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W.P.No.4267 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>04.01.2023</i>
<i>Pronounced on</i>	<i>22.02.2023</i>

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4267 of 2017
and W.M.P.Nos.4423 to 4428 of 2017

1.A. Nambirajan

2.R. Mahadevan

3.T. Muthulakshmi

4.K. Pukari

5.B. Bhaskara Rao

6.P.S. Iji

... Petitioners

Vs.

1.Director General,
Railway Protection Force,
Railway Board, Rail Bhavan,
New Delhi – 110 001.

2.Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi – 110 001.
Rep. by the Joint Director, Estt (Res.)

3.Chief Security Commissioner,
Railway Protection Force,
Southern Railway, 6th Floor,
Moore Market Complex,
Park Town, Chennai – 600 003.



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4.Mr.V.K. Dhaka,

Chief Security Commissioner-cum-Nodal (CSC),
Railway Protection Force,
Eastern Railway,
Kolkata – 271 502.

5.K. Saju

6.S. Pappu

7.Sijo Xavier

8.E. Gnaanandh

9.R. Balasubramanian

10.R. Lakshmi Narayanan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in RBE. No.117 of 2016 dated 30.09.2016 having Ref.No.2016-E (SCT) I/25/8 and the consequential proceedings of the third respondent in Memorandum dated 01.02.2017 having Ref.No.X/P.608/ASIPF Selection/Rule 72/Outdoor and quash the same as violative of article 14 and 16 of the Constitution and consequently issue directions to the respondents 1 to 3 to promote the petitioners in the post of Assistant Sub Inspector in the Railway Protection Force, Southern Railways and give postings to the petitioners in the said posts as per the empanelment proceedings of the third respondent dated 29.08.2016 having Ref.No.X/P.608/ASIPF Selection/Rule.72.

For Petitioners : M/s. Nalini Chidambaram,
Senior Counsel
for M/s.C. Uma

For Respondents : Mr.V. Radhakrihsnan,



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Senior Counsel
for Mr.M. Vijay Anand, (ASC) [R1 to R3]

No appearance – R4 to R10

ORDER

On 11.09.2015, the Railway Board had notified for Limited Departmental Competitive Examination for the post of Assistant Sub-Inspectors, against 40% Quota, under Rule 72 of the Railway Police Force Rules, 1987, for the total of 25 vacancies. Pursuant to the selection process, among 16 Unreserved posts, 6 Scheduled Caste candidates were selected on their own merit and 8 Scheduled Castes were selected under the reserved vacancies for the post of Assistant Sub-Inspector. The newly selected Assistant Sub-Inspectors had completed the training and the selection list was also published on 29.08.2016.

2. The aforesaid selection process was on the basis of a notification by the respondents/Railway Board in RBE.No.126/2010 dated 01.09.2010 in which, it was clarified that the Scheduled Caste and Scheduled Tribe candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against



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unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method.

3. At this juncture, the respondents/Railway Board had passed the impugned orders in RBE.No.117/2016 dated 30.09.2016, keeping the earlier Railway Board's proceedings in RBE.No.126/2010 dated 01.09.2010 in abeyance, with immediate effect. Consequently, the empanelment of the Assistant Sub-Inspectors dated 29.08.2016 was cancelled by the respondents' proceedings dated 01.02.2017 and a fresh Empanelment Order was issued for filling up 25 posts of Assistant Sub-Inspector by removing the SC candidates in Serial Nos.17 to 24 in the empanelment dated 29.08.2016 and placing the General Category with lesser marks in the panel. The aforesaid orders dated 30.09.2016 and 01.02.2017 are put under challenge in the present Writ Petition.

4. The learned senior counsel appearing for the petitioners submitted that in view of the various memorandums and notifications of the Railway Board, the SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications,



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cannot be adjusted against the reserved points of reservation roster and therefore, the impugned order dated 30.09.2016, which has kept the notification of the Board in RBE.No.126/2010 in abeyance, cannot be sustained. The learned senior counsel had also placed reliance on three decisions of the Hon'ble Supreme Court and submitted that in view of the law laid down therein, though the candidates belonging to General Category are not entitled to be considered for the reserved posts, the reserved category candidates can compete for the non-reserved posts also and therefore, the impugned proceedings of the respondents/Board keeping this proposition in abeyance, as well as the consequential proceedings of removing the names of the petitioners' belonging to Scheduled Caste Community, who were selected on their own merit and ability, cannot be adjusted against the reserved category. The learned senior counsel also stated that in view of the impugned order of the respondents, the General Category candidates who had scored lower marks than the petitioners, are now working as Assistant Sub-Inspector of Police, resulting in grave injustice.



