

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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ORIGINAL APPLICATION NO.060/00666/2017

Chandigarh, this the 28th day of February, 2018

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**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MS. P. GOPINATH, MEMBER (A)**

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Sh. Inder Kumar s/o Sh. D.B. Gupta, working as Assistant Controller of Defence Accounts in the office of Principal Controller of Defence Accounts (WC), Sector 9, Chandigarh.

....APPLICANT

(Present: **Mr. D. R. Sharma, Advocate**)

VERSUS

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Controller General of Defence Accounts, Ulan Batar Road, Delhi Cantt.-110010.
3. The Principal Controller of Defence Accounts (WC), Sector 9, Chandigarh.
4. A.S. Sahare, Assistant Controller of Defence Accounts, working in o/o Pay and Accounts Officer (Other Ranks) Guards Kamptee (Maharashtra).
5. D.S. Bansal, Assistant Controller of Defence Accounts, working in o/o Integrated Financial Advisor, ARTRAC Shimla (H.P.).
6. Des Raj, Assistant Controller of Defence Accounts, working in o/o Zonal Office (Pension Disbursement) Pathankot (PB).
7. Mulkh Raj, Assistant Controller of Defence Accounts, working in o/o Area Accounts Office, Pathankot (PB).
8. Kura Ram, Assistant Controller of Defence Accounts, working in o/o Integrated Financial Advisor, 3 BRD, Chandigarh.
9. R.N. Sarkar, Assistant Controller of Defence Accounts, working in o/o Integrated Financial Advisor, HQ 33 Corps Sukna (West Bengal).
10. S.K. Dass, Assistant Controller of Defence Accounts, working in o/o MGO/PPO (AHQ) Delhi, under the administrative control of Principal Controller of Defence Accounts, New Delhi.
11. Y. Sobha, Assistant Controller of Defence Accounts, working in o/o Joint Controller of Defence Accounts (Research & Development) Pune.

12. Dhani Ram, Assistant Controller of Defence Accounts, working in o/o Integrated Financial Advisor (WC) Chandimandir.
13. S.Kala, Assistant Controller of Defence Accounts, working in o/o Integrated Financial Advisor, 5 BRD Sulur (Tamil Nadu).
14. Subhash Chand, Assistant Controller of Defence Accounts, working in o/o Pay and Accounts Office (Other Ranks) BEG&C, Roorkee (Utrakhand).
15. B.N. Amresh, Assistant Controller of Defence Accounts, working in o/o Pay and Accounts Office (Other Ranks) MLI Belgaum (Karnataka).
16. A.K. Sakolia, Assistant Controller of Defence Accounts, working in o/o Kendriya Sainik Board, Delhi as Joint Director (Accounts) (Encadred post).
17. L.D. Morya, Assistant Controller of Defence Accounts working in o/o Integrated Financial Advisor (SWC) Jaipur.
18. Sunita Chauhan, Assistant Controller of Defence Accounts, working in o/o Financial Advisor to ASD (B) Mumbai, Maharashtra.
19. Rashpal, Assistant Controller of Defence Accounts, working in o/o Integrated Financial Advisor, HQ 16 Corps, Nagrota, J&K.
20. K.V. Unavane, Assistant Controller of Defence Accounts, working in o/o Integrated Financial Advisor (Navy) Western Naval Command, Mumbai.
21. Hans Raj, Assistant Controller of Defence Accounts, working in o/o Integrated Financial Advisor HQ 2 Corps, Ambala.
22. B.S. Kamble, Assistant Controller of Defence Accounts, working in o/o Integrated Financial Advisor CAFVD, Kirkee (Maharashtra).
23. Dhana Lakshmi (Kum), Assistant Controller of Defence Accounts, working in o/o Integrated Financial Advisor 26 ED, Bangalore.

