

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.9876 of 2016(O&M)

Date of Decision:-12.02.2020

Union of India &Ors.

.....Petitioners.

Versus

Central Administrative Tribunal, Chandigarh Bench & Ors.

.....Respondents.

AND

CWP No.15191 of 2016(O&M)

MES No.313831 Balraj Singh & Ors.

.....Petitioners.

Versus

Central Administrative Tribunal, Chandigarh Bench & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

**Present:- Mr. Praveen Chander Goyal, Senior Panel Counsel for
Petitioners (in CWP No.9876 of 2016) &
for respondent nos.2 to 4 (in CWP No.15191 of 2016).**

**Mr. G.S. Bal, Senior Advocate assisted by
Ms. Madhu, Advocate for the Petitioner(s)
(in CWP No.15191 of 2016).**

**Mr. Rohit Seth, Advocate for Respondent nos.2 & 3
(in CWP No.9876 of 2016) &
for respondent nos.5 & 6 (in CWP No.15191 of 2016).**

SANT PARKASH, J.

This order shall dispose of above mentioned two writ petitions as the same arise out of common order dated 21.01.2016 (**P-1**) passed by Central Administrative Tribunal (for short 'The Tribunal'). Civil Writ petition No. 9876 of 2016 has been filed by Union of India whereas Writ petition bearing no. 15191 of 2016 has been filed by four petitioners (belonging to SC/ST category), whose proposed promotion vide letter dated 08.09.2014 (**A-5**) for promotion to the grade of Executive Engineers in Military Engineer Services (MES) against the vacancies for the year 2012-13 to 2014-15; as well as seniority list dated 14.02.2014 (**A-3**) in the cadre of Assistant Engineers, has been set aside vide impugned order dated 21.01.2016 (**P-1**) by The Tribunal by allowing the Original Application (OA) filed by respondents no 4 and 5 (belonging to General Category), with a further direction to UOI to follow the principle of catch up rule in fixing the seniority of the general category candidates in the cadre of Assistant Engineers. For sake of convenience, facts are being taken from CWP No. 15191 of 2016.

The factual matrix of the case is that respondents No. 4 and 5 (applicants in OA) initially joined as Superintendent Grade-I and Superintendent Grade-II respectively. Both the posts were merged to form cadre of Junior Engineers. In the joint seniority list prepared for Junior Engineers, respondents no 4 and 5 (belonging to General Category) were placed higher than the petitioners. Since petitioners belonged to SC/ST categories, they were promoted as Assistant Engineers prior to the promotion of respondents no 4 and 5 as Assistant Engineers by availing the

benefit of reservation. However, while considering Assistant Engineers for further promotion as Executive Engineer, vide letter dated 08.09.2014 (A-5), Engineer in Chief called for credentials of petitioners amongst others, by ignoring the claim of respondents no 4 and 5. This was done on the basis of seniority list dated 14.02.2014 (A-3) in the cadre of Assistant Engineers prepared for promotion to Executive Engineers, whereby petitioners were shown senior to respondents no 4 and 5. Consequently, respondent Nos. 4 and 5 filed Original Application before the Tribunal claiming their right of fixation of seniority, above the petitioners, by applying the Catch Up Rule in the cadre of Assistant Engineers and thereby considering their claim for promotion to the next higher post of Executive Engineers prior to them.

The Tribunal considered the matter in detail and vide its impugned order dated 21.01.2016 (P-1) held that the competent authority has arbitrarily ignored the principle of “Catch-up” Rule in fixing the seniority in the cadre of Assistant Engineers vide seniority list dated 14.02.2014 (A-3) and wrongly applied the policy of reservation in promotion to the post of Executive Engineers and, therefore, set aside the letter dated 08.09.2014 (A-5) as well as seniority list dated 14.02.2014 (A-3).

Hence, these writ petitions.

Learned counsels for the Union of India as well as private petitioners (belonging to Reserved Category) have commonly argued that principle of “Catch-up” cannot be applied in view of 85th Constitutional Amendment (2001), whereby the effect of “Catch-up” rule was negated. It has further been contended that the learned Tribunal wrongly relied upon the Judgment passed by Hon’ble Supreme Court in the case of “**M Nagraj**

and others Vs Union of India and others, (2006) 8 SCC 212. Lastly, it has been submitted that the Hon'ble Supreme Court in the case of “**Jarnail Singh and others Vs Lachhmi Narain Gupta and others, 2018 (10) SCC 396**” has held that the condition referred in **M. Nagraj’s case** directing the Authorities to collect quantifiable data showing backwardness of the SCs and STs, was held to be contrary to Indra Sawhneys’ Judgment and therefore the finding of Tribunal to hold promotions to be bad in view of **M. Nagraj’s case (supra)** is against law.

