

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2118/2015 & CM Nos.3817-18/2015**
UOI AND ANR Petitioners
Through: Mr. Jagjit Singh, Ms. Rashmi
Malhotra, Advocates
versus
JETHA RAM AND ORS Respondents
Through

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S. MEHTA

ORDER
% **04.03.2015**

KAILASH GAMBHIR, J. (ORAL)

C.M. Appl. No. 3818/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 2118/2015 & C.M. Appl. No. 3817/2015 (Stay)

1. By this petition filed under Articles 226 & 227 of the Constitution of India, petitioner seeks to challenge the orders dated 28.04.2014 and 23.07.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'learned Tribunal'*) in O.A.No. 627/2013 and R.A. No.164/2014 respectively.

2. Assailing the impugned order Mr. Jagjit Singh, Standing Counsel
W.P. (C) No. 2118/2015

appearing on behalf of the petitioners submits that the learned Tribunal has not appreciated the fact that in terms of RBE 126 of 2010, relating to reservation in promotion and the treatment of SC/ST candidates promoted on their own merit and seniority and not owing to reservations or relaxation of qualifications will be adjusted against unreserved points of reservation roster irrespective of the fact whether promotion is made by the selection method or the non selection method and once the said rules were in existence which were not even challenged by the respondents, the petitioners were bound to follow the same and accordingly carried out the selection on merit from the promotional post of Ticket Examiner Grade 5200-20200 GP 1900 against 33.1/3 % PQ.

3. The learned counsel further submitted that the learned Tribunal has not appreciated the fact that these respondents had qualified the written examination and they were placed in the panel according to their merit position, but could not make it because of there being no reservation in the reserved category. Based on these submissions, the learned counsel submits that the impugned order passed by learned Tribunal deserves to be set aside.

4. We have heard the submissions made by the learned counsel for

the petitioners and carefully gone through the record of the case.

5. These respondents had challenged the notice issued by the petitioners dated 15.06.2012 placing 29 candidates on the provisional panel of Ticket Examiner Grade 5200-20200 GP 1900 against 33 .1 /3 % PQ according to their merit position, as per Railway Board's instructions contained in letter No. E (NG) 1-2008/PM7/4/Special Leave Petition/dated 19.6.2009. The grievance raised by the respondents was that the selection was held to fill up 36 posts of ticket Examiner/Commercial Department Grade 5200-20200 GP 1900 from amongst the eligible Group 'D' staff and out of the said vacancies, there were 23 vacancies in the category of unreserved, 6 vacancies in the category of Schedule Castes and 07 in the category of Schedule Tribe. The written test was held on 10.09.2011 followed by a DPC on 13.6.2012. All these respondents belonged to SC category and they had appeared in the written test held on 10.09.2011 and were declared qualified in the "relaxed standards" for consideration by the DPC for placement in the Provisional panel by respondents vide letter dated 16.2.2012. Their names appeared against S.No.1, 5, 9, 10, 14 and 15 among other SC candidates as per the said letter. Vide letter dated

29.2.2012 they were directed to appear for examination on 1.3.2012 onwards. They were also declared fit in B-two category without glasses which is the requisite category for placement in the final panel as per the notification dated 28.10.2010. However, their names were not included in the impugned panel dated 15.06.2012 issued by the petitioners. Contention raised by the respondents was that the said panel was not sustainable as the petitioners failed to appreciate that those SC/ST candidates promoted on their own merit will not be counted against the quota vacancies. In other words, the petitioners placed those SC candidates who had qualified the examination under the General standards against the reserved category. The learned Tribunal on appreciation of the facts and after placing reliance on the judgment of the Supreme Court in *M. Nagraj vs. Union of India and others, JT 2006 (9) SC 191*, took a view that until the conditions laid down in the said judgment are followed no reservation shall be applied in promotion. For better appreciation, the relevant paras of the said judgment are reproduced as under:-

“We have heard the learned counsel for the applicant Shri M.S. Reen and learned counsel for the respondent Shri Shailendra Tiwari. We have also gone through the documents available on record. Admittedly, the impugned panel of Ticket Examiners

has been prepared for promotion of eligible Group D staff. Admittedly, the respondents have applied the principle of reservation while preparing the said panel. The issue regarding reservation in promotion is already settled by the Hon'ble Supreme Court in M. Nagraj vs. Union of India and others JT 2006 (9) SC 191, 2006 (8) SCC 2112 holding that reservation in promotion per se is not unconstitutional. Therefore, it has upheld the provisions for reservation in promotion for Schedule Castes and Scheduled Tribes with consequential seniority as contained in Article 16(4A) and Article 16(4B) of Constitution. The said article reads as under:-

“4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. Reservation on total number of vacancies of that year.”

But such reservation is subject to the condition that the State shall form its opinion that the Scheduled Castes and Scheduled Tribes are not adequately represented in the service. The relevant part of the Apex Court's judgment in the aforesaid case is as under:-

“22. 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.”

In view of the aforesaid position, the impugned panel dated 15.06.2012, is set aside. The respondents are directed to review the matter in the light of the aforesaid judgment of the Apex Court in M. Nagraj’s case (supra). Until the conditions precedent in the said judgment, no reservation shall be applied in promotion. The Respondents may draw fresh panel of Ticket Examiner from the eligible Group ‘D’ staff without applying the principle of reservation. The aforesaid directions shall be complied within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.”

6. In this background, we find no ground to disagree with the reasoning given by the learned Tribunal. The petitioners themselves have applied the principle of reservation while preparing the said panel and therefore, they cannot later take a stand that the principle of reservation was not kept in view while selecting the candidates from the promotional post. In this background, the learned Tribunal has rightly placed reliance on the judgment of the Apex Court in **M. Nagraj’s** case (supra), wherein the view taken was that the reservation in promotion per se is not

unconstitutional but such reservation is subject to the condition that the State shall form its own opinion that the Schedule Castes and Schedule tribes are not adequately represented in the service. Finding no merit in the present petition, the same is hereby dismissed. The petitioners are accordingly directed to comply with the directions given by the learned Tribunal within a period of two months from the date of this order.

7. The Writ Petition and pending applications stand disposed of.

KAILASH GAMBHIR, J.

I.S. MEHTA, J.

MARCH 04, 2015

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