

CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA

O.A. 350/00183/2016

Present : Hon'ble Justice Shri Vishnu Ch. Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

1. TUSHAR KANTI GHOSH,
Son of Late Jagannath Prosad Ghosh,
Aged about 48 years,
Residing at A-23/03,
Anubhav Co-operative,
Bidhannagar,
Durgapur – 713212.
2. AMIT RANJAN SEN,
Son of Late Probhat Ranjan Sen,
Aged about 55 years,
Residing at 72 CD, Durand Colony, Asansol,
District : Burdwan,
Pin – 713301.
3. PRADIP KUMAR ROY,
Son of Late Kalipada Roy,
Aged about 57 years,
Residing at 10/35, Samiran Roy Road, Asansol,
District : Burdwan,
Pin – 713301.
4. ARUP KUMAR BANERJEE,
Son of Late Madan Mohan Banerjee,
Aged about 54 years,
Sasthynagar Ismail, Asansol,
District : Burdwan,
Pin – 713301.
5. PRABIR KUMAR SARKAR,
Son of Late R.K. Sarkar,
Aged about 55 years,
BRMB Road, Asansol,
District : Burdwan,
Pin – 713304.
6. PARTHA PRATIM THAKUR,



Son of Late Sunil Chandra Thakur,
Aged about 45 years,
130GH Traffic Colony, Asansol,
District : Burdwan,
Pin - 713301.

7. SHAHOOD AHMAD,
Son of Late Abdul Hossain,
Aged about 45 years,
Flat No. 21, Block B, Shibani Apartment,
Dr. M.N. Saha Road, Asansol,
District : Burdwan,
Pin - 713301.

All are working as Senior Passenger Guard,
Eastern Railway, Asansol Division.

..... Applicants.

Versus

1. UNION OF INDIA,
Through the General Manager,
Eastern Railway,
17, N.S. Road, Fairlie Place,
Kolkata - 700 001.
2. The Chairman,
Railway Board, Rail Bhawan,
New Delhi - 110 001.
3. THE CHIEF PERSONNEL OFFICER,
Eastern Railway,
Fairlie Place, 17, N.S. Road,
Kolkata - 700 001.
4. THE DIVISIONAL RAILWAY MANAGER,
Eastern Railway,
Asansol Division, Asansol,
District : Budwan,
Pin - 713302.
5. THE SENIOR DIVISIONAL PERSONNEL OFFICER,
Eastern Railway,



Asansol Division, Asansol,
District : Budwan,
Pin – 713302.

6. THE SENIOR DIVISIONAL
OPERATION MANAGER,
Eastern Railway,
Asansol Division Asansol,
District : Budwan,
Pin – 713302.

7. ROSHAN KUJUR,
Working for the post of
Senior Passenger Guard,
Eastern Railway,
Asansol service through
The Station Manager, Asansol,
(Being S.C. Junior candidate Empanelled
By giving accelerated promotion following
Reservation Policy).

8. ARUP KUMAR MONDAL,
Working for the post of
Senior Passenger Guard,
Eastern Railway,
Asansol service through
The Station Manager, Asansol
(Being S.C. Empanelled as
Unreserved in the impugned Panel).

..... Respondents.

For the Applicant : Mr. U.N. Betal , Counsel

For the Respondents : Mr M.K.Bandyopadhyay, Counsel

Date of hearing: 06.12.2016

Date of order: 09.12.2016



ORDER**JUSTICE V.C. GUPTA, JM**

The applicants of this O.A are working against the post of Senior Passenger Guard (SPG for short) of Eastern Railway, Asansol Division. The next promotional post for the post of SPG is Mail Express Guard (MEG for short). Such promotions are governed by RBE No.161/2009 and are based on non selection basis. The merit/suitability of the candidates is evaluated on the basis of prescribed bench mark. The criteria to fill up the post are seniority cum suitability. A Panel was prepared for promotion to the MEG in Asansol Division on 4.9.2015 which is annexed as Annexure A-1 and the same is extracted herein below:

"Eastern Railway

No:E(T-I) Mail Exp Guard
Station Manager/ASN/MDP
Chief Yard Master/UDL/STN/BRR

Asansol, dt. 04/09/15

Sub: Filling up the vacancy of Mail Express Guard in PB-2 Rs.
3900-34800/- +4200/-.

