



**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**CHANDIGARH BENCH**

**Reserved on: 18.10.2023**  
**Pronounced on: 26.02.2024**

**HON'BLE SH. RAMESH SINGH THAKUR MEMBER (J)**  
**HON'BLE MRS. RASHMI SAXENA SAHNI, MEMBER (A)**

**(1) O.A. No.060/1435/2018**

1. Anupam Yadav, HRMS No. 198917593, Staff No. 180021, Aged 50 years S/O Sh. Faqir Chand Yadav, presently working as Accounts Officer O/O Principal General Manager Telecom District Faridabad, Main Telephone Exchange Building, Admn. Block, Sector 15-A, Faridabad-121007.
2. Ramesh Chander, HRMS No. 198409810, Staff No. 180705, Aged 55 years S/O Sh. Jiwan Dass Vyas, presently working as Accounts Officer O/O Principal General Manager Telecom District Faridabad, Main Telephone Exchange Building, Admn. Block, Sector 15-A, Faridabad-121007.

... .. Applicants

(By Advocate : Sh. R.K. Sharma)

Versus

1. Union of India through Secretary to Government of India, Ministry of Communication, Department of Telecommunication, Sanchar Bhawan, New Delhi.
2. Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi- 110001.
3. Bharat Sanchar Nigam Limited, Corporate Office, 4<sup>th</sup> Floor, Bharat Sanchar Bhawan, Harish Chander Lane, Janpath, New Delhi-110001 through Chairman Cum Managing Director.
4. Director (Finance), Bharat Sanchar Nigam Limited, Room No. 210, CTO Building, Eastern Court, Janpath, New Delhi-110001. Corporate Office, 7<sup>th</sup> Floor, Bharat Sanchar Bhawan, Harish Chander Lane, Janpath, New Delhi-110001.



5. Director (HR), Bharat Sanchar Nigam Limited, Room No. 210, CTO Building, Eastern Court, Janpath, New Delhi-110001.
6. Senior General Manager (FP), Corporate Office, 7<sup>th</sup> Floor, Bharat Sanchar Bhawan, Harish Chander Lane, Janpath, New Delhi-110001.
7. Deputy General Manager (SEA), Bharat Sanchar Nigam Limited, Room No. 210, CTO Building, Eastern Court, Janpath, New Delhi-110001. Corporate Office, 7<sup>th</sup> Floor, Bharat Sanchar Bhawan, Harish Chander Lane, Janpath, New Delhi-110001.
8. Tapas Kanti Suklabaidya, Staff No. 180056, HRMS No. 198115302.
9. Dalia Santra, Staff No. 180075, HRMS No. 199103742.
10. Prem Dass, Staff No. 180082, HRMS No. 198501859.
11. Uttam Charan Das, Staff No. 180086, HRMS No. 198308199.
12. Hans Raj, Staff No. 180156, HRMS No. 198500674.
13. Aharon Rao C, Staff No. 180166, HRMS No. 199102471.
14. Manjit Singh, Staff No. 180176, HRMS No. 198401094.
15. Ravi Bhushan Khare, Staff No. 180178, HRMS No. 198113818.
16. Debabrata Sardar, Staff No. 180180, HRMS No. 198314992.
17. Gopalan R, Staff No. 180195, HRMS No. 198401626.
18. Rama Devi M, Staff No. 180199, HRMS No. 198004923.
19. Dalbir Singh, Staff No. 180202, HRMS No. 198601720.
20. Jayakar P, Staff No. 180212, HRMS No. 198315724.
21. Karuppiah S, Staff No. 180217, HRMS No. 198100941.
22. Partha Sarathi Saha, Staff No. 180225, HRMS No. 199211357.
23. Palash Biswas, Staff No. 180226, HRMS No. 199104689.
24. Kartick Naskar, Staff No. 180227, HRMS No. 198601544.
25. Onkar Chand, Staff No. 180292, HRMS No. 198602352.



26. Pradeep Kumar Raj, Staff No. 180294, HRMS No. 199106090.
27. Mange Ram Karanwal, Staff No. 180296, HRMS No. 198209881.
28. Ram Phal Ram, Staff No. 180298, HRMS No. 198112020.
29. Shanthi N, Staff No. 180304, HRMS No. 198506308.
30. Kamble Prashant Gangaram, Staff No. 180307, HRMS No. 199100913.
31. Gaikwad Shivaji Farida, Staff No. 180308, HRMS No. 198309332.
32. Subhas Chowdhury, Staff No. 180313, HRMS No. 198601280.
33. Parkash Singh Chunagra, Staff No. 180314, HRMS No. 198202555.
34. Suthanthira C, Staff No. 180317, HRMS No. 19800719.
35. Sumran Singh, Staff No. 180319, HRMS No. 198211675.
36. Kalyan Sahay Koli, Staff No. 180322, HRMS No. 197704197.
37. Jai Beer Singh, Staff No. 180323, HRMS No. 198405518.
38. Balasubramanian M, Staff No. 180324, HRMS No. 197901197.
39. Shiva Prakash M. Staff No. 182048, HRMS No. 198113380.
40. Acha Rao Dabbakota, Staff No. 182119, HRMS No. 198905961.
41. Hambay Hembram, Staff No. 182122, HRMS No. 199100722.
42. Mali Ram Meena, Staff No. 182221, HRMS No. 198107638.
43. Gopala Krishna Sampathi, Staff No. 182562, HRMS No. 198303239.
44. Botchi Krishna Korukonda, Staff No. 182568, HRMS No. 198902748.
45. Ram Kishan Meena, Staff No. 182587, HRMS No. 198312481.
46. Jayantilal Asari, Staff No. 182665, HRMS No. 198316080.
47. Kalayan Singh Chauhan, Staff No. 182961, HRMS No. 199001517.
48. Mancha B, Staff No. 183035, HRMS No. 198502114.



49. Mawrie dale Soh, Staff No. 183348, HRMS No. 200401699.
50. Mukesh Kumar, Staff No. 183405, HRMS No. 200400883.
51. Amit Kumar, Staff No. 183446, HRMS No. 200401083.
52. Smita Kujur, Staff No. 183491, HRMS No. 200402202.
53. Tashi Tundup, Staff No. 183498, HRMS No. 200401331.
54. Surinder Kumar Chandel, Staff No. 183506, HRMS No. 200402746.
55. L Haokholun Haokip, Staff No. 183532, HRMS No. 200402788.
56. Gracer Richmond Pathaw, Staff No. 183533, HRMS No. 200400880.
57. Ramesh Kumar, Staff No. 183542, HRMS No. 200400510.
58. Pynjanai Marbaniang, Staff No. 183547, HRMS No. 200401515.
59. Rolester Syiemlieh, Staff No. 183570, HRMS No. 200401698.
60. Shailender Kumar, Staff No. 183587, HRMS No. 200402837.
61. Rajesh Kumar Negi, Staff No. 183588, HRMS No. 200400425.
62. Sukhai Sema, Staff No. 183589, HRMS No. 200401394.
63. Bijoy Krishna sonowal, Staff No. 183590, HRMS No. 200402364.
64. Ricky Sohtun, Staff No. 183591, HRMS No. 200401772.
65. Wonderly Shangdiar, Staff No. 183594, HRMS No. 200306362.
66. Babula Pradhan, Staff No. 183595, HRMS No. 200400516.
67. Anita Bhagat, Staff No. 183596, HRMS No. 200402735.
68. G.L. John Seldow, Staff No. 183597, HRMS No. 200400935.
69. Mangi Lal Badara, Staff No. 183598, HRMS No. 200400540.
70. Jonathan Langel, Staff No. 183599, HRMS No. 200402338.



71. Pratap Chand, Staff No. 183600, HRMS No. 200400511.
72. Parshya Nayak Bhukya, Staff No. 183601, HRMS No. 200400518.
73. Ravinder Singh Tomar, Staff No. 183602, HRMS No. 200402544.
74. Swantanter Kumar, Staff No. 183603, HRMS No. 200402829.
75. Dharam Singh, Staff No. 180327, HRMS No. 198310496.
76. Vijay Kumar M, Staff No. 180328, HRMS No. 198313551.
77. Vasanthi A S, Staff No. 180332, HRMS No. 198400407.
78. Chatla Santha Kumar D M J, Staff No. 180365, HRMS No. 199101125.
79. Jeevrraj Khateek, Staff No. 180492, HRMS No. 198216293.
80. Manabendra Barman, Staff No. 180495, HRMS No. 198901335.
81. Murugesan R, Staff No. 180522, HRMS No. 198600483.
82. Raju Pachigalla, Staff No. 180525, HRMS No. 198207780.
83. Satish Kumar, Staff No. 180535, HRMS No. 198305603.
84. Darshan Singh, Staff No. 180542, HRMS No. 198800217.
85. Vinkateswara swamy Chinnam, Staff No. 180555, HRMS No. 198701252.
86. Partha Pratim Karan, Staff No.180556, HRMS No. 198806415.
87. Mangi Lal Balai, Staff No.180558, HRMS No. 198405828.
88. Padmalatha M, Staff No.180559, HRMS No. 199103635.
89. Ravi D, Staff No. 180574, HRMS No. 199000225.
90. Rajendra Raigar, Staff No.180579, HRMS No. 198806101.

(Respondent No.8 to 90 working as Accounts Officers, now promoted as Chief Accounts Officer/ Senior Accounts Officer in various circles as detailed in impugned order A-1, to be served through Respondent No.3).



91. Smt. Molly George, Staff No. 88900, HRMS No. 198313708, working as Chief Accounts Officer (looking after substantive post Sr. Account Officer EB & Sales) O/o P.G.M.T. Ernakulam Kerala Circle, Kerala-682040.

... .. Respondents

(BY ADVOCATE: Sh. K.S. Chauhan, Sr. Advocate with Sh. K.K. Thakur with Ms. Monika Kondal, Sh. Ajit Kumar and Sh. Abhishek Chauhan, Sh. Khushdeep Mann in MA No. 1742/2023)

**(2) O.A. No.060/831/2018**

1. Vijay Kumar, Staff No. 183177, aged about 42 years, presently working as Accounts Officer, Ambala Telecom District, BSNL, Ambala Cantt - 133001. Group 'B'.
2. Dinesh Kumar, , Staff No. 183448, aged about 39 years, presently working as Accounts Officer, Haryana Telecom Circle, Ambala Cantt - 133001.
3. Surinder Kumar, Staff No. 183494, aged about 38 years, presently working as Accounts Officer, Karnal Telecom District, BSNL, Kurukshetra - 136118.

... Applicants

(By Advocate : Sh. R.K. Sharma)

Versus

1. Bharat Sanchar Nigam Limited through Chairman Cum Managing Director, Corporate Office, 3<sup>rd</sup> Floor, Bharat Sanchar Bhawan, Harish Chandra Lane, Janpath, New Delhi - 110001.
2. Director (HR/Finance), Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, Harish Chandra Lane, Janpath, New Delhi - 110001.
3. Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Haryana Telecom Circle, No. 107, Mahatma Gandhi Road, Ambala Cantonment - 133001.
4. General Manager (FP), Bharat Sanchar Nigam Limited, Corporate Office, 7<sup>th</sup> Floor, Bharat Sanchar Bhawan,



Harish Chandra Mathur Lane, Janpath, New Delhi – 110001.

Union of India through Secretary to Government of India, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi-110001.

