

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2577 OF 2005

Union of India & Ors.	...Petitioners
Versus	
M. Vijay Kumar & Ors.	...Respondents

Mrs. Neeta V. Masurkar with Mr. V. S. Masurkar and Mr. S. G. Thakur for Petitioners.
Mr. S. P. Saxena with Mr. A. S. Rao for Respondent No. 1.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 13 APRIL 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the petitioners and the respondent no. 1.

2] The challenge in this petition is to the judgment and order dated 18th June 2004 made by the Central Administrative Tribunal (CAT) in Original Application No. 674 of 2003 instituted by the respondent no. 1 seeking *inter alia* for the proper operation of the model roster for cadre strength upto 13 posts.

3] In the light of various orders made in this matter from time to time, in effect, the directions in the impugned judgment and order, are yet to be complied. Initially, ad interim orders were granted in this petition. Ultimately, by an order dated 18th November 2008, though, it was stated that the learned counsel for th petitioner does not formally press for interim relief, this was in view of the statement made by the learned counsel for the respondents that the respondents will not press application for contempt pending before the CAT. There is no dispute, that till date, there is no compliance with the direction issued by the CAT in the impugned judgment and order for such reasons.

4] Mrs. Masurkar, the learned counsel for the petitioners submits that since only 15% reservation was provided for SC category and further since there were only four posts in the promotional cadre of senior scientific assistants, the CAT, was not at all justified in holding that the fourth roster point must be for the candidate belonging from the reserved SC category. She submits that such a direction would amount to awarding one fourth or 25 percent

reservation in favour of SC which is contrary to the percentage of reservation quota prescribed. She submits that the CAT, has misread the model roster at page 47 of the paper book and therefore, the impugned judgment and order made by the CAT warrants interference.

5] Without prejudice, she also submits that in view of the ruling of the Hon'ble Supreme Court in the case ***M. Nagaraj & Ors. vs. Union of India & Ors. (2006)8 SCC 212***, the CAT, was not justified in directing the consideration of the respondent no. 1 for promotion against reserved quota.

6] Mr. Saxena, the learned counsel for the respondent no. 1 (original applicant before the CAT) submits that the CAT has quite correctly interpreted and upheld the model roster for promotion for cadre strength upto 13 posts (at page 47 of the paper book). He submits that since the cadre strength in the present case is four, the fourth point on the roster represents the reserved post for SC category. He submits that there is no question of any reservation in excess of 15 percent as prescribed, because for a

considerable period, there will be no reserved post for SC category in the cadre. He submits that when the CAT made the impugned judgment and order, the ruling in *M. Nagaraj* (supra) had not been delivered and therefore, the validity of the impugned judgment and order cannot be adjudged by following the principles in *M. Nagaraj* (supra). For these reasons, Mr. Saxena submits that this petition may be dismissed.

7] The rival contentions now fall for our determination.

8] As clarified at the outset, till date, the directions in the impugned judgment and order are yet to be complied with. Besides, there is no dispute, that the respondent no. 1 (original applicant before the CAT), has already secured promotions to the post of senior scientific assistant, though not, by virtue of the roster determining the reserved post. The respondent no. 1 is said to have already retired from service. If the judgment and order were to be complied with, then the respondent no. 1, would have secured a promotion in the year 2004 but factually, the respondent no. 1, has secured a promotion in the year 2005, even

without the benefit of the directions in the impugned judgment and order. Accordingly, the issue is whether at this point of time, any directions are warranted so as to disturb the *status quo*.

9] Whilst we agree with the contention of Mr. Saxena that the model roster for promotion for cadre strength upto 13 posts (at page 47 of the paper book) is the correct roster to be applied in such a situation and that the direction of the CAT based upon such roster is quite correct, we are of the opinion that this is not a fit case where such direction ought to be implemented at this late stage, only so that the respondent no. 1 secures promotion a year earlier i.e. in the year 2004, than, what he already has i.e. in the year 2005. We agree that there is no merit in the first contention of Mrs. Masurkar as regards operation of the roster for a cadre strength upto 13 posts. The contention that if the fourth post is reserved for SC category, the reservation will exceed 15 percent is not correct, because, by that logic, it could as well be contended that no benefit of promotion against reserved post can ever be made available where the percentage of reservation is 15 percent or 7.5 percent.

Precisely, to deal with such a situation, a roster is provided for, to indicate the position of the reserved posts. Accordingly, there is no merit in the first contention of Mrs. Masurkar.

10] However, we cannot ignore the ruling of the Hon'ble Supreme Court in the case of *M. Nagaraj* (supra). In terms of this ruling before the provision of reservation can be implemented at the stage of promotion, the States have to identify and collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment, keeping in mind maintenance of efficiency in administration. There is nothing on record to indicate that any such exercise has been conducted, so as to enable us to issue positive direction for implementation of the reservation policy at the stage of promotion.

11] Thus, taking into consideration the circumstance that the respondent no. 1 was in fact promoted in the year 2005 though not in the year 2004 in terms of the impugned judgment and order and the further circumstance arising out the ruling of the Hon'ble Supreme Court in the case of

M. Nagaraj (supra), we, set aside the impugned judgment and order made by the CAT, only so that the *status quo* is not disturbed at this late stage.

12] For the aforesaid reasons, this petition, is partly allowed. Though, the respondent no. 1 shall not be entitled to seek promotion from the year 2004, the promotion already secured by the respondent no.1 with effect from 2005, stands approved and the respondent no. 1 shall be paid all consequential benefits arising therefrom. Rule is partly made absolute in the aforesaid terms. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA