

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.4186/2012

Wednesday, this the 19th day of December, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Nimmi Sisodia w/o Shri Anil Kumar Sisodia
r/o House No.128, Rameshwar Nagar
Azadpur, Delhi – 110 033
2. Balbir Singh s/o Shri Satya Singh
r/o H.No.A-5, Sawan Park
Ashok Vihar Phase III
Delhi – 110 052
3. Ghanshayam Srivastava
s/o Shri Ishwar Sharan Srivastava
r/o F-1/172, Gyan Khand I
Indirapuram, Ghaziabad, UP
4. Anupama Singh d/o Shri K G Verma
r/o 78 A, Satyam Enclave
Near P S Vivek Vihar
Delhi – 110 095
5. Vijendra Kumar
s/o Shri Sumer Singh Swami
Flat No.201, Plot No.9
Yash Apartments, Dwarka
Sector 11, Delhi – 110 075

..Applicants

(Mr. Ranjan Kumar, Ms. Deepti Kumari and
Mr. Sanjay Kumar, Advocates)

Versus

1. Govt. of NCT of Delhi
Through
Chief Secretary, Delhi Government
Delhi Secretariat, New Delhi – 110 002
2. Directorate of Prosecution
Through
Director Shri B S Joon
Tis Hazari Courts, Delhi – 110 054

3. Union Public Service Commission
Through its Chairman
Dholpur House, Shahjahan Road
New Delhi – 110 069
4. Principal Secretary (Home)
Govt. of National Capital
Territory of Delhi, Home Department
5th Level, C Wing, Delhi Secretariat
I P Estate, New Delhi
5. Subhash Chandra, Addl. Public Prosecutor
Presently posted at Tis Hazari Courts, Delhi
6. Neelam Narang, Addl. Public Prosecutor
Presently posted at Tis Hazari Courts, Delhi
7. Dushyant Kumar Siwatch, Addl. Public Prosecutor
Presently posted at Dwarka District Courts, Delhi
8. Birender Singh Dagar, Addl. Public Prosecutor
Presently posted at Police Training College (PTC), Delhi
9. Aditya Kumar, Addl. Public Prosecutor
Presently posted at Saket District Courts, Delhi
10. Ram Kishor Gurjar, Addl. Public Prosecutor
Presently posted at Saket District Courts, Delhi
11. Pravin Kumar Samadhiya, Addl. Public Prosecutor
Presently posted at Tis Hazari Courts, Delhi
12. Ravinder Kumar, Addl. Public Prosecutor
Presently posted at Karkardooma Courts, Delhi
13. Harvinder Kumar Nar, Addl. Public Prosecutor
Presently posted at Tis Hazari Courts, Delhi
14. Sanjay Kumar, Addl. Public Prosecutor
Presently posted at Kardooma Courts, Delhi
15. Subhash Chander Sroai, Addl. Public Prosecutor
Presently posted at Rohini Courts, Delhi
16. Promila, Addl. Public Prosecutor
Presently posted at Tis Hazari Courts, Delhi
17. Surinder Kumar Kain, Addl. Public Prosecutor
Presently posted at Saket Courts, Delhi

18. Virender Singh, Addl. Public Prosecutor
Presently posted at Tis Hazari Courts, Delhi
19. Pramod Kumar, Addl. Public Prosecutor
Presently posted at Rohini District Courts, Delhi
20. Inder Kumar, Addl. Public Prosecutor
Presently posted at Patiala House Courts, Delhi
21. Shiv Kumar, Addl. Public Prosecutor
Presently posted at Rohini Courts, Delhi
22. Vijender Kumar, Addl. Public Prosecutor
Presently posted at Tis hazari Courts, Delhi
23. George M X, Addl. Public Prosecutor
Presently posted at Police Training College (PTC)
Delhi

All respondent Nos. 5 to 23 to be served through
Department, Directorate of Prosecution
Govt. of NCT of Delhi
Tis Hazari Courts, Delhi – 110 054

..Respondents

(Mr. BNP Pathak, Advocate for respondent Nos. 1, 2 & 4,
Ms. Sriparna Chatterjee, Advocate for respondent Nos. 5, 6 &
12,
Mr. R K Sharma, Advocate for respondent Nos. 8 & 10,
Mr. S K Das, Advocate for respondent Nos. 13, 14, 17, 18, 19, 21
& 21,
Mr. Sanjay Jain, Advocate for respondent No.16 –
Nemo for other respondents)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicants were appointed as Assistant Public Prosecutors in the Directorate of Prosecution, Government of NCT of Delhi. The next promotion is to the post of Additional Public Prosecutor. The selection of candidates for promotion to the post of Additional Public Prosecutor, referable to the vacancies of the years 2006-07, 2007-08 & 2008-09, was

entrusted to the Departmental Promotion Committee (DPC) and it met on 28.08.2012. The Govt. of NCT of Delhi took a policy decision to provide reservation in promotions to the post of Additional Public Prosecutor in favour of SC & ST candidates. In the particulars furnished to the DPC, it is mentioned that for the year 2006-07, 5 vacancies are available for general category, 11 for SCs and 5 for STs (aggregate 21), for the year 2007-08, 4 vacancies for general category and none for reserved categories; and for the year 2008-09, 1 vacancy for un-reserved category and 1 for ST. The selection was undertaken for 27 posts in all.

2. The applicants contend that their cases were not considered at all and on the other hand, the cases of respondent Nos.7, 9, 11 & 13 to 23, who are juniors to them, were considered, on the sole ground that they belong to reserved category. It is also stated that respondent Nos. 1 to 3 did not follow the principles enunciated by the Hon'ble Supreme Court in its judgment in **M. Nagaraj & others v. Union of India & others**, JT 2006 (9) SC 191.