6. Suraj Kumar Pradhan, Staff No.183203
7. Jitender Singh, Staff No.183212
8. Yadav Manoj, Staff No.183235
9. Supriyo Kumar Saha, Staff No.183288
10. Ashok Kumar Chauhan, Staff No.183319
11. Anand Verma, Staff No.183333
12. Sanjay Kumar Ved, Staff No.183335
13. Anjali Kajal, Staff No.183342
14. Mawrie Dale Soh, Staff No.183348
15. Joji K., Staff No.183352
16. Jaswinder Singh, Staff No.183356
17. Vipin Kumar, Staff No.183360
18. Om Prakash Chitara, Staff No.183370
19. Rakesh Kumar, Staff No.183383
20. P.Radha Krishna, Staff No.183389
21. Swati Kale (Dongre), Staff No.183397
22. Mukesh Kumar, Staff No.183405
23. Pushp Prakash Pankaj, Staff No.183407
24. Vijayan K., Staff No.183416
25. Hukum Chand, Staff No.183429
26. Suman Bala, Staff No.183436
27. Kanheya Lal, Staff No.183437
28. Amit Kumar, Staff No.183446



29. Keshav Krishan Sahai, Staff No.183447
30. T.Nagaraju, Staff No.183453
31. Vivek Ramesh Satpute, Staff No.183472
32. Solanki Kamlesh Govindbhai, Staff No.183488
33. Smita Kajur, Staff No.183491
34. Tarsem Singh, Staff No.183497
35. Tashi Tundup, Staff No.183498
36. Rekha Kaushal, Staff No.183500
37. Chalwadi Rajesh Basawaraja, Staff No.183501
38. Vijayashankar B., Staff No.183502
39. Gulshan Kumar, Staff No.183503
40. Senthil Murugesan A., Staff No.183504
41. Surender Kumar Chandel, Staff No.183506
42. Rohit Rahul Purusotam, Staff No.183508
43. Premaraj Bhoi, Staff No.183510
44. Baljit Singh, Staff No.183511
45. Sudip Bej, Staff No.183512
46. Parmar Kishor Valjibhai, Staff No.183513
47. Sandhya T.C., Staff No.183514
48. Anjeneya P., Staff No.183515
49. M.Kameswara Rao, Staff No.183516
50. Arun Singh, Staff No.183517
51. Prakash Mandal, Staff No.183518
52. Jayarama, Staff No.183519
53. Biswajit Sarkar, Staff No.183520
54. Solanki Manishkumar Mangaldas, Staff No.183521
55. Bindu, Staff No.183522
56. Swapan Das, Staff No.183523





57. Sushma Anand Kore, Staff No.183525
58. Sukhendu Majumder, Staff No.183526
59. Komal, Staff No.183527
60. Kamaljit, Staff No.183529
61. Ganesan S., Staff No.183530
62. L.Haokholun Haokip, Staff No.183532
63. Gracer Richmond Pathaw, Staff No.183533
64. Manoj Kumar, Staff No.183534
65. Chouhan Sunil, Staff No.183535
66. P.Raja Ramesh, Staff No.183536
67. Subhasish Das, Staff No.183537
68. Narendra Kumar Majhi, Staff No.183538
69. Siddharth Kumar, Staff No.183539
70. Karthik N., Staff No.183540
71. Jagdeep Singh, Staff No.183541
72. Ramesh Kumar, Staff No.183542
73. Rajinder Pal Singh, Staff No.183543
74. Ritu Koli, Staff No.183544
75. Sonara Rajesh Shankarlal, Staff No.183545
76. Diwan Nitin Mukeshbhai, Staff No.183546
77. Pynjanai Marbaniang, Staff No.183547
78. Uttam Kumar Mistry, Staff No.183548
79. Venkateswaran R., Staff No.183549
80. Samsheer Singh, Staff No.183550
81. Vijay Pal, Staff No.183552
82. Sachin Kumar, Staff No.183553
83. Sukhen Das, Staff No.183554
84. Yogendra Singh, Staff No.183555



85. Khushvir Singh, Staff No.183556
86. Siddhartha Sankar Roy, Staff No.183557
87. Paramjeet Singh, Staff No.183558
88. B.Venkateshwar, Staff No.183559
89. Viji V., Staff No.183560
90. Dusmanta Kumar Patra, Staff No.183561
91. Sanjeev Kumar Verma, Staff No.183562
92. Susheel Kumar Pusker, Staff No.183563
93. Santosh Kumar Sethi, Staff No.183564
94. Dhabale Kondiba Gyanoji, Staff No.183565
95. M.Chandramohan, Staff No.183566
96. M.Satyanarayana, Staff No.183567
97. Siddharth Kumar Nim, Staff No.183568
98. Pritam Lal, Staff No.183569
99. Rolester Syiemlieh, Staff No.183570
100. K.Rajasekhar, Staff No.183571
101. Devadas, Staff No.183572
102. Parikh Bhartkumar Nagarbhaj, Staff No.183573
103. A.Srinivas, Staff No.183574
104. Duranta Mondal, Staff No.183576
105. Mukesh, Staff No.183577
106. Priyanka Soni, Staff No.183578
107. Shah Nilesh Virabhaj, Staff No.183579
108. Kamble Pramod, Staff No.183580
109. Bhaskar A., Staff No.183582
110. Surendra Behera, Staff No.183583
111. Kashmir Singh, Staff No.183584
112. Patel Ashokkumar Manilal, Staff No.183585



113. Bablu Jaiswar, Staff No.183586
114. Shailender Kumar, Staff No.183587
115. Rajesh Kumar Negi, Staff No.183588
116. Sukhai Sema, Staff No.183589
117. Bijoy Krishna Sonowal, Staff No.183590
118. Ricky Sohtun, Staff No.183591
119. Dilraj Richard Ashish, Staff No.183592
120. Wonderly Shangdiar, Staff No.183594
121. Babula Pradhan, Staff No.183595
122. Anita Bhagat, Staff No.183596
123. G.L.John Seldow, Staff No.183597
124. Mangilal Badara, Staff No.183598
125. Jonathan Langel, Staff No.183599
126. Pratap Chand, Staff No.183600
127. P.N.Bhukya, Staff No.183601
128. Rvinder Singh Tomar, Staff No.183602
129. Swatanter Kumar, Staff No.183603
130. Mayoring Marchang, Staff No.183604
131. Dulu Charan Deogam, Staff No.183605
132. Doujathang Touthang, Staff No.183606
133. Kiran Radheshyam Killedar, Staff No.183607
134. Sadananda Borah, Staff No.183608
135. Arun Tirkey, Staff No.183609
136. Kekhriesetuo, Staff No.183610
137. Subhash Chander Nayak, Staff No.183611
138. V.Pandu, Staff No.183612
139. Hemanta Raj, Staff No.183613
140. Suryanarayana Naika H., Staff No.183614



141. Gajam Ku. Malini, Staff No.183615
142. Goto Padu, Staff No.183616
143. Vishal Kapoor, Staff No.183617
144. Ninawe Atul Kumar Vitthal Rao, Staff No.183618
145. Ajay Kumar, Staff No.183619
146. Mukhesh Doley, Staff No.183620
147. Rajeev Kumar, Staff No.183621
148. Ramanna Naik, Staff No.183622
149. Bhubendra Nath Behera, Staff No.183623
150. Rakhi Rawal (Chouhan), Staff No.183624
151. Kushal Sonowal, Staff No.183625
152. B.Ravi Kumar, Staff No.183626
153. Uttam Mandal, Staff No.183627
154. Kailash Chand Sonwal, Staff No.183628
155. B.Valibai, Staff No.183629
156. Abhay Shankar Hattewar, Staff No.183630

(Respondent No. 6 to 156 are ex parte vide order dated 26.02.2019)

(By Advocate : Sh. K.K. Thakur with Ms. Monika Kondal, Sh. A.K. Sharma)

**(3) O.A. No.060/50/2023**

1. BSNL Executive Service Association, House No. 951-B, Sector-9, Karnala, Haryana through its President Sh. Surinder Kumar, Staff No. 183494, working as Accounts Officer, Karnal Telecom District, BSNL, Kurukshetra-136118.
2. Rajinder Kamboj, Aged 41 years, S/o Sh.M.R. Kamboj, Working as Accounts Officer, O/o CGMT, BSNL Punjab Circle, Plot No.2, Sector-34A, Chandigarh.



3. Prem Sagar Yadav, Aged 39 years, S/o Sh. Shiv Nath Yadav, Working as Accounts Officer, O/o CGMT, BSNL Punjab Circle, Plot No.2, Sector-34A, Chandigarh.
4. Ojaswi, Aged 35 years, S/o Sh. Raj Kumar, Working as Accounts Officer, O/o CGMT, BSNL Punjab Circle, Telecom Exchange Building, Sector-34A, Chandigarh.
5. Gurvinder Singh Saini, Aged 41 years, S/o Sh. Jagir Singh, Working as Accounts Officer, O/o CGMT, BSNL Punjab Circle, Plot No.2, Sector-34A, Chandigarh.
6. Amreesh Sharma, Aged 44 years, S/o Sh. Raj Gopal Sharma, Working as Accounts Officer, O/o CGMT, BSNL Punjab Circle, Telecom Exchange Building, Sector-34A, Chandigarh.
7. Harbhajan Singh, Aged 40 years, S/o Sh. Kashmir Singh, Working as Accounts Officer, O/o CGMT, BSNL Punjab Circle, Plot No.2, Sector-34A, Chandigarh.
8. Mukesh Sharma, Aged 46 years, S/o Sh. Parkash Chand, Working as Accounts Officer, O/o CGMT, BSNL Punjab Circle, Plot No.2, Sector-34A, Chandigarh.

... Applicants

(By Advocate : Sh. R.K. Sharma)

Versus

1. Bharat Sanchar Nigam Limited through Chairman Cum Managing Director, Corporate Office, 3<sup>rd</sup> Floor, Bharat Sanchar Bhawan, Harish Chandra Lane, Janpath, New Delhi-110001.
2. Director (Finance), Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, Harish Chandra Lane, Janpath, New Delhi-110001.
3. Director (Human Resource), Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, Harish Chandra Lane, Janpath, New Delhi-110001.
4. Chief General manager Telecom, Bharat Sanchar Nigam Limited, Punjab Telecom Circle, Sector 34 A, Chandigarh.
5. General Manager (Pers.), Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, Harish Chandra Lane, Janpath, New Delhi-110001.
6. Union of India through Secretary to Government of India, Department of Personnel and Training, Ministry of



Personnel, Public Grievances and Pensions, North Block,  
New Delhi-110001.

... Respondents

(By Advocate : Sh. Mukesh kaushik, Sh. K.K. Thakur  
with Ms. Monika Kondal)

### **ORDER**

**Per: SH. RAMESH SINGH THAKUR MEMBER (J):**

1. All the above three Original Applications are taken up together for disposal, as a common question of law and facts are involved in all these cases. With the consent of learned counsels for the parties, the facts are being extracted from O.A.No.060/1435/2018 (**Anupam Yadav & Ors. Vs. UOI & Ors.**) and the said case has been treated as a lead case.
2. The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief(s):-
  - “8. (i) Quash Order No. 2-4/2018 SEA-BSNL dated 20.11.2018, copy **Annexure A-1**, to the extent whereby the Respondent No. 3 to 7 have promoted the candidates as Chief Accounts Officer on regular and ad-hoc basis:-
    - a. Who (i.e. Respondent No. 39 to 74) were juniors to the applicants in the cadre of Accounts Officer, by providing reservation in matter of promotion in violation of law laid down by the Hon’ble Apex Court in **M. Nagaraj, (2006)8 SCC 212** read with **Jarnail Singh and others Versus Lachmi Narain Gupta and others, 2018(4) SCT 445** i.e. without carrying out any exercise relating to three yardsticks;



- b. Who (i.e. Respondent No. 8 to 38 and 75 to 90) were junior to the applicant in the feeder cadre of Junior Accounts Officer but promoted as Accounts Officer ahead of applicants by providing reservation in matters of promotion, in violation of the law laid down by the Hon'ble Apex Court in **Union of India Versus Virpal Singh Chauhan, JT 1995(7)(SC) 231**, read with **S. Panneer Selvam and others Versus Government of Tamil Nadu and others, (2015)1 SCC 292** and **B.K. Pavitra Versus Union of India, JT 2017(2) SC 277** i.e. without applying catch up rule;
- c. Who (i.e. Respondent No. 91 and 92) were junior to the applicant in the feeder cadre of Junior Accounts Officer but have been inadvertently shown as senior in the Seniority List dated 27.10.2016 in the cadre of Accounts Officer.
- (ii) Issue directions to the Respondent No 3 to 7 to finalize the tentative seniority list in the cadre of Accounts Officer circulated vide letter No. 3-4/2016-SEA-BSNL dated 27.10.2016, copy **Annexure A-2**, wherein the reserved category candidates (Respondent No. 8 to 38 and 75 to 90), who were junior to the General Category candidates including applicants in the feeder cadre of Junior Accounts Officer and have been shown as senior only on account of their earlier joining on promotion in the cadre of Accounts Officer by way of reservation, by applying catch up rule in terms of **Virpal Singh Chauhan, S. Paneer Selvam and B.K. Pavitra (supra)**.
- (iii) Issue of direction to the official respondents to make promotions from the cadre of Accounts Officer to that of Chief Accounts Officer / AGM on regular / ad-hoc basis strictly in accordance with the seniority after fixing the same by following catch up rule and without applying reservation till the compliance of **M. Nagaraj (2006)8 SCC 212** read with **Jarnail Singh and others Versus Lachhmi Narain Gupta and others, 2018(4) SCT 445** and in terms of judgment in **Virpal Singh Chauhan's case as reiterated in S. Paneer Selvam and B.K. Pavitra** and consider the incumbents including applicants for promotion from the date persons junior to them or the private respondents have been promoted as such, with all the consequential benefits.
- (iv) Issue directions to the respondents not to apply rule of reservation while making further promotions from the cadre of Accounts Officer to that of Chief Accounts Officer, until they follow the mandate issued by the Hon'ble Supreme Court in the case of **M. Nagaraj (2006) 8 SCC 212** read with **Jarnail Singh and others Versus Lachhmi Narain Gupta and**



**others, 2018(4)SCT 445, and catch up rule in terms of Virpal Singh Chauhan, S. Paneneer Selvam and B.K. Pavitra's cases (supra).**

- (v) Issue declaration to the effect that DOPT circular No. 20011/1/96-Estt.(D) dated 21.01.2002, copy attached as **Annexure A-2/A**, based on 85<sup>th</sup> Amendment amending Article 16(4) of the Constitution of India right from the date of its inclusion i.e. 17<sup>th</sup> June, 1995 with a view to allow the reserve category candidates to retain seniority by virtue of rule of reservation, with a view to avoiding judgment of the Hon'ble Supreme Court rendered in **Virpal Singh Chauhan, JT 1995(7) (SC) 231**, has been rendered as redundant and cannot be implemented until there is compliance of mandate of the Hon'ble Supreme Court in **M. Nagaraj reported as (2006) 8 SCC 212** for the simple reason that the main 85<sup>th</sup> amendment of the Constitution effective from 17.06.1995 has been made subject to three tier exercise to collect quantifiable data showing backwardness of the class, inadequacy of representation of that class in public employment and in addition to compliance of Article 335, before granting any promotion; and consequently letter dated 21.01.2002, which is based on the said amendment, cannot be on better footing and has to be subject to the same conditions and as such cannot be implemented till compliance of M. Nagaraj (supra) as modified in Jarnail Singh's case read with judgments in (i) **Union of India Versus Veerpal Singh Chauhan, JT 1995(7)SC 231**; (ii) **S.B. Meena Versus State of Rajasthan, JT 2010(13)SC 341**; (iii) **S. Paneere Selvam and others Versus Government of Tamil Nadu and others, (2015) 10 SCC 292**; (iv) **B.K. Pavitra, JT 2017(2) SC 277**.

