

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3549 of 2017

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1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali.
 2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali.
 3. The Divisional Railway Manager, East Central Railway, Danapur, P.S.- Khagaul, District- Patna.
 4. The Senior Divisional Electric Engineer, East Central Railway, Danapur, Khagaul, P.O.- Khagaul, District- Patna (Bihar).
 5. The Senior Divisional Personnel Officer, East Central Railway, Danapur, Khagaul, P.O.- Khagaul, District- Patna (Bihar).

.... Petitioners

Versus

Ajit Kumar Sharma, son of Late Awadh Bihari Lall, AC Fitter (Electric), East Central Railway, Rajendra Nagar Coaching Complex, District- Patna (Bihar).

.... Respondent

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Appearance :

For the Petitioners	: Mr. Amaresh Kumar Sinha, Advocate
For the Respondent	: Mr. M.P. Dixit, Advocate
	Mr. S.K. Dixit, Advocate
	Mr. Sanjay Kr. Choubey, Advocate
	Mr. Shailendra, Advocate
	Mr. Sunil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 15-05-2017

Heard learned counsel for the petitioners and
learned counsel for the respondent.

2. The matter related to the filling up four posts by promotion. The post in question was of Junior Engineer (Electrical). Out of four posts, three posts were meant for unreserved category and one was for scheduled tribe candidate. After the written examination, since one of the scheduled tribes' candidate supposedly



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qualified on his own merit he was granted benefit of promotion under unreserved category and the post of scheduled tribe remained vacant.

3. The private respondent, namely, Ajit Kumar Sharma, who was also one of the candidates, looking forward to grant of promotion under the unreserved category lost out, because one of the post of unreserved category was filled up by the scheduled tribe candidate. The private respondent, therefore, filed an O.A. No. 438/2016, which was allowed vide order dated 18.11.2016 by Central Administrative Tribunal, Patna Bench, Patna. The following reliefs were prayed for:

"8.1 That Your Lordships may graciously be pleased to declare the impugned action of respondent no. 5 in keeping 01 post of Junior Engineer (Electric) reserved for promotion in favour of ST category in the notification dated 23.09.2015 as null, void, ab initio wrong and contrary to the judicial pronouncements of Hon'ble Supreme Court of India, High Court and CAT including contrary to Annexure A/3 dated 21.02.2016.

8.2 That Your Lordships may further be pleased to direct/command the respondents to include the name of applicant in the final panel dated 09.06.2016 as contained in Annexure A/2 against 01 unfilled post reserved for ST category treating the same as unreserved and without applying any reservation in promotion in favour of SC/ST category without any secured mandatory marks of 60% and successful in the written examinations evident from Annexure



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A/1.

8.3 *That the respondents be further directed to issue promotion order to the post of Junior Engineer (Electric) in favour of applicant, henceforth with all consequential benefits from the date other 03 persons of Annexure A/2 has been granted.*

8.4 *Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the application."*

4. The Central Administrative Tribunal held the decision of the Railway Authorities to be bad in law after a Constitution Bench decision of the Hon'ble Supreme Court rendered in the case of **M. Nagraj Vs. Union of India** since reported in **(2006) 8 SCC 212**; which laid down that the benefit of reservation may not be extended in matters of promotion. The Central Administrative Tribunal further took note of a Division Bench decision of the Patna High Court which was the case of **State of Bihar Vs. Sushil Kumar Singh and others** since reported in **2015(3) PLJR 594**. This decision of the Division Bench still stands.

5. The Central Administrative Tribunal after hearing the parties had this to say in paragraph nos. 6, 7 and 8 of the impugned order which reads as such:

6. *In the instant case, it is an admitted fact that there were four vacancies and four persons including the applicant qualified, therefore, even if reservation was to be followed, the applicant*



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was among three UR candidates who had qualified in the written examination against the three UR vacancies. The applicant has been excluded because of perverse RBE circular by which an ST candidate has been shown selected against UR candidate. As a result of which only three vacancies were filled. The perversity of the circular is also apparent from the fact that such ST candidate does not lose his future advantage of reservation.

*7. The said RBE circular has been overtaken by the Constitutional Bench judgment of **M. Nagraj** and various Benches of the Tribunal and High Courts, including Patna Bench of the Tribunal and Hon'ble Patna High Court. These judgments lay down a fundamental constitutional principle, therefore, whether a particular contrary circular of any department was seen by their Lordships or not is immaterial.*

8. In the present case, the injustice caused to the applicant is even more palpable, because his promotion is not in conflict with the ST candidate. Since four vacancies were notified and four persons had qualified, one of which happened to be an ST candidate, all the four should have been promoted. This complies with Nagraj as well as ensures inclusion of an ST candidate. What Railways have done instead does not stand to reason on any yardstick and or any objective."

6. The rationale and reasoning provided by the Central Administrative Tribunal for allowing the O.A. application is supported by judicial precedent and decisions. Therefore, it is not required to be interfered with. The decision of the Railway Authorities to provide benefit to a scheduled tribe candidate in the unreserved



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category was a mistake committed by them may be on the basis of Railway Board Circular issued earlier, but after the decision of the Hon'ble Apex Court in **M. Nagraj case** (*supra*), such guidelines or circulars would have lost its legal force.

7. Thus, we find no merit in this application. It is, accordingly, dismissed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Rajeev/**AFR**

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