(Vacancy : 55 = UR-42, SC-08, ST-05)

In terms of CPO KKK's Sl. No. 155/09, a select list is to be prepared through(not legible) with prescribed bench mark in favour of the following Sr. Passenger Guard in PB-2 Rs. 3900-34800/- +4200/- GP" in connection with the above subject.


Sl.	NAME	Stn
1.	A. Purakasthya	Sitarampur
2.	D.P. Ganguly	Andal
3.	Tej kumar singh	Asansol
4.	Ram sakal mishra	Asansol
5.	Kailash prasad	Asansol
6.	Bameshwar singh	Asansol
7.	Sudhir kumar	Asansol
8.	Monoj kr. chowdhury	Asansol
9.	Anil kumar deo	Madhupur
10.	Ramesh jha	Asansol



11. Md. Abu bakarsiddique	Madhupur
12. Sushil kr sinha	Andal
13. Rajeeva nayan mishra	Asansol
14. Sanjoy kr. sinha	Asansol
15. Surendra math behara (sc) Against UR Vacancy	Andal
16. Swapan kr. Gharui (sc) Against UR Vacancy	Andal
17. Hassan ayaz	Asansol
18. Prem mohan das	Asansol
19. Jayram das soren (st) Against UR Vacancy	Asansol
20. Somenath adhvaryya	Asansol
21. Vijay pd roy	Asansol
22. S.m. zafar karim	Asansol
23. Sashi bhushan soren (st) Against UR Vacancy	Asansol
24. Uma kant prasad sinha	Asansol
25. Uttam kr das	Andal
26. Biswanath chattopadhyay	Asansol
27. Ram Krishna majilla	Asansol
28. Md. Taslim Hassan	Asansol
29. Arup kr. Mondal (sc) Against UR Vacancy	Asansol
30. Dinanath yadav	Asansol
31. Md. Aslam	Asansol
32. Nani gopal Maji (sc) Against UR Vacancy	Asansol
33. Hem Chandra khalkho (st) Against UR Vacancy	Asansol
34. Abdul kalam azad	Andal
35. Raj kishore prasad (sc) Against UR Vacancy	Asansol
36.(not legible)	
37. Bihay kr. srivastava	Madhupur
38. Susanta kr roychowdhury	Asansol
39. Chandan bhattacharjee	Asansol
40. Sanjib mondal (sc) Against UR Vaccancy	Asansol
41. Maloy kr. Gandhi	Asansol
42. Paritosh kr. roy	Andal
43. Roshan kujur (st)	Asansol
44. Dipak kr roy (sc)	Sitarampur
45. Dharm deo prasad (sc)	Asansol
46. Krishna kumar singh (st)	Asansol
47. Patras kujur (st)	Andal
48. Sonelal kisku (st)	Asansol
49. Pravash ch sardar (sc)	Asansol
50. Umakant chowdhury (sc)	Asansol
51. Anil kumar (sc)	Asansol
52. Baidya nath tudu (st)	Anadal
53. Abhijit (sc)	Andal
54. Arun kumar das (sc)	Asansol
55. Tapas kr saha (sc)	Asansol

Staff concerned need not be spared.

This has the approval of the competent authority.



Sd/-

04.9.15.

For Sr. Divl. Personnel Officer
Eastern Railway/ Asansol"

