

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**O. A. No. 260/00913 OF 2016**  
**Cuttack, this the 21<sup>st</sup> day of June, 2018**

**CORAM**  
**HON'BLE MR. S. K. PATTNAIK, MEMBER(J)**  
**HON'BLE DR. M. SARANGI, MEMBER (A)**

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1. Ranjan Kumar Pradhan, aged about 44 years, son of Sri Sarbeswar Pradhan of Manpur PO- Jatni, PS- Delang, Dist- Puri.
2. Santosh Kumar Subudhi, aged about 44 years, C/o Sri Biswanath Pati At- Bali PO/PS- Jatni, Dist- Khurda.

...Applicants

(By the Advocate- M/s. B.Dash, C.Mohanta)

-VERSUS-

**Union of India Represented through**

1. Secretary (Establishment), Ministry of Railways, Railway Board, New Delhi.
2. General Manager, East Coast Railway, Rail Bhawan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, PO- Jatni, Dist- Khurda.
4. Senior Divisional Electrical Engineer (OP), Khurda, AT/PO/Dist- Khurda.
5. Divisional Railway Manager, East Coast Railway, At/PO- Jatni, Khurda.
6. Alekh Chandra Naik, S/o Baruna Naik, At/PO- Chakundapala, PS- Turumunga, Dist- Keonjhar, presently working as Loco Pilot (T), ECoR, Stn. KOJR.
7. Drapada Behera, S/o Gopal Behera, At/PO- Hatatota, PS- Talcher, Angul, presently working as Loco Pilot (G), ECoR, Stn. TLHR.
8. Santosh Kumar Singh, S/o Mangal Singh, At/PO- Chintamani Nagar, PS- Jatni, Dist- Khurda, presently working as Loco Pilot (T), ECoR, Stn. KUR.

9. Siba Shankar Behera, S/o Arjun Behera, At/PO- Kudiary, Chua Sahi, PS- Jatni, Dist- Khurda, presently working as Loco Pilot (G), ECoR, KUR Stn.

...Respondents

{By the Advocate- Mr. M.K.Das, M/s R.N.Parija,S.P.Nayak, P.Panda (for intervener)}

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## **O R D E R**

### **S. K. PATTNAIK, MEMBER (J):**

Both the applicants, in this O.A., seek quashing of the impugned order dated 08.11.2016 (A/6), impugned notification vide dated 11.01.2016 (A/1) relating to reservation of 7 posts for SC and 3 posts for ST and to direct the Respondents to denotify 10 posts from reserved category and to fill up the posts strictly in accordance with the seniority subject to rejection of unfit without resorting to reservation.

2. The Respondents issued notification dated 11.01.2016 for filling up of the total number of 43 posts (UR 33, SC 07 and ST 03) of Chief Loco Inspector in PB-II with GP Rs. 4600/- in Mechanical and Electrical (OP) Deptt. of Khurda Division. The grievance of the applicant is that the reservation for 7 posts of SC and 03 posts of ST in promotion by way of bifurcating the vacancies vis a vis the roster point of SC/ST is thoroughly misconceived as no quantifiable data for framing any rule to follow reservation in promotion was collected in terms of the law laid down by the Hon'ble Supreme Court in the case of M.Nagraj, as a result of which the applicants, who are senior to many reserved candidates are going to be deprived of their right for being considered

for promotion to the post of Chief Loco Inspector. It has been stated that they have submitted representation as against providing reservation in promotion dehors the law. As no consideration was given to the representation, they have approached this tribunal in O.A. 630/2016, which was disposed of on 14.09.2016 with direction to consider the representation in accordance with law but the authorities rejected the same on the ground, which is not sustainable in the eyes of law.

3. Heard. Perused the records.
4. Respondents have filed their counter trying to justify their action and the notification under Annexure- A/1 as also the order of rejection but we find that none of the grounds taken in the counter have any substantial force for the reasons to be discussed herein below.
5. We may at the outset record that the issue of reservation in promotion has been resolved by plethora of judicial pronouncements and is in fact no more res integra. As regards reservation in promotion, it is clarified that under the present circumstances and parameters, reservation in promotion is not legally permissible in view of the Constitutional Bench Judgment passed in the case of ***M.Nagraj Vs. UOI reported in 2006 (8) SCC 212***. In a recent decision, a Division Bench of the Hon'ble High Court of Patna in the case of ***State of Bihar Vs. Sunil Kumar Singh LPA No. 1066/2015 decided on 30.07.2015 reported in 2015 (3) PLJR page 592*** relying on the Constitutional Bench Judgment of M.Nagraj have emphatically held that there cannot be any reservation in promotion. Even the Railway Board vide RBE No. 117/2016 dated

30.09.2016 has put a hold on a escalatory promotion based on reservation in view of categorical undertaking given by the Solicitor General of India before the Hon'ble Supreme Court in Contempt Case No. 314/2016. Even under RBE No. 117/2016 the Railway Board has kept in abeyance RBE No. 126/2010 dated 01.09.2010.