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RESPONDENTS

Present: **Mr. Ram Lal Gupta, Advocate for Respondents no.1to3.**
Mr. H.S. Thakur, Advocate for Respondents No.5-8,10-13,15&21to23)

ORDER (oral)

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J):-

The instant Original Application (OA), is directed by applicant Inder Kumar, Assistant Controller of Defence Accounts, challenging the validity of the impugned letter dated 18.5.2017 (Annexure A-1), whereby his juniors (Private Respondents No.4 to 23), who belong to reserved category, were wrongly promoted to the post of Deputy

Controller of Defence Accounts (for brevity Dy.CDA), by ignoring the catch-up principle and by granting benefit of reservation in promotion, letters dated 19.5.2017 (Annexure A-2) and dated 30.5.2017 (Annexure A-3), by virtue of which his representations were ordered to be kept pending, to be considered after the SLP filed by the respondents is decided, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

2. The epitome of the facts and the material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant OA, and emanating from the record, is that the applicant joined the Department of Defence Accounts on 30.8.1974, as an Auditor, and qualified the Subordinate Accounts Service (SAS) Examination held on All India Basis, during the year 1986, whereas private respondents No. 4 to 23, joined the Department as Auditors between January, 1980 to October, 1989, as per chart (Annexure A-4). The promotions to the post of Section Officer (Accounts) [SO(A)] are made in order of seniority, and the seniority of the SO(A) is fixed according to the date of their passing of SAS Examination, as per para 92 of the Office Manual, Part-I.

3. The case set up by the applicant, in brief, in so far as relevant, is that he was promoted as S.O(A) on 25.3.1991 and Assistant Accounts Officer (AAO) on 11.3.1996 whereas Respondents No. 4 to 23 were promoted as SO (A) between 8.11.1993 to 11.2.1997 and AAO between 16.1.1998 to 31.12.2000. It was alleged that the private respondents, who belong to reserved category, superseded the applicant in promotion

of Accounts Officer (AO) and they were promoted as such between 26.4.2004 to 11.8.2006 and the applicant was promoted as A.O on 3.10.2007. The respondents were shown senior to the applicant, in the seniority list. By virtue of reservation, respondents No. 4 to 23 were promoted as Senior Accounts Officer (SAO) between 29.4.2009 to 24.5.2009 and the applicant was promoted as SAO on 19.4.2010 and shown junior to the private respondents in the seniority list, Annexures A-6 and A-7.

4. The case of the applicant further proceeds that the private respondents No. 4 to 23 were promoted as Assistant Controller of Defence Accounts (ACDA) between 3.1.2011 to 28.12.2013, on the basis of the alleged seniority list (Annexure A-8). He submitted representations dated 2.8.2016 (Annexure A-9) and 19.1.2017 (Annexure A-10), to promote only eligible persons, by applying the catch-up rule and not to grant benefit of reservation in promotion, but the respondents kept on promoting the reserved categories and his representations were kept pending, in the garb of pendency of SLPs filed by some other persons.

5. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the applicant claims that although the applicant was senior at every stage, from Respondents No. 4 to 23, but they were wrongly promoted to the post of AO, SAO, ACDO and Dy. CDA, by illegally ignoring the catch up rule and by wrongly applying the policy of reservation in promotion, which according to him is arbitrary, illegal, without jurisdiction and against the well settled principle of law laid down by the Apex Court

in various judgments. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned orders, in the manner indicated hereinabove.

6. On the contrary, the official respondents have refuted the claim of the applicant and filed the reply, wherein it was duly acknowledged that the seniority of the private respondents was fixed by following the extant government rules and regulations. A chronological development of rule position / government policy / orders on consequential benefit of reservation in promotion along with other related information which are followed for calculating seniority of officers, has been given. It was alleged that benefit of reservation in promotion was granted to the Respondents No. 4 to 23, in pursuance of DoP&T OM dated 20.7.1974, 25.2.1976, 25.4.1989 and 13.8.1997 (Annexure R-1 Coolly), OMs dated 30.1.1997 (Annexure R-2) and 21.1.2002 (Annexure R-4). The government servants belonging to SC/ST have been availing the benefit of consequential seniority on their promotion on the basis of rule of reservation.

7. It will not be out of place to mention here that, although the private respondents have filed their separate respective replies but toed the line of defence, as pleaded by the official respondents. Instead of reproducing the entire contents of the replies in toto, and in order to avoid repetition of facts, suffice it to say, that while duly acknowledging the factual matrix and reiterating the validity of the impugned letters / orders, all the respondents have stoutly denied all other allegations and grounds, contained in the OA, and prayed for its dismissal. That is how, we are seized of the matter.

8. Having heard the learned counsel for the parties, having gone through the record and legal provisional with their valuable assistance & after bestowal of thought over the entire matter, we are of the firm view that the instant OA deserves to be accepted, in the manner and for the reasons mentioned here-in-below.

