

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**RA No.247/2018 with MA No. 5025/2018 In
O.A No.1453/2015**

The 04th day of December, 2018

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

1. Neelabh Saxena,
Age-39 years,
S/o Sh. B.S. Saxena,
Loco Pilot (Goods),
Under DRM Bikaner,
17 OA No.3476/2013 and connected OAs
R/o-11/530, M.P.Nagar,
Bikaner, Rajasthan.
2. Shabhe Ram Teli,
Age-41 years,
S/o Sh. Mohan Lal,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o Railway Colony, Sadar Bazar,
Hurda Dist.Rajasthan.
3. Pawan Kumar Yadav,
Age 47 years,
S/o Sh. Jitemal Yadav,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o Railway Colony Vivek Vihar,
Lal Ghar, Rajasthan.
4. Ajay Kumar Sharma,
Age-36 years,
S/o Sh. Late Banwari,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o Railway Colony, Chutia Kunwa,
Bikaner, Rajasthan.
5. Rajesh Pilania,
Age-29 years,
S/o Sh. Bharat Singh,
Loco Pilot (Goods),

Under DRM Bikaner,
R/o-19/20, Railway Colony,
Rampura Basti Bikaner,
Rajasthan.

6. Manak Lal,
Age-30 years,
S/o Sh.Mula Ram,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o Railway Colony,
Rani Bazar, Bikaner, Rajasthan.
7. Imran Khan,
Age-33 years,
S/o Sh.Ali Khan,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o-24 Railway Colony,
Rampura Basti, Bikaner,
Rajasthan.
8. Shyam Sunder Swami,
Age-44 years,
S/o Sh. Babu Lal,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o Railway Colony, Vivek Nagar,
Lal Ghar, Rajasthan.
9. Sanjay Kumar Prajapti,
Age 42 years,
S/o Sh. Surja Ram,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o Railway Colony,
Near Hanuman Mandir, Bikaner,
Rajasthan.
10. Rijwan Ahmad,
Age 32 years,
S/o Shri Mahbub Alam,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o-1/K/16 Railway Colony,
Pawan Puri, Bikaner,
Rajasthan.

11. Satish Chand,
Age 56 years,
S/o Shri Tulsi Ram Mishra,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o Railway Colony, Rani Bazar,
Bikaner, Rajasthan.
12. Jai Bhagwan Singh,
Age 56 years,
S/o Shri Lal Singh,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o Rani Bazar Bast,
Bikaner, Rajasthan.
13. Ram Kumar Verma,
Age-36 years,
S/o Shri Baktu Ram Verma,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o -1/KA-13, Pawan Puri Bikaner,
Rajasthan.
14. Ravinder Kumar Solanki,
Age-42 years,
S/o Shri Ram Lal Solanki,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o -Railway Colony,
Chand Mal Park Bikaner,
Rajasthan.
15. Pradeep Kumar,
Age-37 years,
S/o Shri Hira Lal Prasad,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o 17-B Railway Colony Bikaner,
Rajasthan.
16. Dilip Kumar,
Age 32 years,
S/o Shri Pasupat Nath Prasad,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o 121-B Railway Colony,
Hanuman Mandir Bikaner,

Rajasthan.

17. Bhanwar Singh,
Age 35 years,
S/o Shri Chhtar Singh,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o 4/352, M.P. Railway Colony,
Pawan Puri, Bikaner.
18. Vijay Kumar,
Age 38 years,
S/o Shri Ram Narayan Mishtri,
Loco Pilot (Goods),
Under DRM Bikaner,
R/o 2/13, Pawan Puri, Bikaner,
Rajasthan
OA No.3476/2013 and connected OAs.
19. Ashish Ghosh,
Age 38 years,
S/o Shri Khagender Nath Ghosh,
Loco Pilot (Goods)
Under DRM Bikaner
R/o 1/KA-14, Pawan Puri Bikaner,
Rajasthan.
20. Chandrakant Kumar,
Age 30 years
S/o Shri Naresh Prasad,
Loco Pilot (Goods)
Under DRM Bikaner
R/o-Rani Bazar Bast Bikaner,
Rajasthan.
21. Deepak Kumar Tiwari,
Age 46 years,
S/o Shri Amar Chand Tiwari,
Loco Pilot (Goods)
Under DRM Bikaner
R/o-B-2/128 Railway Colony,
Bikaner, Rajasthan.
22. Mritunjay Kumar Singh,
Age 37 years,
S/o Shri Vinay Krishan Prasad,
Loco Pilot (Goods)
Under DRM Bikaner

R/o-121-C, Railway Colony,
Hanuman Mandir, Bikaner,
Rajasthan.