The applicants claimed to be the most senior employees in the Asansol Division on the post of SPG but they were excluded in the above panel in violation of the reservation rules. It was further contended that as per seniority list of candidates prepared in 2002 at entry level of the post of Goods Guard the position of the applicants are well ahead the empanelled candidates a Sl.No.43 to 55 in the impugned panel. But the benefit of accelerated promotion being the reserved candidates has been extended to candidates at Sl.43 to 55 and the reserved candidates on the basis of their quota under the reserved category placed in the panel violating the judgment delivered by Hon'ble Supreme Court in **M Nagaraj v. Union of India, (2006) 8 SCC 212**. The applicants also placed on record the provisional panel of selected candidates for the post of SPG prepared in 2013 to show that they are Senior Passenger Guard in comparison to the empanelled candidates in the present panel. The panel for promotion was prepared after following the reservation policy contrary to the verdict of Hon'ble Supreme Court in plethora of judgments and the same is also contrary to the ratio propounded in the case of M. Nagaraj case (Supra). The applicants made a representation along with others in terms of the order passed in M.Nagaraj case but without deciding their representations the Railway management has prepared the above referred list of promotion. It was further contended that a candidate of reserved category cannot be placed against an unreserved vacancy in case of promotion on non selection basis. When the representations of the applicants were not considered, the applicants preferred O.A. No.174/2015, Shri



Tushar Kanti Ghosh & Ors. Vs. Union of India & Others before this Tribunal, which was decided on 02.11.2015 and directions have been issued to the respondents to decide the representation of the applicants. The relevant portion of the judgment in O.A.1745/2015 is quoted herein below:

"5. It is noticed that a representation has been preferred to the Chief Personnel Officer, Eastern Railway, the Divisional Railway Manager, Eastern Railway and the Senior Divisional Personnel Officer, Eastern Railway, on 30.09.2015 alleging that reservation policy could not be applied against any reserved vacancies in non-selection promotional post. The said representation not yet been disposed of till date. Hence, without expressing any opinion in the matter, the OA is disposed of with a direction upon the Senior Divisional Personnel Officer or any other competent authority to give a personal hearing to the present applicants and to pass a reasoned and speaking order in accordance with law within a period of one month from the date of receipt of a copy of this order. Till such time the provisional panel in question shall not be finalized. This order is passed with the consent of both the parties."

In pursuance of the aforesaid order the competent authority decided the representation of the applicants by a speaking order dated 06.01.2016 which has been annexed as Annexure A-6 to the O.A and the same is also quoted herein below for ready reference:

"REASONED AND SPEAKING ORDER

Pursuant to the order dated 02.11.15 passed by Hon'ble Tribunal in OA No. 1745 of 2015. I have personally gone through the representations of the applicants, OAs and the relevant files. In light of the factual verification of these documents and keeping in view the ruling provisions it is observed as under:-

The applicants altogether 04, namely Tushar Kanti Ghosh, Amit Ranjan Sen, Pradip Kumar Roy, and Dilip Kumar Das who are presently working as Sr. Passenger Guards and filed the aforesaid OA before Hon'ble Tribunal/Calcutta Bench wherein Hon'ble Tribunal vide order dated 02.11.15 has observed that "....a representation has been preferred to the Chief Personnel Officer, Divisional Railway Manager, and the Sr. Divisional Personnel Officer alleging that reservation policy could not be applied against reserved vacancies in non-selection promotional post.



The said representation not yet been disposed of till date. Hence without expressing any opinion in the matter, the OA is disposed of with directions upon the Sr. Divisional Personnel Officer or any other competent authority to give a personal hearing to the present applicants and to pass a reasoned and speaking order in accordance with law within a period of one month from the date of receipt of a copy of this order."

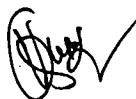
Pursuant to the above order, the applicants of the OA No. 1745 of 2015 were granted a personal hearing on 06.01.2015. Their grievances were patiently heard and found to be similar to the contents of their representation dated 30.09.15 received on 04.11.15 by this office.

In compliance with the above order, para-wise comments in response to the representation dated 30.09.15 is furnished below:-

1. Sr. Passenger Guard is an intermediate grade in the overall Guard Cadre. The apex grade amongst the Guard cadre is Mail Express Guard.
2. As per extant procedure assessment for filling up 55 posts of Mail Exp. Guard was made taking in to account prescribed percentage of reservation policies as is applicable for all promotions in terms of RB's letter No. E(SCT)72, dtd. 11.11.73. As per computation of reservation, shortfall against SC point was 08 and against ST point 05. Certification of RP Cell and approval of Liaison Officer (SC/ST) had also been obtained.

