

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP No.15782 of 2015
Date of Decision: January 18, 2017

Ram Krishan Singh and others

.....Petitioners

Versus

Union of India and others

.....Respondents

2. CWP No.18511 of 2014

Ashwani Kumar and others

.....Petitioners

Versus

Union of India through Secretary and others

.....Respondents

3. CWP No.16862 of 2015

Union of India through Chief Administrative Officer and others

.....Petitioners

Versus

Vishesh Kumar and others

.....Respondents

4. CWP No.16864 of 2015

Union of India through Chief Administrative Officer and others

.....Petitioners

Versus

Gurpinder Singh and others

.....Respondents

5. CWP No.19037 of 2015

Union of India and others

.....Petitioners

Versus

All India Equality Forum (Regd.) and others

.....Respondents

6. CWP No.19121 of 2015

All India SC/ST Railway Employees Association and others

.....Petitioners

Versus

All India Equality Forum and others

.....Respondents

7.

CWP No.4364 of 2015

Railway Board and another

.....Petitioners

Versus

Sarabjit Singh and others

.....Respondents

8.

CWP No.13001 of 2016

Union of India and others

.....Petitioners

Versus

General Welfare Association (Regd.) and others

.....Respondents

and

9.

CWP No.26026 of 2016

Union of India and others

.....Petitioners

Versus

All India Equality Forum (Regd.) and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE GURMIT RAM

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Anil Kshetarpal, Sr.Advocate with
Mr.Piyush Aggarwal, Advocate
for the petitioners in CWP No.19121 and 19039 of 2015.
Mr.Puneet Jindal, Sr.Advocate with
Ms.Sakshi, Advocate
for the petitioners in CWP Nos.13001-2016
and CWP-4364-2015 and for respondent Nos.1 to 3
in CWP No.18511 of 2014.
Mr.Malkiat Singh Hundal, Advocate for
Mr.R.S.Bains, Advocate
for the petitioners in CWP No.18511 of 2014.
Mr.G.S.Sathi, Advocate
for the petitioners in CWP N.26026 of 2016, 16862, 16864,
19037 of 2015
Mr.Amit Jhanji, Advocate

for the petitioners in CWP No.15782 of 2015 and 26026-2016.
Mr.Yogesh Putney, Advocate
for Railways in CWP Nos.4364 of 2015 and 13001 of 2016.
Mr.Dinesh Kumar, Advocate
for respondent Nos.1 to 7 in CWP Nos.19121 and 19037 of 2015.
Mr.P.M.Kansal, Advocate for
Mr.D.R.Sharma, Advocate
for respondent Nos.4 to 17 in CWP No.18511 of 2014 and
respondent Nos.1 to 14 in CWP No.4364 of 2015.
Mr.Rohit Seth, Advocate alongwith
Mr.Anirudh Gupta, Advocate
for respondent Nos.5 to 21 in CWP-15782-2015, respondent
Nos.1 to 22 in CWP-16862-2015, and respondent Nos.1 to 17
in CWP-16864-2015.
Mr.Anil Lambdharia, Advocate for private respondents
in CWP No.15782 of 2015.

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SURYA KANT, J.

This order shall dispose of all the above captioned writ petitions as the point in issue involved in these cases is common in nature.

[2] The foremost question that arises for consideration is whether the Railways are obligated to provide Roster Point reservation to the scheduled castes/backward class candidates in the matter of promotion or in restructuring of different cadres or such promotions/restructuring exercise is required to be undertaken strictly in order of seniority irrespective of the category to which an official in the zone of consideration belongs?

[3] For the purpose of answering this question, the facts are being extracted from CWP No.15782 of 2015.

