

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 692/2016

Date Of Decision:- 13 March 2019

CORAM: R. VIJAYKUMAR, MEMBER (A).
R.N. SINGH, MEMBER (J).

1. AVANISH KUMAR (son of late Shri Raj O Singh), Date of Birth: 01.03.1981) Age: 35 years), working as Track Maintainer Gr-III(Group "D" Post) under Senior Section Engineer/P-way, Bhayander (West), Western Railway, and residing at: Flat NO.83/06, 1st Floor, Western Railway Quarter, Vasai Road (West), Taluka Vasai Road, District- Palghar, State of Maharashtra, Pin Code No.401202.

2. SHIVA KUMAR SINGH (son of late LalSahab Singh), Date of Birth: 15.12.1973) Age: 42 years), working as Track Maintainer Gr-IV(Group "D" Post) under Senior Section Engineer/P-way, Borivali (West), Western Railway, and residing at: RB-1/12/2, Ground Floor, Bhayander (East), District-Thane, State of Maharashtra, Pin Code No.401 105.

...Applicants.

(By Advocate Shri R G Walia)

Versus

1. Union of India,
Through The Secretary,
Railway Board, Rail Bhavan,
Raisina Road, Rafi Ahmed Kidwai Marg,
New Delhi-110 011.
2. General Manager,
Western Railway,
Headquarters Office, Churchgate,
Mumbai 400 020.
3. DRM (Divisional Railway Manager)
DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400 020.
4. RANJEET SINGH,
Working as Train Maintainer Gr.IV under

DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400008.

5. SANJAY LAL SRIVASTAV
Working as Train Maintainer Gr.IV under
DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400008.
6. GOVIND SAINI
Working as Train Maintainer Gr.IV
under DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400008.
7. MORDHWAJ SINGH MANOHAR
Working as Train Maintainer Gr.III under
DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400008.
8. DHARMENDRA KUMAR
Working as Train Maintainer Gr.II under
DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400008.
9. DIWAKAR KUMAR G. YADAV
Working as Train Maintainer Gr.IV under
DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400008.
10. VIKASH KUMAR SHARMA
Working as Train Maintainer Gr.IV under
DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400008.
11. Mrs. RENUKA YOGESH KHADE,
Working as Train Maintainer Gr.IV under
DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400008.
12. DEVENDRA SINGH RAJPUT
Working as Train Maintainer Gr.IV under
DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400008.

13. OMBEER ROSHANLAL
Working as Train Maintainer Gr.III under
DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400008.
14. SANJAY KUMAR Working as Train Maintainer
Gr.IV under DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai 400008.

... Respondents.

(Respondents by Advocate Shri S Ravi for official
respondent Nos. 1-3, Shri Yogesh Deshpande for
Private Respondent Nos. 4-6 & 8-12 & Ms. S B
Deshmukh for Private Respondent Nos. 13-14)

Reserved On : 28.02.2019.

Pronounced on: 13.03.2019

ORDER

PER:- R. VIJAYKUMAR, MEMBER (A).

Two applicants filed this OA on
15.09.2016 under Section 19 of the
Administrative Tribunals Act, 1985 seeking
the following reliefs:

"a) This Hon'ble Tribunal will be
pleased to call for the records
and proceedings which led to the
passing of the **impugned orders**:
i.e.

i) Impugned order dt. 02.05.2016
alongwith covering letter dated
0405.2016 i.e. **Annx. "A1"**.

ii) Impugned Panel dated
05.11.2015 i.e. **Annx. "A2"** and

iii) Impugned Notification dated
23.01.2015 i.e. **Annx. "A3"**.

and after going through its
propriety, legality and
constitutional validity be pleased

to quash and set aside the same.

In the alternative:

b) This Hon'ble Tribunal be pleased to Order and Direct the Respondents to Re-check/Revaluate the Answer Sheets of the Applicants and the Respondent Nos. 4 to 14 pertaining to:-

- i) Q.No.5: Section C:-
- ii) Q.No.7: Section C:-
- iii) Q.No.10: Section C:-
- iv) Q.NO.3 : Section D:-

of the concerned Question Paper and treat the following Answers:

- I) Correct Answer: td+20/25C
- ii) Correct Answer: 5 years.
- iii) Correct Answer: 1200 metre.
- iv) Correct Answer: 10 years.