3. The facts as taken out from OA No. 060/1435/2018 are that both the applicants belong to General Category and are presently working as Accounts Officer (AO) in the respondent Bharat Sanchar Nigam Limited. The applicants initially joined the lower cadre in the erstwhile department of Telecommunication as TOA on 15.11.1989 and 30.01.1984 and subsequently got promotion as Senior TOA in the year 1994. They were further promoted as





Junior Accounts Officer (JAO) from the cadre of Group 'C', on the basis of Departmental Examination and after undergoing necessary training and they belong to 1996/1998 batch and were appointed as such JAO in March, 1997 / February, 1999 and have been permanently absorbed in the respondent Bharat Sanchar Nigam Limited w.e.f. 01.10.2000. The Respondent No. 8 to 38 belong to Schedule Caste Category and were promoted as JAO after the promotion of applicant no. 1 (Staff No. 180021) as JAO and 75 to 90 belong to Schedule Tribe Category and were promoted as JAO after the promotion of applicant no. 2 (Staff No. 180705) as JAO. Thus, these respondents at their respective position were junior to applicant no. 1 in the cadre of JAO as exhibited in the Seniority List dated 03.04.2002 and the respondents at their respective position were junior to applicant no. 2 in the cadre of JAO as exhibited in the Seniority List dated 17.05.2007. An extract copy of the provisional Seniority List in respect of AAOs/JAOs dated 03.04.2002 & 17.05.2007 is attached as Annexure A-3). The Applicant No. 1 (Staff No. 180021) appears at Sr. No. 1571 and the Respondent No. 8 (Staff No. 180056) appears at Sr. No. 1607 in Seniority List



dated 03.04.2002 and Applicant No. 2 (Staff No. 180705) (Staff No. 180056) appears at Sr. No. 2260 in Seniority List dated 03.04.2002 and the respondent no. 75 to 90 were not even appointed in the BSNL. That the Respondent No. 39 to 74 belong to Schedule Tribe Category and were appointed as JAO after the promotion of applicants as JAO. Therefore, these respondents at their respective position were also junior to applicants in the cadre of JAO as exhibited in the Seniority List dated 17.05.2007 (Annexure A-4). The Applicant No. 1 (Staff No. 180021) and Applicant No. 2 (Staff No. 180705) appear at Sr. No. 348 and 826 in Seniority List dated 03.04.2002 and the Respondents No. 39 (Staff No. 182048) appears at Sr. No. 1265 in Seniority List dated 17.05.2007.

4. That the Respondent No. 91 and 92 belong to General Category and were appointed as JAO after the promotion of applicants as JAO. Therefore, these respondents at their respective position were also junior to applicants in the cadre of JAO as exhibited in the Seniority List dated 03.04.2002 and 17.05.2007. The Applicant No. 1 (Staff No. 180021) appears at Sr. No. 1571 in the Seniority List dated 03.04.2002 and appears at Sr. No. 348 in the



Seniority List dated 17.05.2007 and Applicant No. 2 (Staff No. 180705) appears at Sr. No. 2260 in the Seniority List dated 03.04.2002 and appears at Sr. No. 826 in the Seniority List dated 17.05.2007 and Respondents No. 91 (Staff No. 180638) appears at Sr. No. 2092 in Seniority List dated 03.04.2002 and appears at Sr. No. 728 in Seniority List dated 17.05.2007.

5. It is further averred that the next channel of promotion from the cadre of JAO is that of AO, which is governed by the recruitment rules known as BSNL's Accounts Officers Recruitment Rules (Annexure A-5). As per these Rules, 100% posts of AO are filled on the basis of seniority-cum-fitness from the candidates having three years of regular service as JAO. That BSNL, on the basis on Seniority List dated 03.04.2002, promoted Respondent No. 8 to 38 as AO by applying Reservation in matters of promotion on 11.03.2005 and 75 to 90 as AO by applying Reservation in matters of promotion on 08.10.2008 (Annexure A-6). Pertinently, the applicants belong to General Category and despite being senior to these respondents in the cadre of JAO were not considered for promotion to the cadre of AO.



6. That BSNL, on the basis on Provisional Seniority List dated 17.05.2007, promoted the applicants as well as all the Respondent No. 8 to 38 and 75 to 90 as AO by applying Reservation and 91 and 92 as general category in matters of promotion on 08.10.2008 (Annexure A-7). The applicant no. 1 gave his representation on 02.09.2016 for Catch-up rule so as to regain his Seniority in the cadre of AO. Thereafter, BSNL issued the impugned Seniority List in the cadre of AO on 27.10.2016(Annexure A-2).Needless to mention that in the department of Telecommunication, there was a cadre of Senior Accounts Officer also and this cadre was not existing in the BSNL. However, those who were working as Senior Accounts Officer in the department of Telecommunication were absorbed as Senior Accounts Officer in the BSNL only as a measure personal to them and till they were promoted or retired.
7. The applicants submit that there are two types of anomalies in the impugned Seniority List dated 27.10.2016 at this stage, explained as under:-
- a) First anomaly, being the Non-application of Catch-up Rule, whereby Respondent No. 8 to 38 and 75 to 90 have been given wrongful consequential seniority in the cadre of AO in violation of law declared by Hon'ble Apex Court in B.K. Pavitra's Case and Virpal Singh Chauhan's Case (Supra).



- b) Second anomaly, being Inadvertent or Clerical Mistake, whereby Respondent No. 91 and 92 have been given wrong Seniority Number as the Applicant No. 1 and Respondent No. 91 & 92 belong to General Category and both of the respondents were junior to Applicant No. 1 in the feeder cadre of JAO.
8. That in the impugned provisional seniority list in the cadre of AO dated 27.10.2016, the position of applicants and respondents have been shown wrong as explained hereinabove. That till date, these seniority positions have not been corrected. Also, no final Seniority List in the cadre of AO has been released so far.
9. That the next channel of promotion from the post of AO is to the post of Chief Accounts Officer (CAO), which is also known as Senior Time Scale post and is governed by the Recruitment Rules framed by the respondents BSNL authorities known as BSNL MSRR 2009 (Annexure A-8). As per these Rules, the promotion to the post of Chief Accounts Officer (equivalent of STS i.e. E-4) is 50% from Management Trainees and 50% by promotion from AO level executives with 7 years of service on the basis of selection-cum-seniority.
10. That thus applicants have already become eligible for promotion to the post of Chief Accounts Officer. But, the



Respondent No 3 to 7 obstinately issued the impugned Promotion Order dated 20.11.2018 in the cadre of CAO whereby the candidates, who could not have been considered in wake of law as declared in **M. Nagaraj, Jarnail Singh, Virpal Singh Chauhan, B.K. Pavitra, Paneerselavan, Suraj Bhan Meena**, have been promoted illegally.

11. That the respondent BSNL is a Company incorporated under Companies Act and is fully subscribed by the Government of India for which administrative department is Ministry of Communication, Department of Telecommunication. BSNL follows the reservation policy as issued by the Government of India from time to time in concurrence with its Administrative Ministry. This provision is made even in the Recruitment Rules governing the post including the post of Chief Accounts Officer.
12. That as per policy guidelines issued by the Government of India, there is provision of reservation in matter of promotion to the extent of 15% for SC and 7<sup>1/2</sup>% for ST respectively in the services under the Government of India and so is the percentage in the BSNL.



13. That the reservation in promotions was done away with by the Hon'ble Apex Court on 16<sup>th</sup> November, 1992 in **Indira Sawhney's case, (1992)6 SLR 321** and five years cooling period was granted to the Government to continue reservation in promotions. However, the Government of India, with a view to avoiding judgment of the Hon'ble Apex Court, introduced Constitutional Amendment known as 77<sup>th</sup> Constitutional Amendment providing for reservation in the matter of promotion by introducing Article 16(4) of the Constitution of India on 17.06.1995, so as to enable the State to provide for reservation in the matter of promotion, consequently nullifying the affect of judgment of the Hon'ble Supreme court in Indra Sawhney's case. The said sub-Article, read as it was worded, provided a carte blanche to the State to make any provision, for reservation in promotion, in favour of SCs and STs, provided they were "not adequately represented in the services under the State", and read as under:

“(4A) nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State”.



14. That pursuant to 77<sup>th</sup> Constitutional amendment, DOPT issued Office Memorandum dated 13<sup>th</sup> August, 1997 (Annexure A-8A) to continue the reservation in promotion for the Scheduled Castes and the Scheduled Tribes in the services/ posts under the Central Government beyond 15.11.1997.

15. That the afore-mentioned circular dated 13.08.1997 was the subject matter of Writ Petition (C) No. 3490/2010 and C.M. No. 6956/2010, which came up for consideration before the Hon'ble High Court of Delhi on 23.08.2017 and the Hon'ble Delhi High Court was pleased to quash the circular dated 13.08.1997 and was pleased to issue the following directions:-

"14. The impugned OM dated 13th August 1997, issued by the DOPT cannot, therefore, sustain in view of the law laid down in the decisions already cited hereinabove.

15. Resultantly, prayers (a) and (c), in the writ petition, succeed. The impugned Office Memorandum No 36012/18/95-Estt. (Res) Pt. II, dated 13th August, 1997, issued by the DOPT, is quashed and set aside. The respondents are restrained from granting any reservation, in promotion, to Scheduled Castes or Scheduled Tribes, in exercise of the power conferred by Article 16 (4A) of the Constitution of India, without, in the first instance, carrying out the necessary preliminary exercise of WP(C) 3490/2010 Page 29 of 30 acquiring quantifiable data indicating inadequacy of representation, of the said categories, in service, and evaluating the situation by taking into consideration the said data, along with the competing considerations of backwardness and overall efficiency in administration, and arriving at an empirical decision on the basis thereof."





16. Prayer (b) in the writ petition, to the extent it exhorts this court to quash all promotions made in pursuance of the impugned OM dated 13th August 1997, would stand satisfied by the interim order, stated to have been passed by the Supreme Court, in, inter alia, WP (C) 413 of 1997 filed by the petitioner, to the effect that all promotions made would be subject to the outcome of the challenge laid by the petitioners in the instant case. No further orders would, therefore, require to be passed, by us, regarding prayer (b), which would, consequently, also stand allowed, to the extent that all promotions effected on the basis of the impugned OM, dated 13th August, 1997, would stand quashed.
17. The further prayer, forming the latter part of prayer (b) in the writ petition, that "the employees of general category be given benefit of promotion retrospectively from the date reserved category employees were promoted illegally" cannot, however, be granted, for the simple reason that promotion may be dependent on a variety of factors, including seniority, eligibility, qualifying service, availability of vacancies, application of the quota-rota principle, and the like, and, in the absence of any specific prayer qua any



specific post, an omnibus direction, to promote all "employees of general category", retrospectively, "from the date reserved category employees were promoted illegally", cannot possibly be issued. All that we can say, on this prayer of the petitioner, is that, if, consequent on this judgment, any general category employee becomes entitled to promotion against a post against which an SC or ST candidate was promoted on the basis of the impugned OM dated 13th August 1997, it shall be open to such general category candidate / candidates to represent to the concerned administrative authorities, or to independently seek her, or his, judicial remedies in that regard. Liberty, to the said extent is, therefore, granted."