[4] Private respondent Nos.5 to 21 belong to General category. They were working as Diesel Technician Grade-I in the Diesel Locomotive Modernization Works at Patiala. Writ-petitioners are also working as Diesel Technician Grade-I in the same workshop and they belong to reserved

category. The next promotional post is of Senior Technician for which an eligibility list was prepared. Since the eligibility list mostly consisted of reserved category candidates who were promoted as Diesel Technician Grade-I out of turn against roster points, the private respondents challenged the eligibility list and claimed that no reservation in promotion is permissible after the decision of Constitution Bench in **M.Nagraj and others vs Union of India and others**, 2006(8) SCC 212. No exercise to identify the deficiency in the representation of the reserved category employees was ever taken up by the Railways before providing reservation in promotions.

[5] The Tribunal relied upon various decisions including the one rendered by this Court in **Lacchmi Narain Gupta and others vs Jarnail Singh and others** in CWP No.13218 of 2009 decided on July 15, 2011 and set aside the eligibility list. It further held that promotion to the posts of Senior Technicians be made in the order of seniority ignoring the out of turn/accelerated promotions earlier granted to reserved category candidates, for the reason that the post of Senior Technician is a non-selection post and principle of seniority-cum-merit is required to be followed.

[6] In the connected cases also identical legal principle has been reiterated by the Tribunal keeping in view the facts situation in each case.

[7] It may be mentioned that against the decision of this Court in **Lacchmi Narain Gupta**'s (supra), SLP (C) No.4831 of 2012 is pending in the Hon'ble Supreme Court. It further appears that when the SLP came up for hearing on 29.09.2016, learned Solicitor General of India made a

statement before the Apex Court for the purpose of ad hoc arrangement to be made by the authorities till the matter is finally decided.

[8] With a view to give effect to the statement made by learned Solicitor General of India, Northern Railway, Ferozepur Division, has issued Circular dated 12.01.2017 observing that since for the safety aspects in train operation the promotions of staff are required to be made provisionally subject to the outcome of the final decision of the Hon'ble Supreme Court, the Competent Authority has decided to follow the following procedures for promotions on provisional basis subject to the final outcome of the Court cases:-

- “1. All the promotions are to be done as per General Seniority.
2. Zone of consideration will not be extended.
3. No jumping of candidates will be allowed.
4. Seniority will not be violated in any case.
5. All the SC & ST candidates coming in the purview of General Seniority shall be considered against available Roster Points, even if they were acquiring UR points in the past,.
6. Whenever, in any case if Roster Points are consumed and the number of SC and ST candidates still appears as per the zone of consideration in the General Seniority, they shall be adjusted against UR Roster Points on temporary basis to be adjusted against future SC/ST vacancies.
7. Once SC/ST Roster Points are available in future these UR points will be vacated and SC/ST candidates will be adjusted against newly available points.
8. In case there is no SC & ST candidates available in the zone of consideration but vacancies are available the vacancies shall be kept as shortfall for future adjustment.”

[9] It is undeniable that parties to these cases shall also be bound by the final verdict of the Hon'ble Supreme Court and their fate shall also be decided in terms of the decision of the Hon'ble Supreme Court even if no

formal SLP/civil appeals are filed in these cases. Till the final decision comes, we find that the arrangement made by Northern Railway, Firozpur is fair, just and a workable solution.

[10] Consequently, all these writ petitions are disposed of with a direction to the Railway Authorities to provisionally implement the orders passed by the Tribunal in these cases subject to the terms and conditions contained in its above re-produced letter dated 12.01.2017 and further subject to the final decision of the Hon'ble Supreme Court.

[11] There is no reason as to why the other Divisions of Northern Railways or the Railway Coach Factory, Kapurthala should deviate or have a different criteria to follow. Consequently, it is directed that the above-stated provisional arrangement shall be followed by all the Divisions as well as Rail Coach Factory/ production units till the final decision of the Hon'ble Supreme Court.

[12] Let the needful be done within two months.

(SURYA KANT)
JUDGE

January 18, 2017
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(GURMIT RAM)
JUDGE

1.	Whether speaking/reasoned ?	Yes/No
2.	Whether reportable ?	Yes/No