On the basis of approved assessment, notification was issued indicating total vacancy of 55 with break up of communities as UR – 42, SC – 08, ST – 05. According to the eligibility list of Mail Exp. Guard PB – 2 + Grade Pay Rs. 4200/- total 55 (UR – 42, SC – 08, ST – 05) from Sr. Pass Guard have been prepared for promotion keeping in view extant seniority and reservation policies and notified vide letter No. E(T-I)/Mail Exp dated 04.09.2015. The suitability was being conducted by following the method of Suitability with prescribed Bench Mark as per RBE No. 161/2009 (CPO / E. Railway's Sl. Circular No. 155/ 2009).

3. The reservation policy followed while processing the suitability with prescribed bench mark is in compliance with the order dated 19.10.2006 passed by Hon'ble Supreme Court in the case of M. Nagaraj & ORS v/s UOI & ORS circulated vide RBE No. 29/2008
4. The suitability was being conducted by following the method of Suitability with prescribed Bench Mark as per RBE NO. 161 / 2009 (CPO / E. Railway's Sl. Circular No. 155/ 2009).
5. The eligibility list has been prepared in compliance with guidelines laid down in RBE No.32/2002 wherein it is stated that "ST/ST Railway Servants shall on their promotion by virtue of Rule of reservation/Roster be entitled to consequential seniority also."
6. Reservation policy as communicated vide RBE No. 126/10 and RBE No. 103/03 has been duly followed wherein it is stated that "SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualification will be adjusted against unreserved points of reservation roster, irrespective



of the fact whether the promotion is made by selection method or non-selection method".

Under the above circumstances it may be appreciated that this office has not deviated from any guidelines received from Railway Board from time to time while preparing the eligibility list circulated vide this office letter No. E(T-1)/Mail Exp Guard dated 4.9.15.

This disposes of the order dated 02.11.15 passed by Hon'ble Tribunal, Calcutta Bench in OA No. 1745 of 2015


Sd/-

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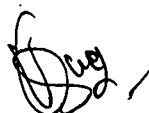
Sr. Divisional Personnel Officer,
Eastern Railway, Asansol"

Aggrieved by the aforesaid speaking order the applicants have filed this application.

2. It has been further pleaded by the applicants that while deciding the representation of the applicants the Senior Divisional Personnel Officer has taken into consideration the reservation policy and followed in the promotion in the light of RBE No.29/2008 after passing the order in the case in M.Nagaraj (supra). In view of the RBE 29/2008 the Railway administration allowed to comply with rule of reservation against roster points of SC, ST Railway servants on their promotion including entitlement of consequential seniority as contended in RBE No.32/2002 and RBE No.103/2003. The Railway also issued reservation policy communicated by RBE No.126/2010 and on the basis of that it has been contended that "SC/ST Railway Servants shall on their promotion by virtue of Rule of reservation/Roster be entitled to consequential seniority also." Reservation policy as communicated vide RBE No. 126/10 and RBE No. 103/03 it has been stated by the respondents that they have duly followed whereby "SC/ST candidates appointed by promotion on their own merit and seniority and



not owing to reservation or relaxation of qualification will be adjusted against unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method". It was further contended by the applicants that RBE No.29/2008 has already been set aside by an order of the Full Bench of Principal Bench of Central Administrative Tribunal vide order dated 02.12.2010 passed in O.A.No. 2211/ 2008, All India Equality Forum and Others vs. U.O.I & Others. Consequently the reservation policy cannot be adhered to in promotion. Thereafter RBE No.126/2010 was again issued whereby the reserved category candidates were placed against the post meant for unreserved candidates. This RBE No.126/2010 was also challenged before Punjab and Haryana High Court in CWP No.13218/2009 in the case of Lachhmi Narain Gupta & Others vs. Jarnail Singh & Others. The Hon'ble High Court of Punjab and Haryana by the judgment dated 15.07.2011 quashed the office Memorandum dated 10.08.2010 issued by DOPT and on the basis of which RBE 126/2010 was issued, against which Union of India and Jarnail Singh have preferred SLPs. In SLP No.30621/2011, Jarnail Singh & others Vs Union of India & others before the Hon'ble Supreme Court order of maintaining status quo has been passed on 03.02.2015. Thereafter, Contempt Petition was filed before the Hon'ble supreme Court against DOPT and Railways and after hearing the matter on 29.09.2016, the learned Solicitor General gave an undertaking that till such time the main matter along with Contempt Petition is decided no further promotion of the reserved category persons to unreserved post will be made based on O.M. dated 10.08.2010 of DOPT and the Railway Board Circular dated 14.09.2010 having RBE No.126/2010. But inspite of that the applicants at sl. No.43 to 55 still find place in the panel on the