18. That after the judgment in Indira Sawhney's case, there was a judgment of the Hon'ble Apex Court in Hon'ble Apex Court rendered in **Union of India Versus Virpal Singh Chauhan, reported as JT 1995(7) (SC) 231** evolving principle of catch up rule so as to restore the seniority of general category, who were superseded in the matter of promotion by virtue of application of rule of reservation.
19. That with a view to avoiding judgment in Virpal Singh Chauhan's case, Central Government again brought in



Constitutional amendment by adding Article 16(4A) in the year 2001 by making provision of seniority also linking it to the roster point and making it effective from 17<sup>th</sup> June, 1995, thus giving undue benefit to the reserved category candidates even for consequential seniority in addition to reservation based on the roster point.

20. That in the meantime the Constitutional amendment came up for consideration before the Hon'ble Apex Court in **M. Nagaraj & Others Vs. Union of India and others, reported as 2006(8) SCC 212** and the Hon'ble Supreme Court while up-holding Constitutional amendment of Article 16(4A) effective from 17.06.1995 has categorically held that if the State Government wishes to make provision for reservation to SC and STs in promotion, the State has to collect in quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. This exercise has to be carried out before making further promotions.
21. That till date the three tier exercise has not been carried out either by the Government of India or by the BSNL authorities so far. Thus, BSNL having relied upon



Government of India instructions in the matter of reservation cannot independently carry out such exercise.

That consequently General Category candidates started approaching the courts for applying catch up rule till compliance of M. Nagaraj including OA No. 647/HR/2012, decided on 21.03.2013 titled Narender Singh and another Versus BSNL and others, relating to promotion from JAO to AO and onwards and this Hon'ble Tribunal relying upon M. Nagaraj was pleased to allow the O.A. vide judgment dated 21.03.2013 (Annexure A-9).

23. That similarly the respondent Corporation was restrained from making further promotions from JAO to AO on the basis of reservation without following M. Nagaraj, in O.A. No. 060/00295/2015 titled Parkash Vir and another Versus BSNL and others, in which this Hon'ble Tribunal was pleased to pass interim orders on 23.04.2015 (Annexure A-10) restraining the respondents from making further promotions on the basis of reservation and to follow the mandate given by the Hon'ble Supreme Court in the case of M. Nagaraj. Subsequently, the said OA was dismissed as withdrawn with liberty to file fresh one after removing the technical defects. The subsequent O.A. was registered



as O.A. No. 332/2017 in which also a Division Bench of this Hon'ble Tribunal was pleased to pass interim order on 28.03.2017 (Annexure A-11).

That in the meantime another judgment in case of S. Paneer Salvam, reported as 2015(10) SCC 292 was rendered by the Hon'ble Supreme Court and based on the same one Sh. A.K. Sardana, Accounts Officer approached this Hon'ble Tribunal in the matter of promotion from AO to Chief Accounts Officer by filing O.A. No. 060/01132/2016 titled as A.K. Sardana and another Versus Union of India and others, which was decided on 27.01.2017 (Annexure A-12).

25. That another O.A. No. 060/00440/2018 titled Vijay Kumar and others Versus Chairman-cum-Managing Director, BSNL and others, was decided on 17.04.2018. Copy of judgments dated 17.04.2018 (Annexure A-13).
26. That against order in the case of A.K. Sardana, BSNL has filed CWP No.18054/2018, which is pending in the Hon'ble High Court but there is no interim order. In case of Vijay Kumar, the respondent BSNL has side tracked the issued and rejected claim of the applicants on irrelevant considerations which have already been considered and



ignored by the courts of law. However, Vijay Kumar and others have filed another O.A. No.831/2018, which is pending in this Hon'ble Tribunal and fixed for 16.01.2019.

That there was yet another circular issued by the Government of India on 21.01.2002 (Annexure A-2/A) restoring the seniority to the reserved category candidates but the said circular has also been held to be inoperative by this Hon'ble Tribunal in judgment dated 08.02.2018 in O.A. No.060/00254/2017 in the case of **Maheshinder Singh Dhindsa Versus Union of India and others**, being in derogation of M. Nagaraj.

28. That in the meantime, the matter of M. Nagaraj was under consideration of the Hon'ble Constitutional Bench in case of Jarnail Singh versus Lachhmi Narain and the Hon'ble Supreme Court had passed two interim orders on 17.05.2018 and 05.06.2018 and the DOPT by misinterpreting the said interim order had issued policy decision dated 15.06.2018 (Annexure A-14).
29. That in O.A. No. 332/2017 filed by Parkash Vir, the official respondents based on circular dated 15.06.2018, moved an application for vacation/ modification of interim order dated 28.03.2017 and the stay order was modified by this



Hon'ble Tribunal vide order dated 07.09.2018. The said order dated 07.09.2018 was challenged before the Hon'ble Punjab and Haryana High Court in which the Hon'ble High Court vide order dated 24.09.2018 directed the promotion, if any subject to final outcome of the proceedings. The copies of orders dated 07.09.2018 and 24.09.2018 are attached as Annexure A-15 and A-16.

30. That in the meantime, matter of M. Nagaraj on the basis of reference in Jarnail Singh Versus Lachhmi Narain Gupta has been considered by the Hon'ble Apex Court on 26.09.2018 reported as 2018(4) SCT 445 in which one clause of quantifiable data with respect to backwardness has been withdrawn and a fresh clause / rider of Creamy Layer has been imposed. The Hon'ble Supreme Court has further clarified that the representation of SC/ST in public employment cannot be given the same meaning as assigned to representation of SC/ST in Art 330. After the aforementioned order of the Hon'ble Apex Court, the Hon'ble Punjab and Haryana High Court has directed this Hon'ble Tribunal to decide the main O.A. in the case of Parkash Vir within three months from the date of receipt of



certified copy of the order. A copy of order dated 09.10.2018 is attached as **Annexure A-17**.

That the fact remains that this Hon'ble Tribunal had been directing the respondent corporation to follow M. Nagaraj and till then not to provide reservation in promotions, both through final orders as well as interim orders. Now in view of answer of the Constitution Bench in case of Jarnail Singh, the same situation has arisen that the respondents cannot provide reservation in promotion without compliance of M. Nagaraj read with Jarnail Singh and without following the catch up rule in terms of Veerpal Singh Chauhan, S. Paneer Salvam and B.K. Pavitra.

32. That neither the Government nor BSNL had either carried out three tier exercise prior to 26.09.2018 after M. Nagaraj nor after 26.09.2018 after modification of M. Nagaraj to some extent so far.
33. That the applicant No.1 who had already represented on 02.09.2016 (Annexure A-18) again sent representation on 05.10.2018(Annexure A-19) with the hope and expectation and the directions issued by this Hon'ble Tribunal from time to time that the respondents would not commit further illegality and would follow the mandate of Hon'ble





Supreme Court in the afore-mentioned judgments and the interim orders passed by this Hon'ble Tribunal but to their surprise they passed orders dated 20.11.2018 (Annexure A-1). A perusal of impugned order dated 20.11.2018 shows that persons mentioned at Sr. No. 154 to 184 and 343 to 378 are junior to applicant No.1 and persons at Sr. No. 343 to 378 are junior to applicant No.2. Further the persons who have been considered for ad-hoc promotion from Sr. No. 1 to 16, 44 and 61 are junior to Applicant No.1. The representations of the affected employees including applicant No.1 qua the provisional seniority list have not been decided so far and the seniority list has also not been finalized but on the other hand official respondents promoted private respondents to the post of Chief Accounts Officer on regular / ad-hoc basis by applying rule of reservation and without finalizing the seniority list by applying catch up rule, whereas respondents cannot apply rule of reservation without compliance of mandate of M. Nagaraj reiterated in Jarnail Singh's case and are duty bound to follow catch up rule in view of the mandate of Hon'ble Supreme Court in **Virpal Singh Chauhan's** case reiterated in **S. Panneer Selvam**



**and others Versus Government of Tamil Nadu and others and B.K. Pavitra.**

That even in the Recruitment Rules of BSNL, there is a provision that BSNL will follow the instructions issued by the Government of India from time to time. Consequently any mandate issued by the Hon'ble Apex Court touching the provisions of Article 16(4A) introduced by 85<sup>th</sup> Constitutional amendment and policy instructions issued on the basis of the said constitutional amendment will be deemed to be modified and made subject to same mandate as contained in M. Nagaraj. Hence, it is stated in the OA that both of the applicants were senior at their respective position to all the respondents in the cadre of JAO. Both of the applicants were also senior at their respective position to the Respondent No. 39 to 74 in the cadre of AO. But, the Respondent No. 3 to 7 have illegally promoted both the sets of respondents in violation of the mandate of the Hon'ble Apex Court in M. Nagaraj read with Jarnail Singh and others Versus Lachhmi Narain and others. That not only these promotions, more promotions in the cadre of Accounts Officer are in the pipeline and are likely to be made any moment. That thus no time is left



for the applicants to wait any longer as intention of the respondents is quite clear with a view to frustrate the claim of general category candidates and granting reservation in the matter of promotion, respondent Corporation has invented a novel method as involved in the present case. Hence, the present Original Application.

35. Short reply has been filed on behalf of Respondents No. 1 & 2 wherein it is stated that no action has been envisaged pertaining to the Respondent No. 1 (i.e. Union of India, Ministry of Communications, Department of Communications, Sanchar Bhawan, New Delhi through its Secretary) and Respondent No. 2 (i.e. Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, North Block, New Delhi) and the main contesting parties are Respondents No. 3 to 7, i.e. BSNL only.
36. A detailed written statement on behalf of Respondents No. 3 to 7 has been filed wherein, it has been stated that owing to insertion of Clause 4A in Article 16 in the Constitution by the Constitution (77<sup>th</sup> Amendment) Act, 1995 w.e.f. 17.06.1995, the following provision was, in so



far as reservation in promotions in respect of public employment was made:-

“16. (4A) – Nothing in this Article shall prevent the State from making any provision for reservation (in matters of promotion, with consequential seniority, to any class) or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State.”

Thus, it is an enabling provision empowering the State to make provisions for reservation in promotions.

37. It is further stated that if the State decided to provide such reservation (in promotions), law laid down by the Apex Court in its Constitution Bench decision in **M. Nagaraj Vs. Union of India (2006) 8 SCC 212** would have to be followed without which the State cannot proceed with such reservation. Further, Hon'ble Supreme Court vide its interim orders dated 17.05.2018 and 05.06.2018 in **SLP No. 30621/2011 titled Jarnail Singh & Ors. Vs. Lachhmi Narain Gupta etc.**, inter alia had directed to make promotions clarifying that “the pendency of this SLP shall not stand in the way of Union of India taking steps for the purpose of promotion from ‘reserved to reserved’ and ‘unreserved to unreserved’ and also in the matter of promotion on merits.” On the basis of these interim orders, DoPT vide its order dated 15.06.2018 has made it clear



that since the Hon'ble Supreme Court vide its order dated 15.11.2017 in SLP (C) No. 28306/2017 has decided to refer to a Constitution Bench to examine whether its earlier decision in **M. Nagraj & Others Vs. UOI & Others** requires reconsideration or not, inter-alia, on the issue as to whether test of backwardness would, at all, apply in case of SC & ST, the cadre controlling authorities are required to carry out promotions based on the existing seniority/select lists. BSNL, being Central Government owned PSU, is also bound by the rules and regulations as prescribed by DoPT.

38. It is further stated in CWP No. 13218/2009 titled Lachhmi Narain Gupta & Others Vs. Jarnail Singh & Others, the Hon'ble Punjab and Haryana High Court held vide judgement dated 15.07.2011 that there shall be no reservation in promotions unless requisite conditions are fulfilled. This judgement was challenged in the Hon'ble Supreme Court in SLP (C) No. 30621 of 2011. Vide its order dated 26.09.2018, the Hon'ble Supreme Court deleted the conclusion in M. Nagraj case that "the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes", same



being contrary to nine-judge Bench judgement in **Indira Sawhney case (1992) Supp (3)SCC 217**. The Hon'ble Court has left the decision regarding reservation in promotions upon the State. In Indira Sawhney's case (supra), it was held that "Reservation in promotion is constitutionally impermissible as, once the advantaged and disadvantaged are made equal and are brought in one class or group then any further benefit extended for promotion on the inequality existing prior to be brought in the group would be treating equals unequally. It would not be eradicating the effects of past discrimination but perpetuating it." The Hon'ble Apex Court has thus observed that reservation in promotion is not mandatory but within the discretion of the State.