Only to grant appropriate Marks to them and thereafter to issue the Result of the said Selection and Promote the candidates as per Merit.

C) This Hon'ble Tribunal be pleased to hold and declare that the reservation of 3(three) posts as notified vide Notification dated 23.01.2015 is absolutely illegal and wrong and accordingly order and direct the Respondents to fill the said 3(Reserved) posts on General Merit without providing any reservation in promotion and accordingly set aside the Promotion Order/Panel dated 05.11.2015.

d) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

e) Costs of this Original

Application may be provided for."

2. When the case was finally heard on 28.02.2019, learned counsel for the applicants submitted an affidavit on behalf of the applicant No. 1, stating that he was withdrawing the application in his regard and requested deletion of applicant No. 1 from the array of applicants and this has been permitted. On this basis, the MA No. 785/2016 for joint application became infructuous.

3. The single applicant remaining was serving with the respondents as Track Maintainer, Group-IV(Group-D Post) and belongs to the unreserved category and had applied under the LDCE for twelve posts of JE/P-WAY of which three posts were kept reserved for Scheduled Castes(S.C) and Scheduled Tribes(S.T) employees. Following the examination and selection held on 02.11.2013, eleven persons were selected, of which respondents 13 & 14, belonging to SC category, were appointed against the reserved

category posts. In their OA, the applicants had firstly challenged the answer key for the questions for which marking had been given in respect of four questions. They have also challenged the application of reservation in promotion against the twelve vacancies by reference to the decision of the Constitution Bench of the Hon'ble Apex Court *in M. Nagaraj & Ors. Vs. Union of India & Ors.* [(2006) 8 SC 212]. On this basis, they have submitted that the selections should have been done on the basis of merit by reference to the marks obtained in the examination. In support of their case, they have relied on the statement of marks obtained by 73 candidates who appeared in the examination (Annexure A-6) and the applicant (A-2) was ranked 9/10 (joint rank) as per this merit order whereas the reserved candidates at Sl.No. 35 (R-14) who had obtained 75 marks and Sl.No. 48 (R-13) who had obtained 84 marks were selected and no one was selected in the vacancy that has been reserved for a ST Candidate.

4. During arguments, learned counsel for

the applicant submitted that he was not pressing the challenge to the answer key and was restricting his application to the aspect of the challenge to the application of reservations in the matter of promotion. For this purpose, he has relied on the recent judgment of the Hon'ble Apex Court in *Jarnail Singh & Ors V. Lachhmi Narain Gupta & Ors. in SLP(Civil) No. 30621 of 2011* which considered the need to review the judgment rendered in *M. Nagaraj(supra)* by a Seven Judge Bench and denied such a requirement but struck down a portion of the decisions that were ruled in *M.Nagaraj(supra)* on the need to carry out an exercise to quantify backwardness. The Hon'ble Apex Court maintained the need to carry out the exercise for determining the other issues involved as laid out in the rulings of the Hon'ble Apex Court in *M.Nagaraj case(supra)*. This SLP decided by the Hon'ble Apex Court had considered, interalia, and upheld the decisions of the Hon'ble High Court of Punjab & Haryana in *Lachhmi Narain Gupta & Ors. V.*

Jarnail Singh in CWP No. 13218/2009 wherein the DoP&T OM dt. 10.08.2010 was quashed and which had also been noted in the judgment of the Hon'ble High Court of Bombay in W.P. No. 8381/2011. The Hon'ble Apex Court had also upheld the judgment of the Hon'ble High Court of Delhi in *All India Equality Forum & Ors. V. Union of India Through its Secretary & Ors. Decided on 23.08.2017* which had quashed the DoPT OM dt. 13.08.1997 extending reservations beyond 15.11.1997. He has also referred to a recent decision of this Bench in OA No. 727/2013 & Ors. decided on 29.11.2018 and also to a decision of this Bench at Nagpur in OA No. 2181/2013 & Ors. decided on 30.11.2018.

5. Learned counsel for the respondents was also heard in this regard. The pleadings on file have been carefully examined and the position in law and precedents have been carefully studied for application in the present case.