3. To be precise, the applicants contend that no exercise was undertaken by the Administration to ascertain the representation of candidates belonging to SC / ST categories in the post of Additional Public Prosecutor and their backwardness. Other grounds are also urged.

4. Respondent Nos. 1, 2 & 4 filed a detailed counter affidavit. It is stated that decision to introduce the reservation in promotions in favour of SC & ST candidates was taken in the year 1989 duly following the prescribed procedure and thereafter the promotions are being effected regularly. They further contend that the existence of large number of vacancies in favour of SC candidates in the year 2006-07 was on account of carrying forward of vacancies referable to the earlier years and that no vacancy, which is available for unreserved category, has been filled by candidates belonging to SC & ST candidates.

5. Reliance is placed upon Article 16 (4A) & (B) of the Constitution of India to contradict the plea of the applicants that the extent of reservation has exceeded 50% of the existing strength. According to them, the effect of carrying forward of vacancies deserves to be ignored in the context of ascertaining the extent of reservation.

6. We heard Mr. Ranjan Kumar, learned counsel for applicants, Mr. B N P Pathak, learned counsel for official respondent Nos. 1, 2 & 4, Ms. Sriparna Chatterjee, learned counsel for respondent Nos. 5, 6 & 12, Mr. R K Sharma, learned counsel for respondent Nos. 8 & 10, Mr. S K Das, learned counsel for respondent Nos. 13, 14, 17, 18, 19, 21 & 22 and Mr. Sanjay Jain, learned counsel for respondent No. 16. There is no

representation on behalf of respondent Nos.3, 7, 9, 11, 15, 20 & 23.

7. On an earlier occasion, this O.A. was allowed vide order dated 01.06.2016. However, on R.A. No.152/2016 being filed by some of the affected respondents, the order dated 01.06.2016 was recalled and the O.A. was restored to file.

8. The applicants on the one hand and the private respondent Nos. 5 to 23 on the other were appointed as Assistant Public Prosecutor almost at the same time, i.e., in the year 1999. The Govt. of NCT of Delhi has taken a decision in 1989 to provide reservation in promotions to the post of Additional Public Prosecutor in favour of SC & ST candidates. Accordingly, the roster points were also identified. Here itself, we make a mention to the fact that the applicants did not challenge the decision of Govt. of NCT of Delhi to provide reservation in favour of SC & ST candidates in promotions to the post of Additional Public Prosecutor.

9. It is true that in **M. Nagaraj's** case (supra), the Hon'ble Supreme Court held that Article 16 (4A) & (4B) of the Constitution are only enabling provisions and whenever the State decides to provide reservation in promotions, it must justify the same by undertaking the exercise of collecting the quantifiable data regarding (a) the representation of community in the particular post; and (b) their backwardness.

As regards the first aspect, another rider was added to the effect that the question as to whether there will be any adverse effect on the efficiency of the Department on account of providing reservation in promotions, must be taken into account.

10. The applicants contend that the decision taken by the Govt. of NCT of Delhi is not in consonance with the principles laid down by Hon'ble Supreme Court in **M. Nagaraj's** case (supra). If that was to be so, they were expected to challenge the provisions providing reservation in promotions in favour of SC & ST categories. That not having been done, the only scrutiny that can be undertaken is about its implementation.

11. In the recent past, the Hon'ble Supreme Court in **Jarnail Singh & others v. Lachhmi Narain Gupta & others** (Special Leave Petition (Civil) No.30621/2011 with connected petitions) decided on 26.09.2018, virtually has done-away with the second requirement mentioned in **M. Nagaraj's** case (supra). It is only the adequacy aspect that remains now. That again would become relevant only when the decision is taken to introduce the reservation in promotions. The exercise is not expected to be undertaken periodically.

12. It is true that quite large number of vacancies were reserved in favour of SC candidates for promotion to the post of Additional Public Prosecutor referable to the year 2006-07.

That, however, is because of the carrying forward of the vacancies of the previous years. The very fact that not even a single vacancy is reserved for that category in the subsequent two years discloses the objective approach of the official respondents.

13. If the total number of posts in the cadre of Additional Public Prosecutor on the one hand and the number of SC officers, working as of now, on the other, is taken into account, a clear picture would emerge, as though reservation is around 50% as against 15% provided under the relevant rules. Since this is on account of carrying forward of vacancies, the general principle as to ceiling of reservation does not apply. This exactly is the protection, which is provided under Article 16 (4B) of the Constitution. The occasional fluctuation in the number of officers of SC or ST categories on account of filling up of the carried forward vacancies cannot be a basis to declare the promotions as illegal and arbitrary.

14. The law, as it stands now, does protect the interest of the officers of un-reserved categories, inasmuch as the seniority in the higher posts get restored by the operation of 'catch-up' rule, as laid down by the Hon'ble Supreme Court in **Ajit Singh Janjua & others v. State of Punjab**, 1996 AIR 1189. By now, the applicants have been promoted to the post of Additional Public Prosecutor on *ad hoc* basis and there is no

reason to believe that the Administration would not take steps to promote them on regular basis.

15. The O.A. is accordingly dismissed. We, however, make it clear that since the private respondent Nos. 5, 6, 8, 10 & 12 do not belong to SC category, the aforesaid discussion would not have any relevance in relation to them.

There shall be no order as to cost.

(K. N. Shrivastava)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

December 19, 2018
/sunil/