On the contrary, learned counsel for respondent Nos. 4 and 5 (applicant in OA), belonging to General Category submits that the Tribunal has rightly placed reliance on the judgment passed by the Hon'ble Supreme Court in **M. Nagraj’s case (supra)**, which categorically laid down that there cannot be any reservation in promotion unless three tier exercise is carried out and till that exercise is carried out, rule of “Catch-up” will be applicable and thus, there is no escape for the Government in any manner to forego the aforesaid rule of “Catch Up” in fixing seniority of erstwhile seniors belonging to General Category and further concededly no instructions based on quantifiable date of inadequate representation of SC/ST has been issued, whereby the benefit of promotion to the higher post could be extended. He has further submitted that selecting a junior for promotion by ignoring his senior amounts to illegality and against common logic.

We have heard the learned senior counsel for the parties and perused the record carefully.

Before proceeding further, it would be appropriate to reproduce the relevant findings of the Hon'ble Supreme Court in the case of **M.**

Nagraj's (supra):

" 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.

However, in this case, as stated, the main issue concerns the "extent of reservation". In this regard the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

Subject to above, we uphold the constitutional validity of the Constitution (Seventy-Seventh Amendment) Act, 1995, the Constitution (Eighty-First Amendment) Act, 2000, the Constitution (Eighty-Second Amendment) Act, 2000 and the Constitution (Eighty-Fifth Amendment) Act, 2001. "

From the perusal of the case file, it is evident that petitioners were being promoted to the post of Executive Engineers after giving benefit of reservation, by ignoring the claim of respondents no 4 and 5 (who are senior) in the basic feeder cadre of Junior Engineers, while extending the benefit of reservation policy. Upon subsequent promotion of respondent Nos. 4 and 5, belonging to General Category in the cadre of Assistant Engineer were entitled to be placed above the petitioners in the Seniority List of Assistant Engineers based on the principle of Catch up Rule, which has been wrongly denied to respondent Nos. 4 and 5. The effect of Catch Up Rule could only be negated in view of the 85th Constitutional amendment and complete benefit of reservation in promotions effected provided the instructions granted benefit of such reservation were issued by following the principles laid down in **M. Nagaraj's (supra)**. The Hon'ble Supreme Court in the case of **M. Nagaraj's (supra)** while conditionally upholding the 85th Constitution amendment, mandated that it is the duty of the State to prove in each case the existence of compelling reasons for determining "inadequacy of representation", "backwardness" and "overall efficiency" before making any provision for reservation in promotion. Recently, in a judgment rendered by the Constitution Bench of the Hon'ble Supreme Court in **Jarnail Singh's case supra**, the Hon'ble Supreme Court has upheld the decision rendered in the case of **M. Nagaraj's (supra)** to the extent of the requirement that the State had to collect quantifiable data showing adequate

representation of the Scheduled Castes and the Scheduled Tribes in the service and over all administrative efficiency. For sake of convenience, relevant portion of paragraph no 17 of the Jarnail Singh's judgment is reproduced herein under:

“17. 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. We may also add at this juncture that Nagaraj (supra) is a unanimous judgment of five learned Judges of this Court which has held sway since the year 2006. xxx”

Xxxx In fact, the tests laid down in Nagaraj (supra) for judging whether a constitutional amendment violates basic structure have been expressly approved by a nine-Judge Bench of this Court in I.R. Coelho (Dead) by LRs. v. State of Tamil Nadu and Ors., (2007) 2 SCC 1 (See paragraphs 61, 105, and 142). The entirety of the decision, far from being clearly erroneous, correctly applies the basic structure doctrine to uphold constitutional amendments on certain conditions which are based upon the equality principle as being part of basic structure. **Thus, we may make it clear that quantifiable data shall be collected by the State, on the parameters as stipulated in Nagaraj (supra) on the inadequacy of representation, which can be tested by the Courts. We may further add that the data would be relatable to the concerned cadre**

”

(Emphasis supplied)

Thus, the findings of the Tribunal are well reasoned and in consonance with the various decisions of Hon'ble Supreme Court. The argument of Ld. Counsels for petitioners that M. Nagaraj's judgment has

been over-ruled vis-à-vis the mandate of collecting data in Jarnail Singh's case, is incorrect and, therefore, rejected.

Admittedly, the Union of India in the case in hand has neither made any specific provision in consonance with Article 16(4A) of the Constitution nor got collected quantifiable data showing the inadequacy of the representation of SCs/STs so as to grant complete benefit of promotion to the reserved category i.e. non application of Catch Up Rule. Thus, the Tribunal had rightly quashed the letter seeking credentials of petitioners for promotions as well as seniority list, being against law and correctly directed the UOI to apply the "catch-up" rule in fixing seniority in the cadre of Assistant Engineers, as admittedly, petitioners were promoted earlier as Assistant Engineers by giving benefit of reservation vis-à-vis respondent Nos. 4 and 5, who are otherwise senior to petitioners in the basic feeder cadre of Junior Engineer as per document Annexure A-1 i.e seniority list of Junior Engineers dated 07.04.2011.

In view of the above discussion, instant writ petitions are hereby ordered to be **dismissed**. Pending application(s), if any, shall also stand disposed of, in terms thereof.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

February 12, 2020

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>