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5. Per contra, the learned senior counsel appearing for the Railway Board, submitted that, as against the interim order dated 11.03.2019 passed in the present Writ Petition, they have preferred an appeal before the Hon'ble Supreme Court in Civil Appeal Nos.709-710 of 2022, which has been tagged along with SLP (Civil) No.30621 of 2011, which arises from the order of the Hon'ble High Court of Punjab and Haryana in the case of '**Lachhmi Narain Gupta & others Vs. Jarnail Singh & others**'. According to the learned senior counsel, the issue involved in '**Jarnail Singh & others Vs. Lachhmi Narain Gupta & others**', is identical to the petitioners' case and since C.A.Nos.709-710 of 2022, which challenges the interim order passed in the present Writ Petition, is also tagged along with **Jarnail Singh (supra)** before the Hon'ble Supreme Court, the present Writ Petition should not be proceeded with.

6. In reply, the learned senior counsel appearing for the petitioner submitted that **Jarnail Singh (supra)**, has no relevance to the issue involved in the present Writ Petition since the Board is governed by their own memorandums and notifications. She further submitted that it is factually incorrect to state that CA.Nos.709-710 of 2022 has been tagged



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along with **Jarnail Singh** (*supra*) and produced a copy of the Office Report dated 08.04.2022 of the Hon'ble Supreme Court of India in CA.Nos.709-710 of 2022, which evidences that these Civil Appeals have been de-tagged.

7. The first and foremost issue that requires to be dealt with is, whether the present Writ Petition could be proceeded further, in view of the stand taken by the respondents that the subject matter is under consideration of the Hon'ble Supreme Court. If the appeals filed against the interim order dated 11.03.2019 passed by this Court in the present Writ Petition were also tagged along with **Jarnail Singh** (*supra*) by the Hon'ble Supreme Court, this Court may not have proceeded further in the matter.

8. The learned senior counsel who also represents the petitioners before the Hon'ble Supreme Court in CA.Nos.709-710 of 2022, submitted that, though these appeals were originally tagged along with **Jarnail Singh** (*supra*), it was subsequently represented before the Hon'ble Supreme Court that both the issues are not connected and accordingly, the appeals came to be de-tagged on 08.04.2022. Furthermore, in the interim order dated



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28.01.2022 of the Hon'ble Supreme Court passed in **Jarnail Singh** (*supra*),

it was held as follows:-

..... *“This Court found the challenge to the Report on the ground of data having been collected on the basis of Groups A, B, C and D as opposed to cadres, to be without merit. The basis of the said conclusion of the Court was that there is no fixed meaning ascribed to the term ‘cadre’ in service jurisprudence. Further, this Court held that collection of quantifiable data on the inadequacy of representation is in the services of the State, according to **M. Nagaraj** (*supra*). In addition, this Court was also of the view that Article 16(4- A) referred to inadequacy of representation in the services of the State. It was further declared that collection of data on the basis of groups does not exclude data pertaining to cadres, as a group includes posts in all the cadres in that group.*

45. *Collection of quantifiable data for determining the inadequacy of representation of SCs and STs is a basic requirement for providing reservation in promotions, as laid down by this court in **M. Nagaraj** (*supra*). The unit for the purpose of collection of data is a cadre, according to **M. Nagaraj** (*supra*) and **Jarnail Singh** (*supra*). For the purpose of collection of quantifiable data for providing reservation in promotions, the entire service cannot be taken to be a unit and treated as a cadre, as already stated. The structure of services*



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in the State of Karnataka is along the same lines as that of services in the Central Government. Services are divided into 'groups', which are further bifurcated into cadres. There is no confusion that a cadre is not synonymous with a 'group'.

46. *The first term of reference for the Ratna Prabha Committee was to collect data cadre-wise. The conclusion of this Court in **B.K. Pavitra II** (supra) that the expression 'cadre' has no fixed meaning in service jurisprudence is contrary to the judgments of this Court, which have been referred to above while answering point 2. In clear terms, **M. Nagaraj** (supra) held that the unit for collection of quantifiable data is cadre, and not services as has been held in **B.K. Pavitra II** (supra). Article 16(4-A) of the Constitution enables the State to make reservation in promotions for SCs and STs, which are not adequately represented in the services of the State. However, the provision for reservation in matters of promotion is with reference to class or classes of posts in the services under the State. That 'groups' consist of cadres is a fact which was taken into consideration by this Court in **B.K. Pavitra II** (supra). The conclusion that the collection of data on the basis of 'groups' is valid, is contrary to the decisions of this court in **M. Nagaraj** (supra) and **Jarnail Singh** (supra).*