39. It is further stated by the respondents that Government brought Constitution (85<sup>th</sup> amendment) Act, 2001 dated 04.01.2002, amending Article 16 (4A) of the Constitution to provide for constitutional seniority in case of promotion by virtue of reservation with retrospective effect from 17.06.1995 and DoP&T has issued subsequent instructions contained in its OM dated 21.01.2002 on this subject. The Division Bench decision of the Apex Court in B.K. Pavitra &



Others Vs. UOI etc. in C.A. No. 2368/2011 is qua the applicants only and cannot be universally extended to others including the BSNL. The said Constitutional amendment and the above DoP&T's OM are very much in force and are being adhered to by BSNL. In O.A. No. 063/00531/2017 titled **Naresh Kumar & Ors. Vs. UOI & Ors.** regarding promotions from the post of DE (T) to the post of DGM (T) by applying catch up rule, this Tribunal vide orders dated 17.12.2018, vacated the stay order and allowed to proceed with the promotions of DGM.

40. Further, DoPT vide its OM dated 18.07.2018 has clarified that the interim orders of the Apex Court dated 17.05.2018 and 05.06.2018 have directed to carry out promotions based on existing seniority/select lists and further clarified that existing seniority lists would have been prepared keeping in view of promotions of consequential seniority contained in DoPT OM dated 21.01.2002. Therefore, consequential seniority of SC/ST employees promoted by virtue of rule of reservation is inherent/inbuilt in the existing seniority lists which are not to be operated for considering promotions.



41. Thus, the respondents submit that there is no derogation of law and the impugned orders were passed as per the law in force and may not be stayed else it would be painful for the genuine and deserving officers promoted through these orders while all the same it would negatively affect the functioning of the Department.
42. Private respondents have not chosen to file any reply.
43. Replication on behalf of applicants to the written statement filed on behalf of Respondents No. 3 to 7 has also been filed rebutting thereby the contentions made in the written statement by the Respondents. It is stated in the rejoinder that the respondents are misinterpreting the reservation policy and the judgements rendered by the Hon'ble Courts. After the judgement of the Hon'ble Supreme Court in M. Nagraj Versus Union of India, reported as (2006) 8 SCC 212 read with judgements in S. Paneere Selvam and others versus Government of Tamil Nadu and others, reported as (2015) 10 SCC 292, B.K. Pavitra, JT 2017 (2) SC 277 and Jarnail Singh Vs. Lachmi Narain Gupta 2918(4) SCT 445, there cannot be any reservation in promotions until three tier exercise with regard to collection of quantifiable data showing





backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335 in terms of judgement of the Hon'ble Apex Court in M. Nagraj is not carried out. Admittedly, no such exercise has been carried out by the Competent Authority so far and as such, there cannot be any reservation in promotions till compliance of the mandate of Hon'ble Supreme Court and as such, the respondents are duty bound to apply catch-up rule as well as are required not to grant reservation in promotions.

44. The respondents No. 3 to 7 have also filed an Additional Affidavit wherein they submitted that both the applicants before this Tribunal have already reached the higher pay grade in view of the time bound executive promotion policy and neither the applicants will be benefited in any form nor they will be affected adversely in any manner whatsoever if the promotions take place as they have already reached to a higher pay grade due to time bound upgradation policy of the respondent BSNL. Moreover, the applicants have applied for the BSNL Voluntary Retirement Scheme for the Executives issued by the respondent BSNL and were granted the benefit under the VRS-19 policy and



have thus retired from the services of the respondent BSNL w.e.f. 31.01.2020. Both the applicants have been granted the benefit under the VRS policy vide their approval letter dated 17.01.2020 (Annexure A-3).

45. As a rebuttal to the Additional Affidavit filed by respondents No. 3 to 7, the applicants submit that Voluntary Retirement Scheme was not involved when the original applicants filed the present OA. In fact, it was an intervening event. It is only by affidavit dated 18.03.2021 the factum of voluntary retirement of the applicants came to the notice of the counsel for the applicants and thus, no malafide can be attributed to the applicants in this regard. Moreover, full and final settlement was with regard to voluntary retirement scheme and not to forego any benefit arising out of retrospective promotion or revision of pay scale etc. which is always admissible to an employee even after retirement.

46. The learned counsel for the respondents has relied upon the following judgements:-

- (a) (2015) 8 SCC 1 Vipulbhai M. Chaudhary Vs. Gujarat Cooperative Milk Marketing Federation Ltd and Others
- (b) Sudhakar Baburao Nangnure Vs. Noreshwar Raghunathrao Shende 2020 (11) SCC 399
- (c) B.K. Pavitra Vs. UOI (2019) 16 SCC 129



(d)

High Court of Kerala decision in T. Sridhar Reddy case, W.P. (C) 2633/2021 and CM Appl. 7795/2021 titled as Gyan Singh and Ors. Vs. UOI and Ors. (Delhi High Court), O.P. (CAT) 212/2019 titled as T. Sidhardha Reddy and Ors. Vs. Rajive Kumar Gupta and Ors.

Jarnail Singh Vs. Lachhmi Narain Gupta (2018) 10 SCC 396

(f)

Jarnail Singh Vs. Lachchmi Narain Gupta (2022) 10 SCC 303

47. We have heard the learned counsels for the parties and have carefully gone through the pleadings and law points regarding the case at hand.

48. It is clear that the applicants as well as private respondents in all these OAs, were either promoted or directly recruited to the entry level executive cadre of Junior Accounts Officer (i.e., JAO) in the respondent BSNL. The relevant recruitment rules of respondent BSNL provide for promotion from the cadre of JAO to the cadre of Accounts Officer (i.e., AO) on seniority-cum-fitness basis and from the cadre of AO to the cadre of Chief Accounts Officer (i.e., CAO) on selection-cum-seniority basis.

49. Further, the applicants in all these OAs belong to Open Category (i.e., OC), while the private respondents belong to Scheduled Castes (i.e., SC) and Scheduled Tribes (i.e., ST) categories. In O.A. No. 60/01435/2018 and O.A. No. 60/00831/2018, the applicants were senior to the private



respondents in the cadre of JAO. The private respondents got promotion in the cadre of AO, and then in the cadre of CAO, by availing the benefits of reservation in matter of promotion and also on the basis of provisional seniority list in the feeder-cadres of JAO and AO, which were drawn without following catch up rule.

50. It is also not disputed that the applicants in O.A. No. 60/01435/2018 got promotion in the cadre of AO on 08.10.2008, whereas the private respondents got the same on 11.03.2005 by availing the benefit of reservation in matter of promotion. The applicants in O.A. No. 60/000831/2018 got promotion in the cadre of AO on 15.01.2015, whereas the private respondents got the same on 08.10.2008 by availing the benefit of reservation in matter of promotion. The applicants in O.A. No. 60/00050/2023 got promotion in the cadre of AO on 26.06.2018, whereas many of the candidates belonging to the SCs and STs category (who were junior to them in the cadre of JAO) got promotion in the cadre of AO on 16.01.2015 by availing the benefit of reservation in matter of promotion. The respondent BSNL, after carrying out aforesaid promotions, drew a provisional seniority list in



the cadre of AO dated 27.10.2016, but without applying the catch-up rule. On 20.11.2018, the respondent BSNL also made promotion to the cadre of CAO on the basis of impugned provisional seniority list in the cadre of AO dated 27.10.2016.

51. That the applicants, besides seeking different relief(s), have categorically challenged the seniority list in the cadre of AO dated 27.10.2016 that has been drawn without applying the Catch-up Rule as evolved in **Virpal Singh Chauhan (1995) 6 SCC 684**, **Ajit Singh Januja (1996) 2 SCC 715**, and **Ajit Singh (1999) 7 SCC 209**, read with **S. Panneerselvam, (2015) 1 SCC 292**, **B.K. Pavitra, JT 2017(2) SC 277** and **Maheshinder Singh Dhindsa 2020 PHHC 021046 DB**, and also agitated the action of respondent BSNL in providing next promotion from the cadre of AO to the cadre of CAO without complying the mandate of **M. Nagaraj, (2006) 8 SCC 212** and further explained in **Jarnail Singh, 2018 (10) SCC 396** and **2022 SCC Online SC 96**.
52. In these OAs, three questions of law emerge, i.e.



- A. Whether the candidates belonging to the cadre of SCs and STs Category are eligible for reservation in matter of promotion under Article 16(4A) from AO to CAO?
- B. Whether the respondent BSNL is required to draw seniority list in the cadre of AO by applying the Catch-up Rule before making promotion to the cadre of CAO?
- C. Whether the promotions carried out without complying with the mandate of M. Nagaraj, (2006) 8 SCC 212 or without drawing the seniority list by applying 'catch-up rule' are liable to be quashed?
53. That for the purpose of answering the aforesaid questions of law, the legal evolution, qua the reservation in matter of promotion for the candidates belonging to SCs and STs, is worth going through. After the **Indira Sawhney, 1992 Supp. (3) SCC 217**, the following Constitutional Amendments were made, which were challenged under Article 32 before the Hon'ble Supreme Court of India in **M. Nagaraj, (2006) 8 SCC 212**. –
- 77<sup>th</sup> Constitutional Amendment dated 17.06.1995 [Insertion of Clause 16(4A)];
  - 81<sup>st</sup> Constitutional Amendment dated 09.06.2000 [Insertion of Clause 16(4B)];
  - 82<sup>nd</sup> Constitutional Amendment dated 08.09.2000 [Insertion of Proviso to Article 335]; and
  - 85<sup>th</sup> Constitutional Amendment dated 04.01.2002 [Providing Consequential Seniority vide Article 16(4A)].

54. That the brief conclusion of **M. Nagaraj, (2006) 8 SCC 212** is



is under:-

- The impugned amendments do not alter the structure of Articles 14, 15 and 16 (equity code). The parameters mentioned in Article 16(4) are retained. Clause 16(4A) is derived from clause 16(4). The Clause (4A) is confined to SCs and STs alone. Therefore, the present case does not change the identity of the Constitution. The Clause 16(1) cannot prevent the State from taking cognizance of the compelling interests of backward classes in the society. The Clauses 16(1) and 16(4) are restatement of the principle of equality under Article 14. The Clause 16(4) refers to affirmative action by way of reservation. The Clause 16(4), however, states that the appropriate Government is free to provide for reservation in cases where it is satisfied on the basis of quantifiable data that backward class is inadequately represented in the services. Therefore, in every case where the State decides to provide for reservation, there must exist two circumstances, namely, 'backwardness' and 'inadequacy of representation' besides 'administrative efficiency' under article 335.
- ii. The court referred to **Ajit Singh, (1999) 7 SCC 209** [in which court overruled **Jagdish Lal, (1997) 6 SCC 538**] and held that Article 16(4) and 16(4A) do not confer any fundamental right to reservation. The Article 16(1) deals with a fundamental right, whereas the Articles 16(4) and 16(4A) are only enabling and dissertational provisions.
  - iii. 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.
  - iv. The State is not bound to make reservation for the candidates of SC/ST category in matter of promotions. However, if they wish to exercise their discretion and make such provision, the State will have to make three-tier exercise, namely, it has to collect quantifiable data showing (i) backwardness of the class and (ii) inadequacy of representation of that class in public employment in addition to (iii) 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.
  - v. The constitutional limitation as enshrined in Article 335 is relaxed in 82<sup>nd</sup> constitutional amendment but not obliterated.

That the correctness of **M. Nagaraj (supra)** came to be tested in **Jarnail Singh, 2018 (10) SCC 396**. The Hon'ble Supreme Court referred to **Indra Sawhney 1992 Supp (3) SCC 217, Indra**



**Sawhney (2000) 1 SCC 168, Ashoka Kumar Thakur (2008) 6 SCC, Chinnaiah (2005) 1 SCC 394, Thomas (1976) 2 SCC 310,** and held that the Creamy Layer, being an equality provision, is not a rule of classification, thus it applies to SCs and STs category as well (Paragraph 15-17), while one clause of quantifiable data with respect to backwardness has been withdrawn (Paragraph 21). The operating part of judgement is extracted under : -

"15. In fact, Chinnaiah (supra) has referred to the Scheduled Castes as being the most backward among the backward classes (See paragraph 43). This is for the reason that the Presidential List contains only those castes or groups or parts thereof, which have been regarded as untouchables. Similarly, the Presidential List of Scheduled Tribes only refers to those tribes in remote backward areas who are socially extremely backward. Thus, it is clear that when Nagaraj (supra) requires the States to collect quantifiable data on backwardness, insofar as Scheduled Castes and Scheduled Tribes are concerned, this would clearly be contrary to the Indra Sawhney (1) (supra) and would have to be declared to be bad on this ground.