9. What cannot possibly be disputed here is that the applicant was appointed as AAO much prior to the Respondent No.4 to 23 and he remained senior to them, as per seniority list as on 1.10.2003 (Annexure A-5). Surprisingly enough, the private respondents No.4 to 23, who were much junior to the applicant, were wrongly promoted to the post of A.O during 26.4.2004 to 11.8.2006, SAO during 2009, ACDA and then Dy. CDA, vide impugned letter /order dated 18.5.2017 (Annexure A-1).

10. Thus, it would be seen that the facts of the case are neither intricate, nor much disputed, and fall within a very narrow compass, to decide the real controversy between the parties. Such being the material on record and legal position, now the short and significant question, that arises for our determination, in this case is as to whether the Competent Authority was legally required to follow the principle of catch-up rule and not to apply the policy of reservation in promotion, in the given peculiar facts and special circumstances of this case or not?

11. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must obviously be in the affirmative, in this relevant connection.

12. Ex-facie the main arguments of the learned counsel for the official respondents, that since the private respondents were promoted in view of the DoPT Instructions dated 21.1.2002 (Annexure R-4) and Article 16 (4A) of the Constitution, so the impugned letters and orders are valid, are not only devoid of merit but mis-placed as well, and deserves to be repelled for the following, more than one, reasons.

13. At the first instance, possibly no-one can dispute that Article 16(4A) was inserted w.e.f. 17.6.1995, authorizing the State, to make any provision for reservation in the matter of promotion, with consequential seniority, to any class or classes of posts, in the services under the State. Admittedly, this amendment was challenged and examined by a Constitution Bench of the Hon'ble Supreme Court in the case of **M. Nagraj & Others Vs. Union of India & Others**, (2006) 8 SCC 212. While upholding the constitutional validity of the amendment, the Hon'ble Apex Court has ruled 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.

Subject to 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."

14. Meaning thereby, it is the mandatory duty of the State to prove in each case the existence of the compelling reasons for (a) **backwardness** (b) **inadequacy of the representation** and (c) **administrative efficiency**, before making any provision for reservation in promotion. It was also held that the State is not bound to make reservation for SC/ST in the matter of promotion. However, if they wish to exercise their discretion, and make such provision, the State has to collect **quantifiable data** showing the **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. It is not a matter of dispute that the appropriate Government has neither made any specific provision in consonance with Article 16 (4A) of the Constitution nor got conducted the survey or collected the quantifiable data showing the backwardness of the class and inadequacy of the representation of SCs/STs, in the present case.

15. Likewise, the DoPT instructions, Annexure R-4, which were issued much prior to the mandate of the Constitution Bench of the Hon'ble Apex Court in M.Nagraj & Others' case (supra), will not nullify the mandate of the Apex Court and would not come to the rescue of the respondents, in the present case, in any manner and are held to be in-operative, in this regard. Thus, the impugned promotion order dated 18.5.2017 (Annexure A-1) qua the private respondents, orders dated 19.5.2017 (Annexure A-2), and dated 30.5.2017 (Annexure A-3), passed in complete violation of the mandate of the Hon'ble Apex Court in the case of M. Nagraj & Others (supra), indeed are arbitrary and cannot legally be maintained. Moreover, this matter is no more res-integra and is now well settled.

16. An identical question came to be decided in the case of **Uttar Pradesh Power Corporation Limited v. Rajesh Kumar & others** (2012) 7 SCC 1. The Hon'ble Apex Court, culled out the following principles, which had emerged from **M. Nagaraj's** case, in the following manner:-

"81. From the aforesaid decision in M. Nagaraj case 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 harmonized 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 time-scale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the time-scale 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 optimize 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."

17. Sequel, similar view was taken by Hon'ble Supreme Court in the case of **Central Bank of India v. SC/ST Employees Welfare Association** (2015) 12 SCC 308. The question raised therein was, as to whether in the absence of a Rule of reservation for promotion, such reservation was permissible merely because the banks were following reservation policy of the Government of

India. The Madras High Court after considering the relevant facts found that there was no adequate representation of SCs and STs in higher scales and as such it directed that such representation be granted. The argument of the Bank that such reservation will affect efficiency in the administration was rejected. The Hon'ble Apex Court held that ***in absence of any specific provision for reservation in promotion, the Court could not issue a direction for reservation.*** It was ruled as under:-