23. Bhupender Kumar Yadav,
Age 43 years
S/o Shri Jay Lal Ram Yadav
Loco Pilot (Goods)
Under DRM Bikaner
R/o H.No.68, Near Hanuman Nagar,
Bikaner, Rajasthan.
24. Umesh Kumar Sharma,
Age 47 years,
S/o Shri Late Yej Raj Sharma,
Loco Pilot (Goods)
Under DRM Bikaner
R/o-L-47-E, Railway Colony,
Hishar, Haryana.
25. Ramesh Sahani,
Age 34 years,
S/o Shri Upender Sahani,
Loco Pilot (Goods)
Under DRM Bikaner
R/o Railway Colony,
Rani Bazar, Bikaner, Rajasthan.
26. Shiv Kumar,
Age 37 years,
S/o Shri Om Prakash,
Loco Pilot (Goods)
Under DRM Bikaner
R/o 180-B-1, Manohar Colony,
Patel Nagar, Hisar.
27. Rakesh Kumar,
Age 32 years
S/o Shri Prem Pal Singh
Loco Pilot (Goods)
Under DRM Bikaner
R/o 1559-A, Motipura,
Patej Hisar, Haryana.
28. Upendra Sharma,
Age 34 years,
S/o Shri Bikaram Sharma
Loco Pilot (Goods)

Under DRM Bikaner,
R/o 144-C.B.R. Railway Colony,
Hisar, Haryana.

29. Sanjay Kumar Gupta,
Age 37 years,
S/o Shri Shyma Bihari Gupta
Loco Pilot (Goods)
Under DRM Bikaner,
R/o H.No.25 Ekta Nagar,
Hisar, Haryana.
30. Nirmal Jain,
Age 36 years,
S/o Shri Sikander Chand Jain,
Loco Pilot (Goods)
Under DRM Bikaner,
R/o-2 Vikash Nagar, Gorgan.
31. Jitender Yadav,
Age 32 years
S/o Shri Balbir Singh,
Loco Pilot (Goods)
Under DRM Bikaner,
R/o H.No-2 Vikash Nagar,
Gali No.4, Gorgan.
32. Amit Kumar Yadav,
Age 32 years,
S/o Shri K.C. Yadav,
Loco Pilot (Goods)
Under DRM Bikaner,
R/o H.No.4, Vikash Nagar,
Rewari, Haryana. .. Review Applicants

Versus

Union of India: Through

1. Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
North Western Railway, Bikaner.
3. Divisional Railway Manager,

North Western Railway,
DRM Office, Bikaner.

4. Dhram Veer,
S/o Shri Hari Ram,
Loco Pilot (Goods) Hissar, Haryana.
5. Sunil Kumar Bedwal,
S/o Shri Ram Prasad,
Loco Pilot (Goods), Railway Station,
Hanumangarh.
6. Ram Phool Kasotiya,
S/o Shri Kharati Lal,
23 OA No.3476/2013
(Goods),
Loco Pilot (Goods), Hissar,
Haryana. .. Respondents

ORDER BY CIRCULATION

By Mr. V. Ajay Kumar, Member (J)

MA No.5025/2018

In the circumstances, and for the reasons mentioned therein, the MA filed for condoning of the delay in filing RA is allowed.

RA No.247/2018

The applicants in the instant Review Application, are respondents No.5 and 6 in OA No. 1453/2015. The said OA was disposed of by way of a common order dated 22.01.2018 along with OA No.3476/2013 and batch in Ram Pher Yadav and Others Vs. The Secretary, Railway Board and Others and the operative portion of the same, reads as under:-

“15. In the circumstances and for the aforesaid reasons, the respondents are directed to act in terms of **M. Nagaraj** (supra), i.e.

without following the rule of reservation in promotions and to redraw the promotional lists/panels, if already issued, with all consequential benefits, however, without any back wages in the circumstances. This exercise shall be completed within 90 days from the date of receipt of a copy of this order. Accordingly, all the O.As. are disposed of.

