

**THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD**

**W.P.M.P.No.39928 OF 2016
IN/AND
WRIT PETITION No.11724 OF 2013**

COMMON ORDER: *(Per Hon'ble Sri Justice V.Ramasubramanian)*

The petitioners have come up with the above writ petition challenging an order of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, upholding the shortlisting of candidates done by the Railway Administration for promotion to Group 'B' post of Assistant Engineer/Assistant Executive Engineer.

2. Heard Mrs.S.Siva Kumar, learned counsel for the petitioners, Mr.P.Ganga Rami Reddy, learned Standing Counsel for the Railway Administration and Mr.K.R.K.V. Prasad, learned counsel appearing for the proposed parties.

3. On 02.01.2013, the Railway Administration issued a notification for selection for appointment to Group 'B' post of Assistant Engineer/Assistant Executive Engineer. The total number of posts sought to be filled up by the notification was '8'. The selection was under 70% quota reserved for in-service candidates. The notification indicated that out of the 8 vacancies sought to be filled up, 5 were intended for scheduled castes, 2 were intended for schedule tribes and 1 was unreserved.

4. Under Rule 203.4 of the Indian Railway Establishment Manual, the Railway Administration is obliged to take a list of

candidates who would come within the zone of consideration. The persons who come within the zone of consideration, had to be worked out in the following manner:

“203.4. Zone of consideration: The number of employees to be called for the selection will be in accordance with the sliding scale in the order of seniority as shown below:

1. Vacancies 5 employees
2. Vacancies 8 employees
3. Vacancies 10 employees
4. Vacancies and above employees equal to three times the number of vacancies.”

5. What the Railway Administration did was that they enlisted 24 candidates in the ratio of 1:3 for the total number of 8 vacancies and took 24 candidates as coming within the zone of consideration. Along with them, the Railway Administration also took about 18 candidates who had failed in the previous examination. This was as per instruction No.8.7 under Master Circular on Instructions Governing Promotion from Group ‘C’ to Group ‘B’. This instruction No.8.7 reads as follows:

“8.7. If the field constituted as per the sliding scale includes employees who had failed twice in the earlier selections, a corresponding number of additional employees should be called for the selection, e.g. if the field consists of 15 employees for selection against five vacancies and it includes, say three employees who had appeared earlier in selection twice and failed, three more eligible employees as per seniority should be included in the field.”

6. Challenging the method of arriving at the zone of consideration, the petitioners in this writ petition, who belong to scheduled castes and scheduled tribes, filed an application before the Tribunal in O.A.No.392 of 2013. Their contention in the OA was that since there are 5 vacancies for scheduled castes and 2 for scheduled tribes and 1 unreserved, the Department ought to have

included 15 scheduled caste candidates, 8 scheduled tribe candidates and 5 unreserved category candidates within the zone of consideration.

7. The Railway Administration contended that the zone of consideration need not be prepared on the basis of the Rule of Reservation and that at the stage of preparing the candidates to be included in the zone of consideration, the question of going by communal reservation would not apply.

8. Accepting the stand of the Railway Administration, the Tribunal dismissed the Original Application forcing the petitioners to come up before us.

9. The short question that arises for consideration in the writ petition is as to whether the number of candidates to be included in the zone of consideration would depend upon the Rule of Reservation or not?

10. But the above question has now become one of academic importance, in view of the fact that in O.A.No.203 of 2013, filed by two persons who have now come up with the impleading application, the Tribunal passed an order dated 12.07.2013, in respect of the very same notification for selection dated 02.01.2013. In the said order dated 12.07.2013 passed in O.A.No.203 of 2013, the Tribunal concluded that all the vacancies indicated therein namely 8 vacancies had to be treated as unreserved.

11. The said order of the Tribunal dated 12.07.2013 in O.A.No.203 of 2013 was also upheld by a Division Bench of this Court by a final order dated 29.04.2015 passed in W.P.No.39158 of 2013 batch of cases. The decision in O.A.No.203 of 2013 dated 12.07.2013 arising out of the very same notification for selection dated 02.01.2013, was the subject matter of W.P.No.16280 of 2014. The persons, who have now come up with an application for impleading, were respondents 1 and 2 in the said writ petition.