“32. We have already noticed above that in matters of promotion within Group A posts, which carry an ultimate salary of Rs 5700 per month, there was no provision for any reservation. On a conjoint reading of these two Office Memorandums dated 1-11-1990 and 13-8-1997, in the absence of any other provision or rule evidencing such a reservation in the matter of promotions, it cannot be said that there was reservation in promotion within Group A posts up to the ultimate salary of Rs 5700 per month. The High Court in the impugned judgment has gone by the lofty ideals enshrined in Articles 15 and 16 of the Constitution as well as the fact that in these Banks there is no adequate representation of SC/ST category of officers in Group IV and above. That may be so. It can only provide justification for making a provision of this nature. However, in the absence of such a provision, same cannot be read by overstretching the language of the Office Memorandum dated 13-8-1997. It is for the State to take stock of the ground realities and take a decision as to whether it is necessary to make provision for reservation in promotions to the aforesaid post as well.”

18. Likewise, in the case of **S. Panneer Selvam v. State of Tamil Nadu**, 2015(10) SCC 292. The question before the Hon'ble Apex Court was whether in absence of any policy decision by the State for giving consequential seniority to candidates promoted on the basis of reservation prior to a senior general category candidate, claim for consequential seniority could be accepted. Answering the question in the negative, it was held that in absence of provision for consequential seniority, 'catch up' rule will be applicable and the roster point promotees cannot claim such consequential seniority. The senior general candidates will regain their seniority on being promoted. Observations relevant in this regard are as follows:

"33. ..If we look at the above comparative table of the service particulars of the appellants and the respondents, it is seen that the contesting respondents U. Palaniappan joined the service almost seven years after the appellants, his seniority is automatically accelerated at an unprecedented rate and as on 1-4-2004 his seniority rank as ADE is 150 and seniority of V. Appadurai is 120. The appellants who are qualified and senior than the contesting respondents are placed much below in rank in comparison to the person belonging to the reserved class promotees who were promoted following the rule of reservation.

It is to be noted that the private respondents in the present case have been promoted temporarily under Rule 39(a) and Rule 10(a)(i) of the General Rules with the condition that their inclusion in the promotional order shall not confer on them any right whatsoever in the service. Determination of seniority is a vital aspect in the service career of an employee and his future promotion is dependent on this. Therefore, determination of seniority must be based on some principles which are just and fair. In the absence of any policy decision taken or rules framed by the State of Tamil Nadu regarding Tamil Nadu Highways Engineering Service, accelerated promotion given to the respondents following rule of reservation in terms of Rule 12 will not give them consequential accelerated seniority.

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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."

19. Again, in the case of **B.K. Pavitra & Others Vs. Union of India & Others**, (2017) 4 SCC 620, the Hon'ble Apex Court, relying upon its earlier decisions, has ruled (in para 29), as under :-

"29. It is clear from the above discussion in S. Panneer Selvam case, that exercise for determining "inadequacy of representation", "backwardness" and "overall efficiency", is a must for exercise of power under Article 16(4-A). Mere fact that there is no proportionate representation in promotional posts for the population of SCs and STs is not by itself enough to grant consequential seniority to promotees who are otherwise junior and thereby denying seniority to those who are given promotion later on account of reservation policy. It is for the State to place material on record that there was compelling necessity for exercise of such power and decision of the State was based on material including the study that overall efficiency is not compromised. In the present case, no such exercise has been undertaken. The High Court erroneously observed that it was for the petitioners to plead and prove that the overall efficiency was adversely affected by giving consequential seniority to junior persons who got

promotion on account of reservation. Plea that persons promoted at the same time were allowed to retain their seniority in the lower cadre is untenable and ignores the fact that a senior person may be promoted later and not at same time on account of roster point reservation. Depriving him of his seniority affects his further chances of promotion. Further plea that seniority was not a fundamental right is equally without any merit in the present context. In absence of exercise under Article 16(4-A), it is the 'catch up' rule which fully applies. It is not necessary to go into the question whether the Corporation concerned had adopted the rule of consequential seniority."