However, when it comes to the creamy layer principle, it is important to note that this principle sounds in Articles 14 and 16(1), as unequals within the same class are being treated equally with other members of that class. The genesis of this principle is to be found in State of Kerala & Anr. v. N.M. Thomas and Ors., (1976) 2 SCC 310. This case was concerned with a test-relaxation rule in promotions from lower division clerks to upper division clerks. By a 5:2 majority judgment, the said rule was upheld as a rule that could be justified on the basis that it became necessary as a means of generally giving a leg-up to backward classes. In paragraph 124, Krishna Iyer, J. opined:

"124. A word of sociological caution. In the light of experience, here and elsewhere, the danger of 'reservation', it seems to me, is threefold. Its benefits, by and large, are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake. Secondly, this claim is overplayed extravagantly in democracy by large and vocal groups whose burden of backwardness has been substantially lightened by the march of time and measures of better education and more opportunities of employment, but wish to wear the 'weaker section' label as a means to score over their near-equals formally categorized as the upper brackets. Lastly, a lasting solution to the problem comes only from improvement of social environment, added educational facilities and cross-fertilization of castes by inter-caste and inter-class marriages sponsored as a massive State programme, and this solution is calculatedly hidden from view by the higher 'backward' groups with a vested interest in the plums of backwardism. But social science research, not judicial impressionism, will alone tell the





whole truth and a constant process of objective re-evaluation of progress registered by the 'underdog' categories is essential lest a once deserving 'reservation' should be degraded into 'reverse discrimination'. Innovations in administrative strategy to help the really untouched, most backward classes also emerge from such socio-legal studies and audit exercises, if dispassionately made. In fact, research conducted by the A.N. Sinha Institute of Social Studies, Patna, has revealed a dual society among harijans, a tiny elite gobbling up the benefits and the darker layers sleeping distances away from the special concessions. For them, Articles 46 and 335 remain a 'noble romance' [As Huxley called it in 'Administrative Nihilism' (Methods and Results, Vol. 4 of Collected Essays).], the bonanza going to the 'higher' harijans. I mention this in the present case because lower division clerks are likely to be drawn from the lowest levels of harijan humanity and promotion prospects being accelerated by withdrawing, for a time, 'test' qualifications for this category may perhaps delve deeper. An equalitarian breakthrough in a hierarchical structure has to use many weapons and Rule 13-AA perhaps is one."

The whole object of reservation is to see that backward classes of citizens move forward so that they may march hand in hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were. This being the case, it is clear that when a Court applies the creamy layer principle to Scheduled Castes and Scheduled Tribes, it does not in any manner tinker with the Presidential List under Articles 341 or 342 of the Constitution of India. The caste or group or sub-group named in the said List continues exactly as before. It is only those persons within that group or sub-group, who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation. Even these persons who are contained within the group or sub-group in the Presidential Lists continue to be within those Lists. It is only when it comes to the application of the reservation principle under Articles 14 and 16 that the creamy layer within that sub-group is not given the benefit of such reservation.

We do not think it necessary to go into whether Parliament may or may not exclude the creamy layer from the Presidential Lists contained under Articles 341 and 342. Even on the assumption that Articles 341 and 342 empower Parliament to exclude the creamy layer from the groups or sub-groups contained within these Lists, it is clear that Constitutional Courts, applying Articles 14 and 16 of the Constitution to exclude the creamy layer cannot be said to be thwarted in this exercise by the fact that persons stated to be within a particular group or subgroup in the Presidential List may be kept out by Parliament on application of the creamy layer principle. One



of the most important principles that has been frequently applied in constitutional law is the doctrine of harmonious interpretation. When Articles 14 and 16 are harmoniously interpreted along with other Articles 341 and 342, it is clear that Parliament will have complete freedom to include or exclude persons from the Presidential Lists based on relevant factors. 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 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. 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. This judgment has been repeatedly followed and applied by a number of judgments of this Court, namely:

- a. *Anil Chandra v. Radha Krishna Gaur*, (2009) 9 SCC 454 (two-Judge Bench) (See paragraphs 17 and 18).
- b. *Suraj Bhan Meena & Anr. v. State of Rajasthan & Ors.*, (2011) 1 SCC 467 (two-Judge Bench) (See paragraphs 10, 50, and 67).
- c. *U.P. Power Corporation v. Rajesh Kumar & Ors.*, (2012) 7 SCC 1 (two-Judge Bench) (See paragraphs 61, 81(ix), and 86).
- d. *S. Panneer Selvam & Ors. v. State of Tamil Nadu & Ors.*, (2015) 10 SCC 292 (two-Judge Bench) (See paragraphs 18, 19, and 36).
- e. *Chairman & Managing Director, Central Bank of India & Ors. v. Central Bank of India SC/ST Employees Welfare Association & Ors.*, (2015) 12 SCC 308 (two-Judge Bench) (See paragraphs 9 and 26).
- f. *Suresh Chand Gautam v. State of U.P. & Ors.*, (2016) 11 SCC 113 (two-Judge Bench) (See paragraphs 2 and 45).
- g. *B.K. Pavitra & Ors. v. Union of India & Ors.*, (2017) 4 SCC 620 (two-Judge Bench) (See paragraphs 17 to 22).



Further, Nagaraj (supra) has been approved by larger Benches of this Court in:

- a. General Categories Welfare Federation v. Union of India, (2012) 7 SCC 40 (three-Judge Bench) (See paragraphs 2 and 3).
- b. Rohtas Bhankar v. Union of India, (2014) 8 SCC 872 (five Judge Bench) (See paragraphs 6 and 7).

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.

*21. Thus, we conclude that the judgment in Nagaraj (supra) does not need to be referred 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."*

55. That the Hon'ble Supreme Court in **Jarnail Singh, 2018 (10) SCC 396** clarified that the representation of SCs/STs in public employment cannot be given the same meaning as assigned to representation of SCs and STs in Article 330 (Paragraph 19). The court further added that determining the adequacy of representation in promotional posts is left to the discretion of States for the simple reason that as the post gets higher, it may be necessary (even if a proportionality test to the



population as a whole is taken into account) to reduce the number of Scheduled Castes and Scheduled Tribes in promotional posts (Paragraph 20). The operating part of judgement is extracted under:-

"19. We have already seen that, even without the help of the first part of Article 16(4-A) of the 2012 Amendment Bill, the providing of quantifiable data on backwardness when it comes to Scheduled Castes and Scheduled Tribes, has already been held by us to be contrary to the majority in Indra Sawhney (1) (supra). So far as the second part of the substituted Article 16(4-A) contained in the Bill is concerned, we may notice that the proportionality to the population of Scheduled Castes and Scheduled Tribes is not something that occurs in Article 16(4-A) as enacted, which must be contrasted with Article 330. We may only add that Article 46, which is a provision occurring in the Directive Principles of State Policy, has always made the distinction between the Scheduled Castes and the Scheduled Tribes and other weaker sections of the people. Article 46 reads as follows: —

**"46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.—** The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

This being the case, it is easy to see the pattern of Article 46 being followed in Article 16(4) and Article 16(4-A). Whereas 'backward classes' in Article 16(4) is equivalent to the 'weaker sections of the people' in Article 46, and is the overall genus, the species of Scheduled Castes and Scheduled Tribes is separately mentioned in the latter part of Article 46 and Article 16(4-A). This is for the reason, as has been pointed out by us earlier, that the Scheduled Castes and the Scheduled Tribes are the most backward or the weakest of the weaker sections of society, and are, therefore, presumed to be backward. Shri Dwivedi's argument that as a member of a Scheduled Caste or a Scheduled Tribe reaches the higher posts, he/she no longer has the taint of either untouchability or backwardness, as the case may be, and that therefore, the State can judge the absence of backwardness as the posts go higher, is an argument that goes to the validity of Article 16(4-A). If we were to accept this argument, logically, we would have to strike down Article 16(4-A), as the necessity for continuing reservation for a Scheduled



Caste and/or Scheduled Tribe member in the higher posts would then disappear. Since the object of Article 16(4-A) and 16(4-B) is to do away with the nine-Judge Bench in *Indra Sawhney (1)* (supra) when it came to reservation in promotions in favour of the Scheduled Castes and Scheduled Tribes, that object must be given effect to, and has been given effect by the judgment in *Nagaraj* (supra). This being the case, we cannot countenance an argument which would indirectly revisit the basis or foundation of the constitutional amendments themselves, in order that one small part of *Nagaraj* (supra) be upheld, namely, that there be quantifiable data for judging backwardness of the Scheduled Castes and the Scheduled Tribes in promotional posts. We may hasten to add that Shri Dwivedi's argument cannot be confused with the concept of 'creamy layer' which, as has been pointed out by us hereinabove, applies to persons within the Scheduled Castes or the Scheduled Tribes who no longer require reservation, as opposed to posts beyond the entry stage, which may be occupied by members of the Scheduled Castes or the Scheduled Tribes.

20. *The learned Attorney General also requested us to lay down that the proportion of Scheduled Castes and Scheduled Tribes to the population of India should be taken to be the test for determining whether they are adequately represented in promotional posts for the purpose of Article 16(4-A). He complained that Nagaraj (supra) ought to have stated this, but has said nothing on this aspect. According to us, Nagaraj (supra) has wisely left the test for determining adequacy of representation in promotional posts to the States for the simple reason that as the post gets higher, it may be necessary, even if a proportionality test to the population as a whole is taken into account, to reduce the number of Scheduled Castes and Scheduled Tribes in promotional posts, as one goes upwards. This is for the simple reason that efficiency of administration has to be looked at every time promotions are made. As has been pointed out by B.P. Jeevan Reddy, J.'s judgment in Indra Sawhney (1) (supra), there may be certain posts right at the top, where reservation is impermissible altogether. For this reason, we make it clear that Article 16(4-A) has been couched in language which would leave it to the States to determine adequate representation depending upon the promotional post that is in question. For this purpose, the contrast of Article 16(4-A) and 16(4-B) with Article 330 of the Constitution is important. Article 330 reads as follows: —*

**"330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.-** (1) Seats shall be reserved in the House of the People for-

- (a) the Scheduled Castes;
- (b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and]
- (c) the Scheduled Tribes in the autonomous districts of Assam.



(2) *The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.*

(3) *Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.*

*Explanation.—In this article and in Article 332, the expression 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published:*

*Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 2001 census."*

*It can be seen that when seats are to be reserved in the House of the People for the Scheduled Castes and Scheduled Tribes, the test of proportionality to the population is mandated by the Constitution. The difference in language between this provision and Article 16(4-A) is important, and we decline the invitation of the learned Attorney General to say any more in this behalf."*

56. That in continuation of the averment narrated in the preceding paragraph, it is averred that the Hon'ble Supreme Court in **Jarnail Singh, 2022 SCC Online SC 96** reiterated that the proportion of SCs and STs to the population of India should not be the test for determining inadequacy of representation in promotional posts (Paragraph 30). This Court refused to lay down any criteria for determining the adequacy of representation, as the States were given liberty to determine



the factors relevant for deciding adequate representation, depending upon the promotional posts in question (Paragraph 13). Therefore, no yardstick can be laid down by this Court for determining the adequacy of representation of SCs and STs in promotional posts for the purpose of providing reservation (Paragraph 16). The operating part of judgement is extracted under: -

“13. The learned Attorney General argued before this Court in Jarnail Singh (supra) that this Court did not indicate any test for determining adequacy of representation in service in M. Nagaraj (supra). He submitted that it is important to decide the yardstick applicable for arriving at quantifiable data showing inadequacy of representation of SCs and STs to avoid multiple litigation. This Court refused to lay down any criteria for determining the adequacy of representation, as the States were given liberty to determine the factors relevant for deciding adequate representation, depending upon the promotional posts in question.”

Determination of inadequate representation of SCs and STs in services under a State is left to the discretion of the State, as the determination depends upon myriad factors which this Court cannot envisage. A conscious decision was taken by this Court in M. Nagaraj (supra) and Jarnail Singh (supra) to leave it to the States to fix the criteria for determining inadequacy of representation. The submission of the learned Attorney General for India that this Court has to lay down the yardstick for measuring adequacy of representation did not yield a favourable result as this Court in Jarnail Singh (supra) found it befitting for the States to have the liberty to evaluate the representation of SCs and STs in public employment. Laying down of criteria for determining the inadequacy of representation would result in curtailing the discretion given to the State Governments. In addition, the prevailing local conditions, which may require to be factored in, might not be uniform. Moreover, in M. Nagaraj (supra), this Court made it clear that the validity of law made by the State Governments providing reservation in promotions shall be decided on a case-to-case basis for the purpose of establishing whether the inadequacy of representation is supported by quantifiable data. Therefore, we are of the opinion that no yardstick can be laid down by this Court for determining the adequacy of representation of SCs and STs in promotional posts for the purpose of providing reservation.