basis of their reservation against SC and ST quota and in block they have been placed against their provided quota contrary to decision of Courts/Tribunals. In such a way the Railway Board Circulars by passed ratio propounded in **M.Nagaraj** case accordingly, directives of M Nagaraj case become redundant. Not only this the persons under the reserved category were placed against the posts meant for unreserved candidates which was shown to be placed at Sl.No.15, 16, 19, 23, 29, 32, 33, 35 and 40. In view of the above the panel prepared on 04.09.2015 is sought to be quashed and it was prayed that appropriate directions be issued to the respondents be prepared panel without adhering to reservation policy. The reliefs claimed in the O.A are to setting aside/quashing the said order dated 06.01.2016 and also sought relief to prepare a fresh panel after quashing the panel of 04.09.2015 incorporating the applicants in terms of the judgment rendered by the Apex Court in M. Nagaraj case (supra).

3. The reply has been filed by the respondents, wherein it has been contended that letter dated 04.09.2015 is not actually a panel but it is merely a notification for promotion to the post of MEG in PB-2 Rs.9300-34,800/- plus Rs.4200/- G.P containing the names of SPG available in the zone of consideration. It was further stated that employees shown at Sl.No.43 to 55 in the aforesaid notification was selected under zone of consideration as per guidelines received from the Railway Board vide letter dated 11.01.1973, which has been annexed as Annexure A-1(but the same has not been annexed). On the basis of that it has been stated that in case where the vacancy for reserved quota exist and the reserved community candidates is not available to be adjudged for suitability according to normal general seniority list, the suitability



of the next available candidate belonging to SC/ST candidate from the same list should be adjudged. On this stand it has been stated that though employees shown at Sl. 43 to 55 in the notification were junior to the applicants as per seniority list but they were subsequently promoted by virtue of rule of reservation with consequential seniority in terms of the Board's letter having RBE No.33/2002. It has further contended that RBE No.29/2008 was issued in the light of the judgment of Hon'ble Supreme Court in the case of M.Nagaraj and Others and the seniority of the SC/ST Railway servants promoted by virtue of rule of reservation shall be regulated in terms of the instructions contained in Board's letter dated 08.03.2002 and 13.01.2005. Copies of which has also been shown to be annexed as Annexure-4 (but the same has also not been annexed with the reply). The aforesaid instructions have been complied with by preparing this impugned panel. No other instructions/guidelines have been issued in the form of Office Memorandum or Circular to follow any judgment or order passed in compliance with the aforesaid judgments. It was further contended that when the claim was referred to the nodal Ministry i.e. DOPT by letter dated 11.02.2016 addressed to Railway Board and it has been learnt that issue of enacting the judgment of the Apex Court in M. Nagaraj case is still under examination. It was further contended that the bench mark were specified as follows:

- " For Average -2
- For Good -3;
- For Very Good -4,
- For Outstanding -5."

It has been categorically stated in paragraph 9 of reply that reservation policy as per railway Board's letter under RBE No.126/2010, (copy of the same has also not been annexed though shown to be annexed), was duly followed while

adjudging the suitability of candidates wherein it has been provided that SC/ST candidates should be appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualification and will be adjusted against un-reserved points of reservation roster. It was further contended that the Full Bench decision of the Principal Bench in O.A.2211/2008 is sub-judice before the Hon'ble High Court of Delhi and it was again stated that enacting the judgment of Hon'ble Supreme Court in M. Nagaraj case is still under examination. It was further pleaded that the order passed was strictly in accordance with Circulars and instructions issued by Railways Board from time to time and again reiterated that SC/ST Railway servant promoted by virtue of rule of reservation shall be regulated in terms of the instructions contained in Board's letter dated 8.3.2002 (RBE No.33/2002) and 13.01.2005 (Copies of these RBE were also no annexed though they have been shown to be annexed with the reply).