20. Not only that, Hon'ble High Court of Punjab and Haryana in the case of **Bharat Sanchar Nigam Limited & Another Vs. Shri Naveen Sharma and others**, CWP No. 26882 of 2016 decided on 23.12.2016, has held as under :

"5. After considering the matter in detail and relying upon the law laid down by the Apex Court in **M.Nagraj's** case (supra) and other judgments as noticed in its order dated 30.09.2016, it has been categorically recorded by the Tribunal that there can be no reservation in promotion without collecting quantifiable data of backwardness of the reserved classes and inadequacy of their representation in public employment. In the present case, no such data was held to be collected by the official respondents. Thus, the respondents could not grant reservation in promotion. It has been further recorded by the Tribunal that the reservation in promotion cannot be permitted merely on the basis of shortfall in vacancies of one category or one cadre of one department or one entity or unit only which would be against the principles laid down by the Apex Court. The relevant findings recorded by the Tribunal read thus:-

"13. We have carefully considered the matter. It was not necessary to implead the candidates of SC/ST categories as party to the O.A. because the O.A. was filed even before the examination was held and, therefore, candidates of those categories were not identifiable at that time. Moreover, the challenge is to policy of official respondents regarding reservation in promotion and for this reason also, it was not essential to implead the candidates of the reserved categories as party to the O.A. Accordingly objection of official respondents to this effect is overruled.

14. As regards merit, the applicants are entitled to succeed in view of judgments in the cases of **M.Nagraj** (supra), **Suraj Bhan, Meena** (supra), **Lachhmi Narayan Gupta** (supra), **Rajesh Shukla and another** (supra), **Sukhwinder Singh** (supra) and **Narender Singh** (supra). According to these judgments, there can be no reservation in promotion without collecting quantifiable data of backwardness of the reserved classes and inadequacy of their representation in public employment. No such data has however been collected by the official respondents. Consequently, the respondents cannot grant reservation in promotion.

15. Contention of respondents based on summary of vacancies as given in Annexure R.1 cannot be accepted. Firstly the said summary relates to the position as on 1.1.2015 and not of the year 2010-11 for which LDCE was held on 21.6.2015. Secondly even according to said summary, ST candidates were over represented in the quota of promotion on the basis of seniority-cum-fitness whereas SC candidates were represented almost according to their quota. In the quota of promotion by LDCE, of course, there was shortfall in both reserved categories. However, the reservation in promotion cannot be permitted merely on the basis of shortfall in vacancies of one category or one cadre of one department or one entity or unit only. It would be completely against the letter, spirit, purport and intent of **M.Nagraj** (supra). Quantifiable data regarding public employment has to be collected as per dictum of Hon'ble Supreme Court in **M.Nagraj** (supra) but it has not been so done. BSNL is following OMs of DoPT and admittedly DoPT has not carried out any exercise to collect identifiable data in terms of **M.Nagraj** (supra). Even BSNL has not done so. For this reason, BSNL submitted in the case of SC/ST Welfare Association (supra) that they were disabled from taking steps to remove the shortfall in vacancies of reserved categories. However, official respondents have now taken U turn in the instant case. This cannot be permitted.

Accordingly, we conclude that there can be no reservation in promotion. Action of the respondents to the contrary cannot be sustained."

21. Therefore, it is held that the competent authority has arbitrarily ignored the principles of catch-up rule with impunity and wrongly applied the policy of reservation, while promoting the private respondents, who were junior to the applicant, to the posts of A.O, SAO, ACDA and then Dy. CDA, against the well settled mandate of the Hon'ble Apex Court in the pointed cases (supra), which is not legally permissible. Thus, the contrary arguments of the learned counsel for the respondents, **stricto sensu**, deserve to be and are hereby repelled, in the present set of circumstances of the case. The ratio of law laid down by the Hon'ble Apex Court in the indicated judgments is, **mutatis mutandis**, applicable to the instant controversy, and is the complete answer to the problem in hand.

22. In the light of the aforesaid prismatic reasons, the instant OA is hereby accepted. As a consequence thereof, impugned letter dated 18.5.2017 (Annexure A-1), (relatable to respondents No.4 to 13), letters dated 19.5.2017 (Annexure A-2) and 30.5.2017 (Annexure A-3) are set aside, in the obtaining circumstances of the case. At the same time, the competent authority is also directed to re-caste the seniority list of AO, SAO and ACDA, by following the principle of catch-up rule and only then to make promotions of eligible candidates, to the post of ACDA and Dy.CDA, without applying the policy of reservation in promotion & in consonance with mandate of Apex Court in the indicated cases, within a period of three months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 28.02.2018

HC*