

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 26882 of 2016
Date of decision: 23.12.2016**

Bharat Sanchar Nigam Limited and another

.....Petitioner

Vs.

Shri Naveen Sharma and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Ms. Deepali Puri, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP Nos. 26882 and 26885 of 2016 as according to the learned counsel for the petitioners, the issue involved in both these petitions is identical. However, the facts are being extracted from CWP No.26882 of 2016.

2. In CWP No.26882 of 2016, the petitioners pray for quashing the order dated 30.9.2016, Annexure P.8 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, "the Tribunal") whereby the original application filed by respondent Nos. 1 to 3 has been allowed and the notification dated 15.7.2015 has been quashed to the extent of permitting reservation in promotion to the post of Sub Divisional Engineer (Telecom) [(SDE(T)] by LDCE and on the basis of seniority-cum-fitness. The

petitioners were directed not to apply reservation in promotion by LDCE or on the basis of seniority-cum-fitness.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.26882 of 2016 may be noticed. The post of SDE is governed by the statutory rules called Sub Divisional Engineer(Telecom) Recruitment Rules, 2002 as amended in 2007 (in short, “the Rules”). The rules provide for filling up the posts of SDE by two sources i.e. 67% by JTOS (Telecom) with three years’ service in the grade under seniority- cum-fitness and 33% by LDCE from officers (Telecom) with three years service in the grade. Vide notice dated 10.2.2015, BSNL decided to hold DPC for promotion to the grade of SDE (Telecom) under 67% quota. Respondent Nos. 1 to 3 filed original application challenging the notice dated 10.2.2015 issued by petitioner No.1 and sought directions to the petitioners to hold DPC for promotion to the post of Sub Divisional Engineer (T) under 67% quota without applying the reservation. Vide order dated 21.7.2015, the Tribunal passed the interim order vide which the petitioners were restrained from convening a DPC meeting to make promotion to the post of SDE under 67% quota of promotion on the basis of merit seniority-cum-fitness without following the mandate given by the Apex Court in *M.Nagaraj and others Vs. Union of India and others*, (2011) 1 SCC 467. The petitioners filed written statement to the original application taking various pleas and objections. Vide order dated 31.3.2016, the Tribunal dismissed the application for non prosecution. Respondent Nos. 1 to 3 filed application before the Tribunal for restoration of the original application which was allowed and the original application was restored vide order dated 7.4.2016. Respondent Nos. 1 to 3 also filed application before the Tribunal for clubbing their case with the case of *Shiv Kumar Sharma vs.*

Union of India and others which was also allowed. On 18.5.2016, when the original application filed by respondent Nos. 1 to 3 came up for hearing, the Tribunal in *Shiv Kumar's* case (supra) modified the order dated 29.5.2015 to the extent that BSNL may declare the result of the examination which had been conducted and may take consequential steps but shall not make any actual promotions. Against the interim order dated 18.5.2016, the petitioners approached this court through CWP No.17752 of 2016 which was dismissed as infructuous as the final order had been passed by the Tribunal by that time. Vide order dated 30.9.2016, the Tribunal allowed the original application filed by respondent Nos. 1 to 3 and notification dated 15.7.2015 had been quashed to the extent of permitting reservation in promotion to the post of SDE(T) by LDCE and on the basis of seniority-cum-fitness. The petitioners were directed not to apply reservation in promotion by LDCE or on the basis of seniority-cum-fitness. Hence the instant petitions by the petitioners.

4. We have heard learned counsel for the petitioners.

5. After considering the matter in detail and relying upon the law laid down by the Apex Court in *M.Nagraj's* case (supra) and other judgments as noticed in its order dated 30.09.2016, it has been categorically recorded by the Tribunal that there can be no reservation in promotion without collecting quantifiable data of backwardness of the reserved classes and inadequacy of their representation in public employment. In the present case, no such data was held to be collected by the official respondents. Thus, the respondents could not grant reservation in promotion. It has been further recorded by the Tribunal that the reservation in promotion cannot be permitted merely on the basis of shortfall in vacancies of one category or one cadre of one department or one entity or unit only which would be

against the principles laid down by the Apex Court. The relevant findings recorded by the Tribunal read thus:-

“13. We have carefully considered the matter. It was not necessary to implead the candidates of SC/ST categories as party to the O.A. because the O.A. was filed even before the examination was held and, therefore, candidates of those categories were not identifiable at that time. Moreover, the challenge is to policy of official respondents regarding reservation in promotion and for this reason also, it was not essential to implead the candidates of the reserved categories as party to the O.A. Accordingly objection of official respondents to this effect is overruled.

14. As regards merit, the applicants are entitled to succeed in view of judgments in the cases of *M.Nagraj* (supra), *Suraj Bhan, Meena* (supra), *Lachhmi Narayan Gupta* (supra), *Rajesh Shukla and another* (supra), *Sukhwinder Singh* (supra) and *Narender Singh* (supra). According to these judgments, there can be no reservation in promotion without collecting quantifiable data of backwardness of the reserved classes and inadequacy of their representation in public employment. No such data has however been collected by the official respondents. Consequently, the respondents cannot grant reservation in promotion.

15. Contention of respondents based on summary of vacancies as given in Annexure R.1 cannot be accepted. Firstly the said summary relates to the position as on 1.1.2015 and not of the year 2010-11 for which LDCE was held on 21.6.2015. Secondly even according to said summary, ST candidates were over represented in the quota of promotion on the basis of seniority-cum-fitness whereas SC candidates were represented almost according to their quota. In the quota of promotion by LDCE, of course, there was shortfall in both reserved categories. However, the reservation in promotion cannot be permitted merely on the basis of shortfall in vacancies of one category or one cadre of one department or one entity or unit

only. It would be completely against the letter, spirit, purport and intent of *M.Nagraj* (supra).Quantifiable data regarding public employment has to be collected as per dictum of Hon’ble Supreme Court in *M.Nagraj* (supra) but it has not been so done. BSNL is following OMs of DoPT and admittedly DoPT has not carried out any exercise to collect identifiable data in terms of *M.Nagraj* (supra). Even BSNL has not done so. For this reason, BSNL submitted in the case of SC/ST Welfare Association (supra) that they were disabled from taking steps to remove the shortfall in vacancies of reserved categories. However, official respondents have now taken U turn in the instant case. This cannot be permitted.

Accordingly, we conclude that there can be no reservation in promotion. Action of the respondents to the contrary cannot be sustained.”

6. Learned counsel for the petitioners has not been able to produce any material on record to show that the findings recorded by the Tribunal are illegal or erroneous. She has also not been able to substantiate the claim made in the petitions. Consequently, we do not find any error in the view taken by Tribunal warranting interference by this Court in writ jurisdiction under Articles 226/227 of the Constitution of India. Finding no merit in the petitions, the same are hereby dismissed.

(Ajay Kumar Mittal)
Judge

December 24, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether referred to reporter or not

Yes/No
Yes