47. *The State should justify reservation in promotions with respect to the cadre to which promotion is made. Taking into*



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*account the data pertaining to a 'group', which would be an amalgamation of certain cadres in a service, would not give the correct picture of the inadequacy of representation of SCs and STs in the cadre in relation to which reservation in promotions is sought to be made. Rosters are prepared cadre-wise and not group-wise. Sampling method which was adopted by the Ratna Prabha Committee might be a statistical formula appropriate for collection of data. However, for the purpose of collection of quantifiable data to assess representation of SCs and STs for the purpose of providing reservation in promotions, cadre, which is a part of a 'group', is the unit and the data has to be collected with respect to each cadre. Therefore, we hold that the conclusion of this Court in **B.K. Pavitra II** (supra) approving the collection of data on the basis of 'groups' and not cadres is contrary to the law laid down by this Court in **M. Nagaraj** (supra) and **Jarnail Singh** (supra).*

48. It is made clear that we have not expressed any opinion on the merits of any individual case as we have only answered the common issues that were formulated after hearing the parties.

49. List the matters on 24/2/2022 for further hearing.”

9. On an overall reading of the aforesaid observations, this Court is



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of the view that the issue considered therein, is as to whether it is necessary to arrive at quantifiable data showing inadequacy of representation of SC/ST candidates in public employment, before making reservation for them in promotion. The Hon'ble Supreme had held that it is for the States to assess the inadequacy of representation of the SC/ST in promotional post, by taking into account the relevant factors and that the period of review should be reasonable and bereft to the Government.

10. The aforesaid issue does not arise in the instant cases. The only issue involved here is, as to whether SC candidates appointed by promotion on their own merit can be adjusted against unreserved posts or not, in view of the various office memorandums and notifications which categorically holds that the SC/ST candidates who have been promoted on their own merits and seniority, will not be adjusted against the unreserved points of reservation roster. Thus, in view of the fact that the Hon'ble Supreme Court had passed orders de-tagging CA.Nos.709-710 of 2022 on 08.04.2022 from the batch of **Jarnail Singh** (*supra*) and also of the fact that the Railway Board is governed by their own notifications and memorandums, which provides for accommodating the meritorious SC candidates in the



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unreserved posts, this Court is of the view that this Writ Petition can be disposed of independently, on its own merits.

11. The next question that arises for consideration is as to whether the respondents are justified in cancelling the empanelment of the Assistant Sub-Inspector posts by removing the SC candidates, who were arrayed in the empanelment on their own merit or not?

12. The learned senior counsel for the respondents/Board produced copies of various memorandums/notifications of the Railway Board touching upon the issue in hand. In their office memorandum dated 11.07.2002, it is clarified that the SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against the reserved points of the reservation roster and that they will be adjusted against the unreserved points. It is further clarified therein that if an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder grade, such SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a candidate will



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be considered for promotion along with other candidates, treating him as if he belongs to General Category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point. In the same circular, it is clarified that SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain the status of SC/ST and will be eligible to get benefit of reservation in future/further promotion, if any. Similar clarifications and orders have been issued in the notifications of the Railway Board in RBE.No.128/2002 dated 07.08.2002, RBE No.103/2003 dated 20.06.2003, Office Memorandum No.36028/17/2001-Est.(Res) dated 31.01.2005 and RBE No.19/2009 dated 29.01.2009.

13. Thus, on an overall appraisal of all these aforesaid memorandums/notifications of the Railway Board, the Board has been consistently holding that the SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications, will be adjusted against unreserved points of reservation roster, irrespective of the fact whether such promotions are made by selection method or non-selection method. These clarifications issued in



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these notifications is also fortified by the judicial decisions of the Hon'ble Supreme Court and some of its decisions are dealt hereunder:-

13.1 In the case of '**R.K. Sabharwal & others Vs. State of Punjab & others**' reported in '**(1995) 2 SCC 745**', it has been held that the reserved category candidates can compete for the non-reserved posts and when appointed on merits, their candidature will not be taken into consideration under the reservation category, but will be treated as an unreserved category candidate. The relevant portion of the order reads as follows:-

.... *“4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any*



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Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward



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Classes are operative the same have to be followed. Despite any number of appointment/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and reject the same.....”