16. All the other pending MAs, if any, stand disposed of. No costs".

2. This Tribunal while disposing of the batch of OAs, by its common order dated 22.01.2018, directed the respondents to act in terms of the Constitutional Bench decision in **M. Nagaraj and Others Vs. Union of India and Others, (2006) 8 SCC 212**, only. The review applicants, in fact, have not raised any new ground or grounds in the review and they are simply trying to re-argue the O.A. by filing the instant RA, which is not permissible as per the settled principles of law.

3. Further, the common order dated 22.01.2018 of this Tribunal in O.A. No.3476/2013 and batch, against which the present RA has been filed, was already upheld by the Hon'ble High Court of Delhi in **W.P. (C) No.5601/2018** in **Manoj Kumar Meena and Others Vs. Union of India and Others** vide order dated 23.05.2018. The said order reads as under:-

"1. The petitioners are aggrieved by a common judgment dated 22.01.2018, passed by the Central Administrative Tribunal, wherein the issue relating to reservation in promotion was raised. In the impugned judgment, the Tribunal had relied on the directions issued by the Supreme Court in the case of M. Nagaraj & Ors. Vs. Union of India & Others reported as (2006) 8 SCC 212, particularly, in paras 3 and 4 thereof and held that in view of the categorical findings recorded in the aforesaid judgment and another decision of the Supreme Court in the case of Suresh Chand Gautam Vs. State of Uttar Pradesh and Others reported as AIR 2016 SC 1321, wherein it has been held that the State is not bound to make reservations for SCs/STs in matters of promotion and

if the State wishes to exercise the discretion to make such provision, it must collect quantifiable data showing backwardness of the Class and inadequacy of the representation of that Class in public employment in addition to compliance with Article 335 of the Constitution of India. Noting that the respondents herein have not conducted the exercise as directed by the Constitution Bench in the case of M Nagaraj (supra) and without such an exercise being conducted, no State/Authority can apply the rule of reservation in promotion, the Tribunal has disposed of the original application with directions issued to the respondents to make compliances of the judgment in M. Nagaraj (supra), by collecting the quantifiable data for giving effect to the rules of reservation in promotions.

2. Dr.K.S.Chauhan, learned counsel for the petitioners submits that the Tribunal failed to appreciate that in a recent order dated 14.11.2017, passed by the Supreme Court in Civil Appeals No.4562-4564 of 2017 entitled State of Tripura & Ors. vs. Jayanta Chakraborty & Ors., it was opined that the case requires to be heard by a Bench as per the constitutional mandate under Article 145(3) of the Constitution of India, for consideration including a relook, if necessary, at the judgment of M. Nagraj (supra).

3. On perusing the order dated 14.11.2017, we find that the counsel for the petitioners therein had pressed for an interim relief, which was declined by the Supreme Court with an express view that even interim relief needs to be considered by the Constitution Bench and liberty was granted to the parties to mention the urgency before the Hon'ble Chief Justice of India.

4. This being the position, we are not inclined to interfere in the impugned judgment or entertain the present petition, which is disposed of alongwith the pending applications with liberty granted to the petitioner to approach the Supreme Court for appropriate relief".

4. Further, the order dated 26.09.2018 in SLP No.30621/2011 in

Jarnail Singh & Others vs. Lachhmi Narain Gupta & Others

(Annexure RA-7), basing on which the review applicants are seeking to review the order in the O.A., is subsequent to 22.01.2018, i.e. the date of disposal of the O.A., and hence cannot be considered under the review jurisdiction of this Tribunal.

5. In the circumstances and for the aforesaid reasons, we do not find any merit in the RA and accordingly, the same is dismissed. No costs.

6. However, it is needless to mention that any order/judgment on the issue of reservation in services, including the judgment in the OA against which the instant RA was filed, is subject to the latest law of the land, as declared by the Constitution Bench of the Hon'ble Supreme Court of India in SLP No.30621/2011 in **Jarnail Singh & Others Vs. Lachhmi Narain Gupta & Others** dated 26.09.2018.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS