

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4345 of 2017

- =====
1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
 2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
 3. The Divisional Railway Manager, East Central Railway, Sonpur, District- Saran (Bihar).
 4. The Senior Divisional Personnel Officer, East Central Railway, Sonpur, District- Saran (Bihar).
 5. The Senior Divisional Signal & Telecom Engineer, East Central Railway, Sonpur, District- Saran (Bihar).

.... Petitioners

Versus

Nar Singh Thakur, Son of Late Nageshwar Thakur, Helper-1 under Senior Section Engineer (TELE), East Central Railway, Barauni, District- Begusarai (Bihar).

.... Respondent

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Appearance :

For the Union of India : Mr. Shekhar Singh, Advocate
For the Respondent : Mr. Munna Prasad Dixit, Advocate
Mr. Sanjay Kumar Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 24-07-2017

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

The Union of India has filed the writ application against the order of Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), Patna Bench, Patna which is dated 30.11.2016 passed in O.A. No. 321/2013.

The private respondent was the applicant



before the Tribunal. The Tribunal allowed the O.A. application giving a direction upon the petitioners i.e. the Railway to include the private respondent's name in the final select list which was issued on 18.04.2003 giving him the right of promotion and all consequential benefit but without back-wages.

The short facts are that there were certain vacancies available of Group-C post of TCM Grade-III. The total vacancies notified were five for unreserved, two for Scheduled Caste and two for Scheduled Tribe. The list included the name of private respondent but when it came down to grant of promotion under the unreserved category only four persons were given the benefit of promotion. The private respondent was left out on the ground that one candidate, who belonged to the Scheduled Tribe category, was recommended on the basis of his merit, and therefore, was declared as unreserved category candidate.

The Tribunal while taking note of the various facets of law which has evolved and has been rendered with regard to the benefit of reservation in promotion, the main case being in the case of ***M. Nagraj Vs. Union of India since reported in (2006) 8 SCC 212***; and yet another decision of a Division Bench of this High Court, held that the benefit of such kind in promotion was not available. It was in this background the Tribunal directed



inclusion of name of the private respondent, and therefore, the writ application.

Submission of the counsel for the petitioners is that this decision was taken by the Railways prior to the judgment rendered in the case of *M. Nagraj (supra)* which may have a prospective effect and the decision, as already taken, cannot be undone.

Such a submission would have merited consideration provided the issue relating to grant of benefit of reservation in promotion was not already decided by the Hon'ble Apex Court. The judgment was rendered and reported in the year 2006. The effect of the said Constitution Bench judgment was already in play and it cannot be wished away by taking a plea that Railway Board issued a notification in conformity with the Nagraj case subsequently but list got prepared in 2013. A Constitution Bench decision has been enforced and applied forthwith. A similar decision of the Tribunal was subject matter of challenge before a Division Bench of this High Court, which was the case of *Union of India Vs. Ajit Kumar Sharma in C.W.J.C. No. 3549/2017*, the date of order is 15.05.2017.

Since the Division Bench has already upheld the decision of the Tribunal in similar circumstances in the said writ application upholding its reasoning and the



order, the present writ application, for the same said reason, is dismissed.

(Ajay Kumar Tripathi, J.)

Rajeev/-

(Rajeev Ranjan Prasad, J.)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.07.2017
Transmission Date	N.A.