13.2 In the case of '**M. Nagaraj & others Vs. Union of India & others**' reported in **(2006) 8 SCC 212'**, reliance was placed in the case of '**Indra Sawhney Vs. Union of India**' reported in '**1992 Supp (3) SCC 217**' and in the decision of **R.K. Sabharwal** (*supra*) and held that if a member from reserved category gets selected in General Category, his selection will not be counted against quota limit provided to his class. Such a finding was held in the following manner:-

.... **“60.** In *Indra Sawhney*, Jeevan Reddy, J. noted that reservation under Article 16(4) do not operate on communal ground. Therefore if a member from reserved category gets selected in general category, his selection will not be counted against the quota limit provided to his class. Similarly, in *R.K. Sabharwal*, the Supreme Court held that while general category candidates are not entitled to fill the reserved posts, reserved category candidates are entitled to compete for the general category posts. The fact that considerable number of



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members of backward class have been appointed/promoted against general seats in the State services may be a relevant factor for the State Government to review the question of continuing reservation for the said class.....”

13.3 A similar view was also taken in the case of '**Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and others**' reported in '**(2007) 8 SCC 785**', in the following manner:-

..... “9..... Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - Indira Sawhney (Supra), R. K. Sabharwal vs. State of Punjab (1995 (2) SCC 745), Union of India vs. Virpal Singh Chauhan (1995 (6) SCC 684 and Ritesh R. Sah vs. Dr. Y. L. Yamul (1996 (3) SCC 253)].”

14. On an overall appraisal of the aforesaid ratios laid down by the Hon'ble Supreme Court in these 3 decisions, it has to be necessarily held that when a vertical reservation is made in favour of SC Categories under



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Article 16(4) of the Constitution of India, the candidates belonging to such SC Category, may compete for non-reserved posts and if they are appointed to such non-reserved posts on their own merit, their number will not be counted against the quota reserved for the respective SC Category. In other words, if the number of SC candidates qualify on their own merits to the General Category vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be construed that the reservation quota for SC has been exhausted, but the entire reservation quota will have to be kept intact and available in addition to those selected under the open competition category.

15. All the notifications and office memorandums of the Railway Board are also in consonance with the ratio laid down by the Hon'ble Supreme Court in the aforesaid decisions.

16. The decision of the Railway Board to deviate from their consistent stand in the matter of reservation, was pursuant to a submission of the learned Solicitor General of India before the Hon'ble Supreme Court. When a Cont.P.(C) No.314 of 2016 in SLP (C).No.4831 of 2012, came up



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for hearing on 29.09.2016, a statement was made by him that no further promotions of reserved category persons to unreserved posts will be made, based on the circulars dated 10.08.2010/14.09.2010. Accordingly, the Board in its impugned order dated 30.09.2016, had kept the Railway Board's proceedings in RBE.No.126/2010 dated 01.09.2010, in 'abeyance' with immediate effect. Consequently, the names of the petitioners herein, who were empanelled in the promotional panel for the post of Assistant Sub-Inspectors were cancelled by the proceedings dated 01.02.2017 and a fresh empanelment order for filling up 25 posts of Assistant Sub-Inspectors by removing the SC candidates in the Empanelment Order dated 29.08.2016 and in their place, the General Category candidates with lesser marks were accommodated.

17. In the light of the settled proposition of law that, when a member from reserved category gets selected in a General Category on its own merit, his selection will not be counted against the quota limit provided to his class. Thus, the action of removing the names of the petitioners who were selected on their own merit and not against a reserved quota, cannot be sustained and such an action would be in violation of Articles 14 & 16



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of the Constitution of India.
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18. For all the foregoing reasons, the impugned orders of the second and third respondents dated 30.09.2016 and 01.02.2017 respectively, are hereby quashed. Consequently, there shall be a direction to the respondents 1 to 3, to promote the petitioners to the post of Assistant Sub-Inspector in the Railway Protection Force, Southern Railways, together with posting orders, as per the empanelment proceedings of the third respondent dated 29.08.2016 having Ref.No.X/P.608/ASIPF Selection/Rule.72, within a period of four (4) weeks from the date of receipt of a copy of this order.

19. Accordingly, the Writ Petition stands allowed. No Costs.
Connected miscellaneous petitions are closed.

22.02.2023

Speaking Order
Neutral Citation: Yes
Index : Yes
Internet: Yes

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To



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1. Director General,
Railway Protection Force,
Railway Board, Rail Bhavan,
New Delhi – 110 001.
2. Ministry of Railways,
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