule of reservation in promotion, which is against to the law declared in ***M. Nagaraj Vs. Union of India*** (2006) 8 SCC 21. As per the respondents' statement, no vacancy of Assistant Engineer meant for ST roster quota was in existence as on 17.04.2000, and that no junior of the applicant was promoted to the said post.

8. In the circumstances and in view of the declaration of the law by the Hon'ble Apex Court as observed above, we do not find any merit in the OA and the same is accordingly dismissed. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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