12. In the operative portion of the order dated 29.04.2015 in W.P.No.39158 of 2013 batch of cases, the Division Bench of this Court held as follows:

“VIII. CONCLUSION:

As the Tribunal has merely followed the law laid down by the Supreme Court in **M. Nagaraj**¹, in allowing the O.As, the orders of the Tribunal, to the extent it declared the action of the Railways in providing reservation in promotion without fulfilling the parameters laid down in **M. Nagaraj**¹, to be illegal, do not necessitate interference. The fact however remains that, despite the amendment to the Constitution by insertion of Articles 16(4-A) and (4-B) nearly fourteen years ago, the members of the Scheduled Castes and the Scheduled Tribes still face uncertainty on whether or not they are entitled for reservation in promotion, and to be extended the benefit of consequential seniority. This predicament, they find themselves in, is for no fault of theirs but is on account of the failure of the Union of India to gather data, and form its opinion, on the parameters laid down by the Supreme Court in **M. Nagaraj**¹. The prevailing uncertainty can only be put an end to if the petitioner- Railway is directed to

¹ (2006 (8) SCC 212)

undertake the aforesaid exercise, and take a decision, within a specified time frame.

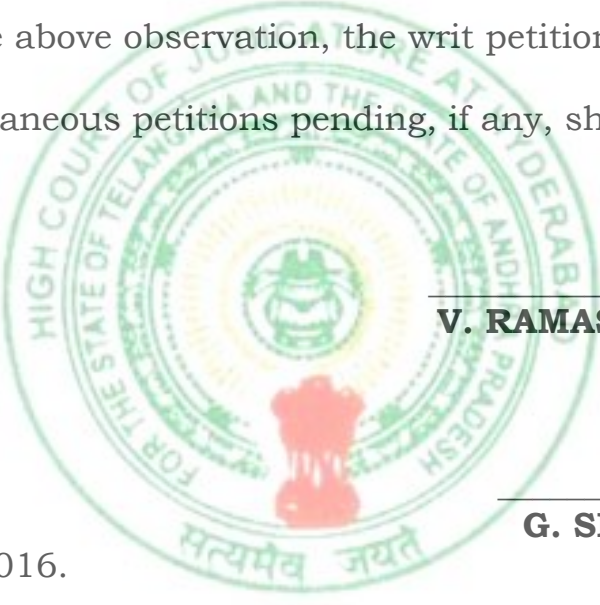
The Writ Petitions are, accordingly, disposed of directing the petitioner-Railways to undertake and complete the exercise of gathering data, and forming its opinion on the parameters laid down by the Supreme Court in **M. Nagaraj**¹, with utmost expedition and, in any event, not later than six months from the date of receipt of a copy of this Order. As this stalemate cannot be permitted to effect railway administration, and the services it renders to the public at large, it is open to the petitioner-Railways to make in-charge arrangements in the interregnum, making it clear to those, who are given charge of the posts, that this arrangement is temporary and would continue only till the exercise of formation of opinion, on the need to provide reservation in promotion, is completed. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.”

13. Therefore, the very question of treating some vacancy as reserved for scheduled castes or scheduled tribes in the notification dated 02.01.2013 has now gone. In other words, all those 8 vacancies, as per the decision rendered in O.A.No.203 of 2013 which was confirmed by this Court, have to be treated as unreserved one. Once this is clear, the inclusion of the candidates without reference to their communal status within the zone of consideration cannot be found fault with.

14. Mr.K.R.K.V. Prasad, learned counsel appearing for the impleading petitioners, raised one more issue namely as to whether those 24 candidates included in the zone of consideration, included some candidates who had gained accelerated promotion and as a consequence also got accelerated seniority or not. But this is not a

case where we are examining the correctness of inclusion of every one of the candidates among those 24 or 42 candidates. That is not the issue which has arisen in the OA out of which the present writ petition arises. Therefore, we do not go into the question whether there is any one within those 24 or 42 candidates, who belong to reserved candidates and who have been granted both accelerated promotion and accelerated seniority or not. That is the question which has to be separately adjudicated by the affected parties, even if there are any.

15. With the above observation, the writ petition is dismissed. No costs. Miscellaneous petitions pending, if any, shall stand closed.



V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 22.12.2016.
TJMR