



WEB COPY



W.P.No.2.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.2548 of 2023
and
W.M.P.No.2642 of 2023

1. Union of India,
Rep. by its General Manager,
Southern Railway, Park Town,
Chennai – 600 003.
2. The Divisional Personnel Officer,
Madurai Division,
Southern Railway,
Madurai.

... Petitioners

-VS-

1. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai – 600 104.
2. M.Arunachalam

3. Banavarilal Meena

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the impugned order passed by the Central Administrative Tribunal, Chennai Bench the 1st respondent herein in O.A.No.297 of 2016 dated 12.10.2022 and quash the same.



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For Petitioners : Mr.AR.L.Sundaresan
Asst. Solicitor General
For Mr.C.Samivel
For R1 : Tribunal
For R2 : Mrs.N.R.Jasmine Padma
For Mr.L.Chandrakumar
For R3 : No Appearance

J U D G M E N T

(By D.Krishnakumar,J.,)

This Writ Petition has been filed, challenging the order dated 12.10.2022 of the 1st respondent / Tribunal made in O.A.No.297 of 2016, by which the respondents/petitioners herein were directed to redraw the promotional list/panel without following the rule of reservation in promotions and grant all consequential benefits to the 2nd respondent herein.

2. It is the case of the petitioners that the 2nd petitioner had issued a notification for selection to the post of Goods Guard for filling up 60% of the vacancies under the promotional quota and the total number of vacancy declared was 18 with the break up of communal vacancies, namely, for SC-8, ST-1 and UR-9. In the written examination conducted on 08.09.2013, there were 35 employees, including the 2nd respondent herein participated and the examination was conducted and insofar as the 2nd respondent is concerned, he secured only the minimum marks of 18 and he was not entitled for any additional marks. It is further case of the petitioners that 16 employees



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were declared to have been recommended to be placed in the panel for promotion and in the list of selected employees, the 3rd respondent, who fell under ST category was included in the unreserved category and against the said promotion list published on 18.09.2013, the 2nd respondent filed O.A.No.1189 of 2013, in which, a direction was issued to re-examine the promotion list to the post of Goods Guard. It is also case of the petitioners that however, on 07.10.2015, the petitioners had decided not to re-examine the list, as the selection process, which was conducted on the basis of the judgment of the Supreme Court in Ram Jayaram vs. General Manager, Railways, was finalized.

3. It is vehemently submitted by the petitioners that the 2nd respondent questioned the rejection order dated 07.10.2015 by filing O.A.No.297 of 2016, wherein the application was allowed, the order of which stated supra, is impugned herein on the ground that the reservation has no role to play in the selection of 3rd respondent and even if the 3rd respondent is considered against ST vacancy, still the 2nd respondent is not entitled to the empanelment.

4. Learned Assistant Solicitor General for the petitioners stated that the Tribunal has considered the decision of the Supreme Court in the case of **M.Nagaraj and Others vs. Union of India (UOI) and Others**, reported in **AIR 2007 SC 71**, in arriving at a conclusion that the 2nd respondent is entitled to the relief sought for in the



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Original Application, whereas, the Apex Court, in a recent judgment in the case of

Bharat Sanchar Nigam Limited and Others vs. Sandeep Choudhary and Others,

reported in **(2022) 11 SCC 779**, held as follows:

“8.6. Similar view has been expressed by this Court in another recent decision of this Court in the case of Sadhana Singh Dangi v. Pinki Asati, MANU/SC/1314/2021 : (2022) 1 SCALE 534. By the said decision, it is reiterated that the reserved category candidates securing higher marks than the last of the general category candidates are entitled to get seat/post in unreserved categories. It is further observed and held that even while applying horizontal reservation, merit must be given precedence and if the candidates, who belong to SCs, STs and OBCs have secured higher marks or are more meritorious, they must be considered against the seats meant for unreserved candidates. It is further observed that the candidates belonging to reserved categories can as well stake claim to seats in unreserved categories if their merit and position in the merit list entitles them to do so.

9. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, ***it is noted that the aforesaid two candidates, namely, Mr. Alok Kumar Yadav and Mr. Dinesh Kumar, belonging to OBC category, were required to be adjusted against the general category as admittedly they were more meritorious than the last of the general category candidates appointed and that their appointments could not have been considered against the seats meant for reserved category. Consequently, after considering their appointments in the general category, the seats meant for reserved category were required to be filled in from and amongst the other remaining reserved category candidates on merit such as Respondent No. 1 herein. If such a procedure would have been followed, the original applicant - Respondent No. 1 would have got appointed on merit in the reserved category seats in the vacancy caused due to the above procedure. Therefore, as such the High Court has not committed any error in observing and holding that the aforesaid two candidates, namely, Mr. Alok Kumar Yadav and Mr. Dinesh Kumar, will have to be adjusted against the general category candidates and accordingly Respondent No. 1 being a reserved category candidate and being at Sr.***



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No. 1 in the waiting list of reserved category was to be appointed.”

5. In the light of the dictum laid down by the Supreme Court in the recent case reported in **(2022) 11 SCC 779**, we have no hesitation to hold that the order of the Tribunal is liable to be set aside, on the ground that the Tribunal had not taken into account the subsequent law laid down by the Supreme Court and the Writ Petition is to be allowed.

6. Accordingly, this Writ Petition is allowed and the order dated 12.10.2022 of the 1st respondent / Tribunal made in O.A.No.297 of 2016 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K., J.,]

[K.B., J]

03.07.2024

Index: Yes / No

Internet: Yes / No

Speaking Order/Non Speaking Order
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D.KRISHNAKUMAR,J.,

AND

K.KUMARESH BABU,J.,

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To:

The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai – 600 104.

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