4. No rejoinder has been filed by the applicants. Only supplementary affidavit has been filed on behalf of the applicants bringing on record the RBE relied upon by the Railway administration in the speaking order.

5. We have heard learned counsel for the parties at length and also perused the record.

6. At the very outset it would be necessary to mention that RBE No.29/2008 as well as RBE No.126/2010 has already been quashed by Full Bench of CAT Principal Bench and by Punjab and Haryana High Court respectively. It has been contended that matter is sub-judice before the Hon'ble Delhi High Court and Hon'ble Supreme Court. In view of the interim order passed by Hon'ble Supreme



Court in the light of undertaking the Railway has decided not to promote further the persons of reserved category against unreserved posts/vacancies in roster on the basis of circular of Railway Board having RBE No.126/2010 based on the Office Memorandum dated 10.08.2010 of the DOPT. In view of the aforementioned statement of the counsel for the respondents the things still continuing as they were before the aforesaid statement No change has been made in the penal nor it has been stated that the present penal will kept in abeyance and no promotions will be carried out on the basis of impugned penal.

7. In M. Nagaraj Case the validity of amended Article 16 (4-A) and (4-B) was upheld. It was further held that these amended Articles enables the State to provide the reservation in promotion. But at the same time it was further ruled that State is not bound to provide such reservation and if State intends to provide reservation in promotion then the State has to consider compelling circumstances for providing reservation with regard to the exigencies of the backwardness of the class and inadequacy of the representation of the class in public employment in addition to comply with Article 335 and unless such exercise is undertaken by the State, discretion with regard to Article 16 (4-A) and (4-B) cannot be implemented. After relying upon that judgment the Apex Court in M. Nagaraj Case (supra) the Hon'ble Supreme Court in case of **Suresh Chand Gautam vs. State of Uttar Pradesh & Ors., (2016) 2 SCC (L&S) 291** and also in **S.Panneer Selvam and Others vs. State of Tamil Nadu & Others, (2015) 10 SCC 292** categorically ruled that merely because validity of Article 16 (4-A) and (4-B) has been upheld by Apex Court, it does not mean that State is authorised to follow the reservation policy in regard to promotion which does not follow the mandate with regard to collection of data and taking a decision. It

(Signature)

has also been ruled that it would be wrong to say that consequential seniority for SCs/ST candidates before amendment could not be disturbed being the effect of amendment would be prospective in nature. Hence any law contrary to the verdict and mandate in M. Nagaraj case would be void and as such the rule in existence prior to the date of amendment with regard to reservation in promotion cannot be allowed to prevail. In this regard the Hon'ble Court also relied upon the decision of the Apex Court in case of ***U.P. Power Corporation Ltd. vs. Rajesh Kumar, (2012) 7 SCC 1***, wherein the provisions contained in Rule 8(A) of U.P. Rules of 1991 as inserted by Rule of 2007 were declared ultra vires and unconstitutional, In view of the above legal proposition it cannot be said that regulations, circulars, instructions, guidelines issued with regard to application of reservation in promotion cannot be allowed to prevail and if any exercise has been done after adhering to the policy of reservation in preparing the panel such panel cannot be allowed to sustain.

8. In this case the private respondents have not chosen to contest the claim who were made parties in the representative capacity and whose names found place in the panel at Sl. 29 and 43.

9. The learned counsel for the Railways vehemently argued that a candidate of a reserved category on its own merit may be placed on promotion against an unreserved point in the roster, but where the reserved candidates are not available the vacancy reserved for SC/ST shall be carried forward and could not be filled by promotion from amongst the candidates of unreserved or other categories. If this argument of the respondents' counsel is accepted it will go against the verdict of a Constitutional Bench judgment in M. Nagaraj case as



discussed herein above and shall also contrary to the undertaking given before the Hon'ble Supreme Court by the respondents.