6. It is further profitable to note that similar matter came up for consideration before the Patna Bench of this Tribunal in O.A. No. 107/2016 (Pravin Kumar & Ors. Vs. UOI & Ors) disposed of on 11.08.2017. The Patna Bench of the Tribunal in which one of us is a Member, analyzing the vires of the reservation in promotion held as under:

*“4. On going through the pleadings of the Respondents it is abundantly clear that they are still in dark about the fact that reservation in promotion is not legally permissible. This Tribunal in OA 02 of 2015 [Rajnish Kumar & Ors. vs. Union of India & Ors.] has passed an elaborate order on 09.07.2016 based on the decision of the Constitutional bench passed in the case of M.Nagraj Vs. UOI & Ors [2006] 8 SCC 212 and a Division Bench of Hon'ble High Court of Patna in LPA No. 1066 of 2015 on 30.7.2015 (State of Bihar vs Sunil Kumar Singh) 2015 (3) PLJR Page 549. According to Their Lordships, there cannot be any reservation in promotion. Even the Railway Board vide RBE 117/2016 dated 30.09.2016 has put a hold on accelerated promotion based on reservation till the conclusion of SLP and kept in abeyance RBE 126/2010 dated 01.09.2010.*

*5. We are at a loss to understand, in spite of such categorical restrictions, how the respondents are resorting to promotion on the basis of roster. This state of affair clearly indicates that Railway is now managed by inefficient and ill equipped officers who have scant knowledge of law and circulars of the Department. Since the order of promotion given by*

*the respondents being arbitrary and contrary to the constitutional Bench in the case of M. Nagraj, is liable to be quashed.*

*6. The O.A. is allowed. The Respondents are directed to revert the persons, who have been given promotion on the basis of reservation as such and exercise under Article 16[4A] can be undertaken after the State takes opinion that such class of persons are not adequately represented in the service under the State, which is equally applicable to Railway, and not otherwise. The exercise be completed within a period of four months. If the department feels that there will be administrative difficulty in implementing the order in that even they are to give promotion to the general candidates who have been over looked by such promotion of Scheduled Caste and Scheduled Tribe employees so that the right of promotion of unreserved candidates are not affected as Article 335 remains a guiding principle for maintenance of efficiency of administration in connection with affairs of the Union or of a State. Furthermore, in a recent decision [(2015) 10 SCC 292, *S. Panneer Selvam & Ors. Vs. State of Tamil Nadu and Others*] Their Lordships of the Hon'ble Apex Court have categorically held that catch-up rule would be applicable in such circumstances, i.e. reserved category promotees cannot count their seniority in the promoted category from the date of their promotion, and if the senior general candidates later reach the promotional level, general candidates will regain their seniority. These observations of the Hon'ble Apex Court have to be kept in mind before undertaking any exercise, so that the action of the respondents shall not have the effect of nullifying the judgment of Hon'ble Supreme Court. No costs.”*

7. Similar matter came up before the Hon'ble Apex Court in the case of *Suraj Bhan Meena & Anr. Vs. State of Rajasthan & Ors.* in Special Leave Petition (Civil) No. 6385/2010 disposed of on 07.12.2010, an excerpt from it is reproduced below:

*“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."*

8. The above being the position of fact and law, the O.A. is allowed. The impugned orders being contrary to law are hereby quashed. The Respondents are directed to revert the persons, who have been given promotion on the basis of reservation, as such an exercise under Article 16[4A] can be undertaken only after the State takes opinion that such class of persons are not adequately represented in the service under the State, which is equally applicable to Railway, and not otherwise.

9. The present exercise of rectifying illegal promotion given to reserved category candidates solely on the basis of reservation ignoring eligible general candidates be completed within a period of four months. If the department feels that there will be administrative difficulty in

implementing the order in that event they are to give promotion to the general candidates who have been over looked by such promotion of Scheduled Caste and Scheduled Tribe employees, so that the right of promotion of unreserved candidates are not affected, as Article 335 remains a guiding principle for maintenance of efficiency of administration in connection with affairs of the Union or State.

10. Furthermore, in a recent decision *[(2015) 10 SCC 292, S. Panneer Selvam & Ors. Vs. State of Tamil Nadu and Others]* Their Lordships of the Hon'ble Apex Court have categorically held that catch-up rule would be applicable in such circumstances, i.e. reserved category promotees cannot count their seniority in the promoted category from the date of their promotion, and if the senior general candidates later reach the promotional level, general candidates will regain their seniority. These observations of the Hon'ble Apex Court have to be kept in mind before undertaking any exercise, so that the action of the respondents shall not have the effect of nullifying the judgment of Hon'ble Supreme Court. Further, it is clarified that till quantified data collected by the State machinery or any further clarification made by a Constitutional Bench judgment of the Hon'ble Apex Court, there shall not be any reservation in promotional post. No costs.

(M. SARANGI)  
Member (Admn.)

(S.K.PATTNAIK)  
Member (Judl.)

RK/CM