In R.K. Sabharwal (supra), it was observed that State Governments may take the total population of a particular Backward Class and its representation in the State services for the purpose of coming to a conclusion that there is inadequate representation in the State services. In M. Nagaraj (supra), this Court was of the considered



view that the exercise of collecting quantifiable data depends on numerous factors, with conflicting claims to be optimised by the administration in the context of local prevailing conditions in public employment. As equity, justice and efficiency are variable factors and are context-specific, how these factors should be identified and counter-balanced will depend on the facts and circumstances of each case. The attempt of the learned Attorney General for India to impress upon this Court that the proportion of SCs and STs in the population of India should be taken as the test for determining whether they are adequately represented in promotional posts, did not yield results. This Court in *Jarnail Singh* (supra) found no fault with *M. Nagaraj* (supra) regarding the test for determining the adequacy of representation in promotional posts in the State. While emphasizing the contrast in the language used between Article 330 and Articles 16(4-A) and 16(4-B) of the Constitution, this Court declined the invitation of the learned Attorney General for India to hold that the proportion of SCs and STs to the population of India should be the test for determining inadequacy of representation in promotional posts. Therefore, we are not persuaded to express any opinion on this aspect. It is for the State to assess the inadequacy of representation of SCs and STs in promotional posts, by taking into account relevant factors.

57. That on the basis on ratio as decided in **M. Nagaraj, (2006) 8 SCC 212** and further explained in **Jarnail Singh, 2018 (10) SCC 396** and **2022 SCC Online SC 96**, it can be deduced as follows:-

- a. That unlike Article 16(1), the Article 16(4), 16(4A) and 16(4B) are not a fundamental right, but only enabling, discretionary or affirmative provisions vested in State.
- b. That the State cannot be bound to provide the reservation in promotion for SCs and STs category under Article 16(4A), but if it wants to provide said reservation, it has to comply with the following conditions, i.e.,
  - i. It has to collect quantifiable w.r.t. backwardness of class. [obliterated by **Jarnail Singh, 2018 (10) SCC 396**];
  - ii. It has to define Creamy Layer so that equals could be treated equally. [explained and clarified by **Jarnail Singh, 2018 (10) SCC 396** that Creamy Layer is a





rule of equity under Article 14 and 16(1), and not of classification, thus when it is applied to SCs and STs category, it does not affect Article 341 and 342];

- iii. It has to collect data w.r.t. overall representation of that class in public employment. [explained and clarified by **Jarnail Singh, 2018 (10) SCC 396** and **2022 SCC Online SC 96** that the representation doesn't mean representation in proportion to population under Article 330. Test of representation is left to the State because as the post gets higher, it may be necessary to reduce the number of SCs and STs on promotional posts];
- iv. It has to comply with Administrative Efficiency under Article 335 (explained by M. Nagraj (2006) 8 SCC 212 that 82<sup>nd</sup> constitutional amendment has relaxed Article 335, but not obliterated)

58. That since neither the Central Government or its dispensation, i.e. the respondent BSNL, has yet complied with the mandate of M. Nagraj (2006) 8 SCC 212 as further explained in Jarnail Singh, 2018 (10) SCC 396 and 2022 SCC Online SC 96, the first question of law is required to be answered that the candidates belonging to the cadre of SCs and STs category are as such not eligible for reservation in matter of promotion under Article 16 (4A) from AO to CAO. Thus, question No. A is accordingly answered.

59. That in **Virpal Singh Chauhan (1995) 6 SCC 684**, the



Hon'ble Supreme Court held that the candidate promoted earlier by virtue of rule of reservation/roster shall not be entitled to seniority over his senior in the feeder category and that as and when a general candidate who was senior to him in the feeder category is promoted, such general candidate will regain his seniority over the reserved candidate notwithstanding that he is promoted subsequent to the reserved candidate. The operating part of judgement is extracted under: -

"24. In short, it is open to the State, if it is so advised, to say that while the rule of reservation shall be applied and the roster followed in the matter of promotions to or within a particular service, class or category, the candidate promoted earlier by virtue of rule of reservation/roster shall not be entitled to seniority over his senior in the feeder category and that as and when a general candidate who was senior to him in the feeder category is promoted, such general candidate will regain his seniority over the reserved candidate notwithstanding that he is promoted subsequent to the reserved candidate. There is no unconstitutionality involved in this. It is permissible for the State to so provide."

That the decision in **Virpal Singh Chauhan (1995) 6 SCC 684** led to 85<sup>th</sup> Constitutional Amendment with retrospective effect from 17.06.1995, whereby the Article 16(4A) was further amended enabling the State to make a provision for reservation in matters of promotion with 'consequential seniority'. The Amended Article 16(4A) reads as under:-

"4A. *Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.*"



That meanwhile the Hon'ble Supreme Court in **Ajit Singh Januja (1996) 2 SCC 715**, relied on the principle of 'catch-up rule' as laid down in **Virpal Singh Chauhan (1995) 6 SCC 684** observing that the balance must be maintained in such a manner that there was no reverse discrimination against the general category candidates and that any rule, circular or order which gives seniority to the reserved category candidates promoted at the roster-point would be violative of Articles 14 and 16 of the Constitution of India.

61. The Hon'ble Supreme Court in **Jagdish Lal (1997) 6 SCC 538**, however opined that the seniority granted to the candidate of SCs and STs category over the candidate of OC category due to his accelerated promotion does not wipe out on promotion of general category candidate. Later on, the Hon'ble Supreme Court in **Ajit Singh (1999) 7 SCC 209**, held that Articles 16(4) and (4A) did not confer any fundamental right to reservation and that they are only enabling provisions. Therefore, the judgment in **Jagdish Lal (1997) 6 SCC 538** was overturned by observing that rights of the reserved classes must be balanced against the interests of other segments of society and the 'catch-up rule' was upheld as evolved in **Virpal**

**Singh Chauhan (1995) 6 SCC 684 and Ajit Singh Januja**



**(1996) 2 SCC 715.**

That the constitutional validity of Article 16(4A) and 16(4B) came to challenge in **M. Nagaraj (2006) 8 SCC 212**, which upheld the constitutional amendments with rider that the impugned provision is an enabling provision and the State is not bound to make reservation for SCs and STs in matters of promotions. However, if the State wishes to exercise its discretion and make such provision, it has to first comply with the riders as already discussed hereinbefore, i.e., (i) to collect the quantifiable data with respect to backwardness of class, (ii) the inadequacy of representation of that class in public employment and (iii) overall administrative efficiency before making provision for reservation.

63. That after **M. Nagaraj (2006) 8 SCC 212**, the issue of making reservation in favour of SCs and STs candidates without complying with the riders and compelling reasons sounded in many cases, such as, **Suraj Bhan Meena JT 2010(13) SC 341, U.P. Power Corporation Limited (2012) 7 SCC 1, Paneerselvam (2015) 10 SCC 292 and B.K. Pavitra vs UOI JT 2017(2) SC 277**, and **Maheshinder Singh Dhindsa 2020 PHHC 021046 DB**. These are cases specifically dealt with the



question as to "Consequential Seniority" and "Catch-up Rule" after 85<sup>th</sup> Consequential Amendment, wherein it was held that the restoration of consequential seniority without conducting the exercise as contemplated in **M. Nagaraj (2006) 8 SCC 212** was liable to be struck down and if the State wanted to introduce a provision for consequential seniority, it would have to follow the procedure indicated in M. Nagaraj. The concluding paragraph in **Suraj Bhan Meena JT 2010(13) SC 341** read as under: -

*"46. The position after the decision in M. Nagaraj's case (supra) is that reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition of ascertaining as to whether such reservation was at all required. The view of the High Court is based on the decision in M. Nagaraj's case (supra) as no exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Schedule Castes and Scheduled Tribes communities in public services. The Rajasthan High Court has rightly quashed the notifications dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan providing for consequential seniority and promotion to the members of the Scheduled Castes and Scheduled Tribes communities and the same does not call for any interference. Accordingly, the claim of Petitioners Suraj Bhan Meena and Sriram Choradia in Special Leave Petition (Civil) No.6385 of 2010 will be subject to the conditions laid down in M. Nagaraj's case (supra) and is disposed of accordingly. Consequently, Special Leave Petition (C) Nos. 7716, 7717, 7826 and 7838 of 2010, filed by the State of Rajasthan, are also dismissed."*

64. That the Hon'ble Supreme Court in **U.P. Power Corporation Limited (2012) 7 SCC 1** has held that the exercise in the light of judgement of Constitution Bench in M. Nagaraj (supra) is

categorically imperative. The operative part of judgment is

reproduced as under: -



85. As has been indicated hereinbefore, it has been vehemently argued by the learned senior counsel for the State and the learned senior counsel for the Corporation that once the principle of reservation was made applicable to the spectrum of promotion, no fresh exercise is necessary. It is also urged that the efficiency in service is not jeopardized. Reference has been made to the Social Justice Committee Report and the chart. We need not produce the same as the said exercise was done regard being had to the population and vacancies and not to the concepts that have been evolved in *M. Nagaraj (supra)*. It is one thing to think that there are statutory rules or executive instructions to grant promotion but it cannot be forgotten that they were all subject to the pronouncement by this Court in *Vir Pal Singh Chauhan (supra)* and *Ajit Singh (II) (supra)*.

86. We are of the firm view that a fresh exercise in the light of the judgment of the Constitution Bench in *M. Nagaraj (supra)* is a categorical imperative. The stand that the constitutional amendments have facilitated the reservation in promotion with consequential seniority and have given the stamp of approval to the Act and the Rules cannot withstand close scrutiny inasmuch as the Constitution Bench has clearly opined that Articles 16(4A) and 16(4B) are enabling provisions and the State can make provisions for the same on certain basis or foundation. The conditions precedents have not been satisfied. No exercise has been undertaken. What has been argued with vehemence is that it is not necessary as the concept of reservation in promotion was already in vogue. We are unable to accept the said submission, for when the provisions of the Constitution are treated valid with certain conditions or riders, it becomes incumbent on the part of the State to appreciate and apply the test so that its amendments can be tested and withstand the scrutiny on parameters laid down therein."

65. That the Hon'ble Supreme Court in **B.K. Pavitra vs UOI JT 2017(2) SC 277**, has also decided the manner in which promotions already carried out in violation **M. Nagaraj (2006) 8 SCC 212** are to be dealt with. The Hon'ble Supreme Court has held that the 'Catch-up Rule' would fully apply in absence of exercise under Article 16(4A). The Hon'ble Supreme Court has further stated that the judgment will not affect those who have already retired and will not affect financial benefits already taken. The Consequential promotions granted to serving

employees, based on consequential seniority benefit, will be treated as ad hoc and liable to be reviewed. The relevant paragraphs read as under:-



"26. It is clear from the above discussion that exercise for determining inadequacy of representation, 'backwardness' and overall efficiency' is a must for exercise of power under Article 16(4A). Mere fact that there is no proportionate representation in promotional posts for the population of SCs and STs is not by itself enough to grant consequential seniority to promotees who are otherwise junior and thereby denying seniority to those who are given promotion later on account of reservation policy. It is for the State to place material on record that there was compelling necessity for exercise of such power and decision of the State was based on material including the study that overall efficiency is not compromised. In the present case, no such exercise has been undertaken. The High Court erroneously observed that it was for the petitioners to plead and prove that the overall efficiency was adversely affected by giving consequential seniority to junior persons who got promotion on account of reservation. Plea that persons promoted at the same time were allowed to retain their seniority in the lower cadre is untenable and ignores the fact that a senior person may be promoted later and not at same time on account of roster point reservation. Depriving him of his seniority affects his further chances of promotion. Further plea that seniority was not a fundamental right is equally without any merit in the present context. In absence of exercise under Article 16(4A), it is the 'catch up' rule which is fully applies. It is not necessary to go into the question whether the concerned Corporation had adopted the rule of consequential seniority.

66. That the Hon'ble Supreme Court in **S. Panneerselvam, (2015) 10 SCC 292** has held that in absence of provision for consequential seniority, the 'catch-up rule' will be applicable (Paragraph 35). Accordingly, the official respondent was directed to revise the seniority list of Assistant Divisional Engineer by applying 'catch-up rule' within four months (Paragraph 36). The operating part of judgement is extracted under, -



"35. In the absence of any provision for consequential seniority in the rules, the 'catch up rule' will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16 (4A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.

36. In the result, the impugned judgment is set aside and these appeals are allowed. State Government-respondent Nos. 1 and 2 are directed to revise the seniority list of Assistant Divisional Engineers applying the 'catch up rule' within four months. Pursuant to the impugned judgment of the Division Bench of Madras High Court, if any further promotion had been granted to the Assistant Divisional Engineers promoted from the rank of Junior Engineers following rule of reservation with consequential seniority, the same shall be reversed. Further promotion of Assistant Divisional Engineers shall be as per the revised seniority list. The parties shall bear their own costs."