10. If reservation is not made applicable in promotion then there is no need to prepare any roster in the cadre which is wholly filled by promotion and all the posts will be treated to be unreserved and none of the post may be fixed for any particular category on the basis of reservation based on community. If in the 100% promotional cadre no persons can be promoted on the basis of reservation unless the State takes decisions after undergoing the exercise as discussed in M. Nagaraj Case and that too after amendment of Article 16(4A) and (4B). If a service cadre have modes of recruitment of both by direct recruitment and by promotion then only in that case roster is required to be prepared to accommodate and adjust the direct recruits vis a vis promotes to fix their inter-se-seniority.

11. Here in the case in hand no such exercise has been carried out by the State so far. Therefore, the earlier regulations/circulars/instructions/rules prepared without following the mandate in M. Nagaraj Case cannot have any sanction of law after pronouncement of the judgment by the Constitutional Bench in the case of M. Nagaraj and no candidate of reserve category can be promoted on the basis of benefit of reservation availed by him at the time of induction in the service as a direct recruit. If a roster on the basis of reservation policy for promotional post(s) still continues contrary to the mandate of M. Nagaraj case the same cannot be given effect to.

12. The learned counsel for the respondents now further contended that the matter is still sub-judice before Delhi High Court so far as RBE No.29/2008 is

concerned. So far as RBE No.126/2010 is concerned the same is also sub-judice before Hon'ble Supreme Court. Therefore, this O.A may be adjourned sine die till a decision is arrived at by the Hon'ble Supreme Court dealing with the case of Punjab and Haryana High Court.

13. We are of the view that in absence of any undertaking by the respondents that the respondent shall not give any effect to the impugned penal for promotion to MES and also keeping in view of the latest pronouncements in the case of **Suresh Chand Gautam vs. State of Uttar Pradesh & Ors., (2016) 2 SCC (L&S) 291** and also in **S.Panneer Selvam and Others vs. State of Tamil Nadu & Others, (2015) 10 SCC 292** following the judgement in **U.P.Power Corporation Ltd. vs. Rajesh Kumar, (2012) 7 SCC 1** this matter need not be kept pending and can be decided in terms of that judgments which has been rendered after observing the mandate of the Constitutional Bench in **M. Nagaraj** case. However, provisions can be made while deciding this case that the judgment of the Hon'ble Apex Court in the case of Punjab and Haryana High Court(SLPs of Union of India and Jarnail Singh - SLP No.30621/2011, Jarnail Singh & others Vs Union of India & others before the Hon'ble Supreme Court) with regard to RBE No.126/2010 may also be taken into consideration and the order passed by this Tribunal would be subject to decision in the aforesaid matters by the Apex Court.

14. In view of the above, we are of the firm view that the alleged notification/panel dated 04.09.2015 cannot be allowed to continue as the same is being violative of the mandate of the Constitutional Bench judgement in M. Nagaraj case and the subsequent judgment rendered by the Hon'ble Apex Court

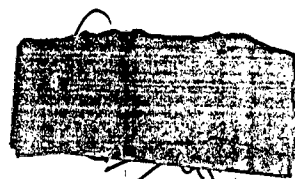


in *Suresh Chand Gautam vs. State of Uttar Pradesh & Ors.*, (2016) 2 SCC (L&S) 291, *S.Panneer Selvam and Others vs. State of Tamil Nadu & Others*, (2015) 10 SCC 292 following the judgement in *U.P.Power Corporation Ltd. vs. Rajesh Kumar*, (2012) 7 SCC 1.

15. Hence this application is allowed. The impugned notification/panel dated 04.09.2015 is set aside and quashed. Liberty is granted to the respondents to prepare a fresh panel without adhering any policy of reservation in promotion. However, this order will be subject to the decision taken by the Hon'ble Apex Court in *SLP No.30621/2011, Lachhmi Narain Gupta & Ors vs. Jarnail Singh & Ors.*(supra). There shall be no order as to costs.



(Jaya Das Gupta)
Administrative Member



(Justice V.C.Gupta)
Judicial Member