

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.9456 OF 2018

ORDER

(per Hon'ble Sri Justice Sanjay Kumar)

The Union of India and its officials in the South Central Railway are the petitioners in this case. They are aggrieved by the order dated 19.09.2017 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, in O.A.No.021/01043/2014. By the said order, the Tribunal directed as follows:

'28. In these circumstances, we direct the deletion of the name of the 9th respondent from the Select List as his promotion is against the settled law that reservations in promotions can be effected only after carrying out the exercise stipulated in M.Nagaraj's case. We further direct the respondents to examine as to whether the private respondents 6 to 8 have availed of reservation at any point of time earlier. If after due examination, it is found that the respondents 6 to 8 have availed of the benefit of reservation in the lower categories, the respondents shall take appropriate action to delete their names from the impugned select list and promote the unreserved candidates in order of their seniority.

29. This exercise shall be done and orders communicated to the applicants within a period of (6) weeks from the date of receipt of a copy of this order.

30. The OA is allowed to the above extent.'

The core issue is as to the implementation of reservation in promotions in favour of Scheduled Castes and Scheduled Tribes by the South Central Railway and the conferment of the benefit of consequential seniority upon such promotees in terms of Article 16(4A) of the Constitution.

Though the Union of India and the Railways seem to have had certain reservations with regard to the exercise directed to be undertaken by them under the aforesaid order, we are of the opinion that in the light of the recent judgment of the Supreme Court in JARNAIL SINGH

V/ s. LACHHMI NARAIN GUPTA¹, it is not open to any organisation to fail to undertake the exercise in terms of the law laid down in M.NAGARAJ V/ s. UNION OF INDIA², modified to an extent by the later judgment in JARNAIL SINGH¹.

In this regard, it would be apposite to look at the relevant observations in M.NAGARAJ². They are as under:

‘The impugned constitutional amendments by which Articles 16(4A) and 16(4B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling-limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBC on one hand and SCs and STs on the other hand as held in Indra Sawhney, the concept of post-based Roster with in-built concept of replacement as held in R.K. Sabharwal.

We reiterate that the ceiling-limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.’

In the context of the above observations, it would also be apposite to extract the observations of the Supreme Court in the later decision in JARNAIL SINGH¹:

‘.....Similarly, Constitutional Courts, when applying the principle of reservation, will be well within their jurisdiction to exclude the creamy layer from such groups or sub-groups when applying the principles of equality Under Articles 14 and 16 of the Constitution of India. We do not agree with Balakrishnan, C.J.'s statement in Ashoka Kumar Thakur (supra) that the creamy layer

¹ (2018) SCC OnLine SC 1641

² (2006) 8 SCC 212

principle is merely a principle of identification and not a principle of equality.

Therefore, when Nagaraj (supra) applied the creamy layer test to Scheduled Castes and Scheduled Tribes in exercise of application of the basic structure test to uphold the constitutional amendments leading to Articles 16(4-A) and 16(4-B), it did not in any manner interfere with Parliament's power Under Article 341 or Article 342. We are, therefore, clearly of the opinion that this part of the judgment does not need to be revisited, and consequently, there is no need to refer Nagaraj (supra) to a seven-Judge Bench.....

.....However, the conclusion in Nagaraj (supra) that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being contrary to the nine-Judge Bench in Indra Sawhney (1) (supra) is held to be invalid to this extent.'

The requirement of collecting data as to the backwardness of the Scheduled Castes and Scheduled Tribes has now been done away with by the later judgment in JARNAIL SINGH¹ and greater emphasis has been laid on excluding the creamy layer. Reservation in promotions and consequential seniority would therefore have to be extended to these reservation categories only after completion of the said exercise. Be it noted that in terms of this exercise, the organisation would have to quantify the data as to the adequacy of representation of these reservation categories in the promotional posts; assess the effect upon the efficiency of administration if such reservation is provided; examine the issue of creamy-layer as laid down in M.NAGARAJ² and JARNAIL SINGH¹; apart from the other parameters which have been left untouched in M.NAGARAJ², and thereafter confer the benefit of reservation in promotions with or without consequential seniority, as warranted. It is only the quantification of data with regard to backwardness of the Scheduled Castes and the Scheduled Tribes that is now excluded in the light of the later judgment in JARNAIL SINGH¹,

though that was one of the parameters indicated in M.NAGARAJ². The Railways are therefore bound to abide by this exercise before undertaking reservation in promotions and extending consequential seniority to such promotees. There can be no exception to this mandate.

The writ petition is accordingly disposed of directing the petitioners to abide by the edict of the Supreme Court as set out *supra* and review the promotions made after the filing of the O.A. and the consequential seniority, if already granted, after giving due opportunity of hearing to all parties concerned in the light of the aforestated parameters. This exercise shall be completed expeditiously and in any event, not later than six months from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR,J

M.GANGA RAO,J

29TH NOVEMBER, 2018
PGS