67. That the **Jarnail Singh, 2022 SCC Online SC 96**, while referring to **Golak Nath 24 (1967) 2 SCR 762** and **Ashok Kumar Gupta (1997) 5SCC 201**, clarified that the **M. Nagaraj, (2006) 8 SCC 212** would have prospective effect from the date of pronouncing its judgement, i.e., 19.10.2006 (Paragraph 42) . The operating part of judgement is extracted under, -

"42. This Court in *Golak Nath (supra)* and *Ashok Kumar Gupta (supra)*, referred to above, has laid down that Article 142 empowers this Court to mould the relief to do complete justice. To conclude this point, the purpose of holding that *M. Nagaraj (supra)* would have prospective effect is only to avoid chaos and confusion that would ensue from its retrospective operation, as it would have a debilitating effect on a very large number of employees, who may have availed of reservation in promotions without there being strict compliance of the conditions prescribed in *M. Nagaraj (supra)*. Most of them would have already retired from service on attaining the age of superannuation. The judgment of *M. Nagaraj (supra)* was delivered in 2006, interpreting Article 16(4-A) of the Constitution which came into force in 1995. As making the principles laid down in *M. Nagaraj (supra)* effective from the year 1995 would be detrimental to the interests of a number of civil servants and would have an effect of unsettling the seniority of individuals over a long



period of time, it is necessary that the judgment of M. Nagaraj (supra) should be declared to have prospective effect."



That the Hon'ble Punjab and Haryana High Court in **Maheshinder Singh Dhindsa 2020 PHHC 021046 DB** quashed the promotion order made in the contradiction with the mandate of **M. Nagaraj, (2006) 8 SCC 212** with the following observation, -

*"Admittedly, the Union of India has neither made any specific provision in consonance with Article 16(4A) of the Constitution nor got collected quantifiable data showing the backwardness of the class and inadequacy of the representation of SCs/STs, in the case in hand so as to grant complete benefit of reservation in promotion i.e. no benefit of Catch Up Rule to employees belonging to General Category by placing them in seniority over the erstwhile junior-reserved category employees having availed the benefit of reservation in promotion. Thus, the Tribunal had rightly quashed the promotions of respondents no 2 to 11 as Assistant Commissioner of Customs and Central Excise, being against law and correctly directed the petitioner-UOI to apply the "catch-up" rule in fixing seniority in the feeder cadre of Superintendent of Customs (Preventive), as admittedly, respondents no 2 to 11 were promoted earlier as Superintendent of Customs (Preventive) by availing benefit of reservation vis-à-vis respondent no 1, who is otherwise senior to respondents no 2 to 11 in the basic feeder cadre of Preventive Officers (Customs) as per document Annexure A-4."*

69. That the SLP No. 12475/2020 filed before the Hon'ble Supreme Court against **Maheshinder Singh Dhindsa 2020 PHHC 021046 DB** has also been dismissed.
70. That having considered the catena of cases in **Pre-M. Nagaraj, (2006) 8 SCC 212 Era**, such as, **Virpal Singh Chauhan (1995) 6 SCC 684, Ajit Singh Januja (1996) 2 SCC 715,** and **Ajit Singh (1999) 7 SCC 209**, it is well clear that as per 'catch-up rule', when an OC Candidate (who is senior in feeder cadre) gets promotion to promoted cadre later than a SC/ST



Candidate (who is junior in feeder cadre), such OC Candidate regains the seniority in the Promoted Cadre over such SC/ST Candidate. Then, the 'catch-up rule' was undone by 85<sup>th</sup> constitutional amendments by introducing the provisions of 'consequential seniority' and the same was upheld in **M. Nagaraj, (2006) 8 SCC 212** with certain riders, as already discussed hereinbefore. Then, there come **Post-M. Nagaraj, (2006) 8 SCC 212 Era**, where the seniority and promotions made without complying the mandate of **M. Nagaraj, (2006) 8 SCC 212** were challenged in **Suraj Bhan Meena JT 2010(13) SC 341, U.P. Power Corporation Limited (2012) 7 SCC 1, Paneerselvam (2015) 10 SCC 292, B.K. Pavitra vs UOI JT 2017(2) SC 237, and Maheshinder Singh Dhindsa 2020 PHHC 021046 DB**, wherein it was held that the 'catch-up rule' applies while drawing the seniority list of promoted cadre; and promotions carried-out in contradiction with the mandate of **M. Nagaraj, (2006) 8 SCC 212** are liable to be quashed.

71. That in view of cases discussed in the preceding paragraph and fact that neither the Central Government nor its dispensation, i.e., the respondent BSNL, has yet complied with the mandate of in **M. Nagaraj, (2006) 8 SCC 212** as further explained in

**Jarnail Singh, 2018 (10) SCC 396 and 2022 SCC Online SC**

96, the respondent BSNL is required to draw seniority list in the cadre of AO by applying the Catch-up Rule before making promotion to the cadre of CAO.

72. The question No. B is accordingly answered.
73. In the matter of **U.P. Power Corporation Limited (2012) 7 SCC 1** and **Maheshinder Singh Dhindsa 2020 PHHC 021046 DB**, the promotions made without complying with the mandate of M. Nagaraj, (2006) 8 SCC 212 or without drawing the seniority list by applying 'catch-up rule' are liable to be quashed.
74. Thus, question No. C is also answered accordingly.
75. The judgements relied upon by the respondents are distinguishable and are not applicable to the facts of the present case. In **(2015) 8 SCC 1 Vipulbhai M. Chaudhary vs. Gujarat Cooperative Milk Marketing Federation Ltd and others**: A Divisional bench Judgment not related to service matters. It is a case of cooperative societies. Interpretation of the constitutional provisions. No relevance to the present cases.

**Sudhakar Baburao Nangnure vs. Noreshwar Raghunathrao Shende 2020(11) SCC 399**: Again a Two judges bench seniority to reserved category candidates granted from the date of promotion as per the reservation in view of GR dated 20.03.2003, which GR was not challenged before Tribunal and High Court and a challenge was laid in the Hon'ble



Supreme Court for the first time. It was under these circumstances, it was held that challenge could not be laid in the Supreme Court without there being pleading before Tribunal or the High Court. Consequently the seniority granted to reserved category candidate was upheld from the date of promotion and rule of catch up was held to be inapplicable.

Whereas in our case (Anupam Yadav), there is a specific challenge to DoPT instructions dated 21.01.2002 which have already been held to be inoperative in case of M.S. Dhindsa by this Hon'ble Tribunal upheld upto the Hon'ble Supreme Court. Even Review Petition has been dismissed by the Hon'ble Supreme Court. Relevant paras of order of this Hon'ble Tribunal Dated 08.02.2018 which refers to OM dated 21.01.2002 and ultimately in para no 26 it has been held to be inoperative.

Reference to first three lines of the order, Para 8, 10, 21 and 26. Furthermore any O.M. of GoI and even judgments prior to Constitution Bench in M. Nagaraj cannot be relied upon, since 3 tier exercise was laid down in M. Nagaraj on 19.10.2006, while interpreting provisions of Article 16(4) A and B relating to reservation in promotion and consequential seniority to SC/ST candidates.

**B.K Pavitra vs. UOI (2019) 16 SCC 129:** initially reserved category candidates were granted seniority also w.e.f the dated of promotion as per the reservation policy in terms of Reservation (to the Posts in the Civil Services of the State) Act, 2002 without compliance of mandate of M. Nagaraj. Consequently in B.K. Pavitra I reported as JT 2017(2) SC 277 Act of 2002 and seniority were set aside. It was thereafter the state of Karnataka complied with the mandate of M. Nagaraj and promulgated 2018 Act granting consequential seniority also to the reserved category candidates after reservation in promotion. Thus the second challenge to the consequential seniority to the reserved category candidates was rejected under B.K. pavitra II which is not the situation in the present case. As neither there is compliance of M.Nagaraj and the O.M. dated 21.01.2002 (Annexure A-2/A) in Anupam Yadav's case has already been declared as inoperative in M.S. Dhindsa's case (Supra).

**High Court of Kerala decision in T. Sridhar Reddy case, W.P. (C) 2633/2021 and CM Appl. 7795/2021 titled as Gyan Singh and others vs. Union of India and others (Delhi High Court), O.P.(CAT) 212/2019 titled as T. Sidhardha Reddy and others vs Rajive Kumar Gupta and others (Kerala High Court), :** In these cases also O.M. dated 21.01.2002 was granting consequential seniority to the reserved category candidates from the date of promotion which were not challenged, which is not the situation in the present case.

Whereas in our case (Anupam Yadav), there is a specific challenge to DoPT instructions dated 21.01.2002 which has already been held to be inoperative in case of M.S. Dhindsa by this Hon'ble Tribunal upheld upto the Hon'ble Supreme Court, even Review Petition has been dismissed by the Hon'ble Supreme Court. Relevant paras of order of this Hon'ble tribunal Dated 08.02.2018 which refers to OM dated 21.01.2002 and ultimately in para No 26 it has been held to be inoperative.



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**Jarnail Singh vs. Lachhmi Narain Gupta (2018) 10 SCC 396:** Creamy layer specifically applicable to SC/STs also (in para No 15 to 17) and reference was made to M. Nagaraj vs. Union of India (2006)8 SCC 212 (para 120).

**Jarnail Singh vs. Lachhmi Narain Gupta (2022) 10 SCC 303:**

- a. In Para 10 of the judgment it has been made clear that the court would not entertain any arguments for reconsideration of the law laid down by M. Nagaraj (Constitution Bench) had rejected the arguments which means that concept of creamy layer is applicable to SC/STs also as held in M. Nagaraj vs Union of India (2006)8 SCC 212 clarified in Jarnail Singh vs Lachhmi Narain Gupta 2018(4) SCT 445.
- b. Since the above mentioned issues were settled by the two judgments i.e. M. Nagaraj (supra) and Jarnail Singh 1 (supra). Hence, there was no reference to Catch up rule and concept of creamy layer in this judgment. Jarnail Singh II (dated 28.01.2022).

76. Thus, there is no force in the arguments put forth by the learned counsel for the respondents and the same is rejected.

77. The learned counsel for the respondents has relied upon the DoPT instructions dated 12.04.2022 and 21.01.2002. It is a well settled law in the matter of **Hindustan Aeronautics Ltd., M/s Bangalore Vs. Commr. of IT, Bangalore 2000 (5) SCC 365 and Anil Ratan Sarkar and others Vs. State of West Bengal and Ors. JT 2001(5) SC 99** that the administrative ipsi dixit cannot infiltrate on to an area which stands covered by judicial orders. Thus, DoPT instructions dated 12.04.2022



which are silent on the issue of Catch up Rule and Creamy layer cannot neutralize the binding effect of Constitutional Benches of M. Nagraj read with Jarnail Singh. Specifically, instructions dated 21.01.2002 have been held to be inoperative in **Maheshinder Singh Dhindsa's** case (supra) which has been upheld upto the level of Apex Court. Thus, the DoPT instructions cannot neutralize the binding effect of **M. Nagraj** (supra) as further explained in **Jarnail Singh** (supra).

78. After answering of the reference in Jarnail Singh (supra) on 26.09.2018, the interim orders dated 17.05.2018 and 05.06.2018 merge with judgment dated 26.09.2018 and consequently DoPT instructions dated 15.06.2018 become ineffective thereafter. Furthermore judgment dated 26.09.2018 is of five judge bench hence any order or judgment by a lower strength of the Bench prior thereto is ineffective.
79. The learned counsel for the applicants submits that the respondents have not complied with the third requirement of M. Nagraj case (supra) qua the administrative efficiency enshrined under Article 335 of the Constitution of India. We find that there is not even a single word qua the fulfillment of prior condition before the reservation in promotion is to be



implemented has been indicated in their reply and neither this concept has been argued by the learned counsel for the respondents.

80. In view of the above detailed discussion, all the present Original Applications are allowed. The provisional seniority list of the cadre of AO are quashed and set aside and the promotions qua SC/ST candidates in pursuant to this provisional seniority list are hereby quashed and set aside.

81. The respondents are directed to finalize the seniority list of the cadre of AO based on catch up rule as discussed above especially in light of para 71 of the order and thereafter, they may make promotion to the cadre of CAO. The said exercise be carried out within six months of the date of receipt of a certified copy of this order.

82. During the pendency of the litigation, many of the incumbents have retired. Their status shall not be disturbed.

83. As the matter has been heard finally, in view of this position, no order is required to be passed on MA No. 1742/2023 for impleading some private respondents and the MA is accordingly dismissed. Other pending MAs, if any, are also disposed of accordingly.

84. There shall be no order so as to costs.

85. A copy of this order be placed in the other connected files.

**(RASHMI SAXENA SAHNI)**  
**Member (A)**

**(RAMESH SINGH THAKUR)**  
**Member (J)**

**ND\***