6. In OA No. 727/2013 & Ors., dt. 29.11.2018, the Central Railways had accorded

reservation in the Loco Running cadre even after the decision of the Hon'ble Apex Court in **M. Nagaraj (supra)**. After hearing parties, it was decided as follows:

"15. In the present case, none of the pre-requisites set out in the judgment of **M. Nagaraj (supra)** with the exception of the portion held as invalid in the present judgment of the Hon'ble Apex Court, have been observed and followed in any manner by the respondents. Therefore, with the reliance on **M. Nagaraj (supra)** by the Hon'ble High Court of Punjab and Haryana having been upheld, the consequent quashing of DoP&T O.M. dt. 10.08.2010 becomes final. As already noted by the coordinate Benches of this Tribunal in Jaipur and Allahabad, with this order of the DoP&T having been quashed, the instructions issued by the respondents in RBE No. 126/2010 dt. 01.09.2010 cannot also survive. When reservations in promotions are themselves not available, the consequent issues will also not be relevant for any decision. The Cps nos. 151/2014 in OA No. 727/2013, 49/2015 in OA No. 14/2014, and 20/2018 in OA No. 578/2015 will need to be heard separately and are delinked herewith and shall be listed.

16. In the circumstances, these O.A.s succeed. The orders of the Railway Board in RBE No. 126/2010 dt. 01.09.2010 are quashed and all the promotions made by respondents in the present batch of cases by reference of these orders shall also stand rescinded. The M.A.s filed in the listed OAs also, accordingly, stand disposed. There shall be no order as to costs."

7. OA No. 2181/2013 decided by this Tribunal on 30.11.2018, dealt with reservations in promotion granted by the Income Tax Department and after examining the law as settled by the Hon'ble Apex Court in *Indira Sawhney and Ors. Vs. Union of India*, 1992 Supp (3) SCC 216, *M. Nagaraj V. U.O.I(supra)*, *B.K. Pavitra & Ors. V. Union of India & Ors.*, JT 2017(2) SC 277 and the recent ruling in *Lachhmi Narain Gupta & Ors. V. Jarnail Singh(supra)*, following orders were recorded:

"15. Therefore, in case promotions have already been given after the date from which reservations in promotion are barred, the catch-up rule explained in *B.K. Pavitra(supra)* must be rigorously followed and only after seniority is fixed in the feeder category, promotions are to be effected and that too, without regard to reservations.

16. The respondents have pleaded inability to carry out this exercise because of its administratively extensive character and the huge amount of time and resources that would have to be extended for this purpose. As applicants point out, the respondents have impleaded the decision of the Hon'ble Apex Court in *N.R. Parmar (supra)* with a fair amount of expediency and it cannot be visualised, even without making the slightest effort, that the present correction would be an impossible exercise. Further, it is quite apparent that when

a person has not served in the promotional category, it will have to be decided by the respondents if such a person could get only the seniority relevant to the promoted category but not necessarily the pay entitled from the date on which the promotion was obtained as as a later date. Therefore, the administrative exercise required for this purpose may well be simpler than what the respondents apprehend.

17. During the final hearing, learned counsel for private respondents argued that the decision may unsettle the long-settled promotions and gravely affect private respondents who fall in reserved category. However, it is clear that the constitutionally valid position is the one to be upheld. The fears of respondents including private respondents appear to be exaggerated and plainly self-serving and on actually carrying out the exercise, the work may well turn out to be less arduous than hazarded.

18. In the circumstances, the respondents are directed to review all the promotions granted based on reservations and by resort to the roster system from 15.11.1997 up to date and carry out the necessary amendments within a period of four months and grant seniority and pay fixation in accordance with the rules and in fairness to the applicants who have been deprived by the wrong and constitutionally invalid decisions of the respondents.

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20. The OAs as above accordingly succeed with above directions and without any order as to costs."

8. In view of the above binding rulings of the Hon'ble Apex Court in various judgments and binding precedents of this Tribunal, the application of reservations in

promotion by the respondents in respect of the twelve posts through LDCE promotion quota is held to be in clear violation of the law as settled by the Hon'ble Apex Court. In the circumstances, the selection list is quashed to the extent of the deviation in respect of the three reserved posts, one of which remained unfilled. The respondents are directed to review the list and prepare it strictly in order of merit and to pass further orders accordingly.

9. In the circumstances, this OA succeeds and is allowed in respect of issues pressed in regard to reservation in promotion and without any order as to costs. The respondents are directed to carry out this exercise within eight weeks and communicate their orders to the applicant within two weeks thereafter.

(R.N. Singh)
Member (J)

(R. Vijaykumar) ✓ |
Member (A)

Ram.