

प्रेषण संख्या /Despatch No. 5471
रजिस्ट्रार /The Registrar
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal,
चंडीगढ़ न्यायपीठ /Chandigarh Bench.
सेवा में/To

दिनांक /Dated 5/4/10

श्री अरुण कुमार शर्मा, वकील
श्री अरुण पीठ राणा, वकील
केन्द्रीय प्रशासनिक अधिकरण,
चंडीगढ़ न्यायपीठ, चंडीगढ़।

मूल /स्था. आवेदन संख्या OA/TA No. 647/एरि/12

नरेश सिंह व अन्य Applicant

बनाम /Vs

यूनियन ऑफ इंडिया /Union of India Respondent



महोदय Sir,

उपरोक्त वाद के संबंध में मुझे इस अधिकरण की न्यायपीठ

I am directed to forward herewith a copy of

के माननीय श्री नरेश सिंह व अन्य बनाम यूनियन ऑफ इंडिया
order/Judgement dated passed by a Bench of this

प्रशासनिक/न्यायिक सदस्य तथा माननीय श्री/श्रीमति

Tribunal comprising Hon'ble Mr./Mrs.....

नरेश सिंह प्रशासनिक/न्यायिक

JM/AM and Hon'ble Mr./Mrs..... JM/AM

सदस्य समावृष्ट हैं द्वारा दिनांक 21/3/13 को पारित आदेश
in the above mentioned case for information/compliance and necessary
सूचना/पालन और आवश्यक कारवाई हेतु अग्रसारित करने का निदेश
action please हुआ है !

भवदीय /Yours Faithfully,

Madam

सलगनक -पूर्वोक्त

उप- रजिस्ट्रार Dy. Registrar

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 647/HR/2012

Date of order:- March 21, 2013.

Coram: **Hon'ble Mr. Justice S.D.Anand, Member(J).**
Hon'ble Mr. Ranbir Singh, Member (A)

1. Narender Singh, Staff No.182994, s/o Shri Hari Singh, presently working as Junior Accounts Officer, o/o General Manager Telecom District, Bharat Sanchar Nigam Limited, Rohtak, resident of House No.641/35, Janta Colony, Rohtak.
2. Surinder Kumar, Staff No.183494, s/o Sh. Om Parkash, presently working as Junior Accounts Officer, Circle Telecom Training Centre, Bharzat Sanchar Nigam Limited, resident of Quarters No.2, BSNL Colony, Sector 7, Kurukshetra.

.....Applicants

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

Versus



1. Bharat Sanchar Nigam Limited, Corporate Office, 4th floor, Bharat Sanchar Bhawan, Harish Chander Lane, Janpath, New Delhi-110001 through Chairman cum Managing Director (CMD).
2. Chief General Manager Telecom Haryana Telecom Circle, BSNL, The Mall, Ambala Cantt.
3. General Manager (FP), Bharat Sanchar Nigam Limited, Corporate Office, 7th floor, Bharat Sanchar Bhawan, Harish Chander Lane, Janpath, New Delhi-110001.
4. Ms. Pratima Purkait, Junior Accounts Officer, through Assistant General Manager (SEA), Bharat Sanchar Nigam Limited,

Co. Adv.

Corporate Office, Bharat Sanchar Bhawan, Harish Chander Lane, Janpath, New Delhi-110 001.

5. Sh. Narsimha Murthy, Junior Accounts Officer through Assistant General Manager (SEA), Bharat Sanchar Nigam Limited; Corporate Office, Bharat Sanchar Bhawan, Harish Chander Lane, Janpath, New Delhi-110 001.

... Respondents

(By Advocate: Mr. R.P.Rana, for Respondents No.1 to 3
None for respondents no.4 & 5).

O R D E R(Oral).

Hon'ble Mr. Justice S.D.Anand, Member (J):

The constitutionality of the amendment providing for/validating reservations in promotions came to be tested before the Hon'ble Apex Judicial Dispensation in M.Nagraj versus Union of India (2007 (4) SCT Page 664). While upholding the constitutionality of the amendment, the view announced by the Hon'ble Apex Court was that reservation in promotion could only come about after the competent quarters had undertaken an exercise to obtain the quantifiable data and recorded a finding on the basis thereof that the reserved category candidates are not adequately represented in the relevant facet of the dispensation. In the course of allowance of O.A. No.308/CH/2010, we had recorded a finding that the Union of India

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had not indeed obtained quantifiable data for the purpose
aforementioned. The relevant part of the finding is extracted
hereunder :-

“18. We find ourselves in complete agree with the plea
raised on behalf of the applicants. In OA No.566-CH of
2008, a learned Coordinate Bench of this Tribunal
recorded a finding, consensual in character, to the extent
that no survey in the context had been undertaken by the
Chandigarh Administration. In Laxmi Narain Gandhi's
case (supra), a learned Division Bench of the High Court
recorded a finding that “ no exercise was carried out to
assess the inadequacy of representation of SC/STs in the
services under the Government of India before issue of
instructions dated 31.1.2005.”

That finding came to be affirmed in judicial review challenge vide
order dated July 15, 2011 in C.W.P.No. 13218 of 2009 respectively.

2. It is not even the averment presently that the decision
recorded by the High Court has been varied or set-aside by the
Hon'ble Apex Court.

3. The applicants herein made their grade, at the relevant
selection process held in the year 2003, for appointment to the post
of Junior Accounts Officers. They joined in that capacity (i.e. the
posts of Junior Accounts Officer) on 9.2.2004 and 24.5.2004
respectively. Prior to their joining, there was an intake of

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deputationists from different departments of the Government of India. At a particular point of time, those deputationists were declared senior to the applicants herein. That declaration was challenged by the applicants by filing O.A.No.246 of 2010 which came to be allowed by the Madras Bench of the Tribunal, vide order dated 23.3.2011. In a judicial review challenge filed against that order, the implementation of that order was stayed.

4. The private respondents herein joined the posts of Junior Accounts Officer in the year 2006 & 2007 (Annexure A-6).

5. The grievance presently raised by the applicants is that the competent authority is inclined to promote the private respondents to the post of Accounts Officer by applying the rule of reservation. The premise adopted by the competent authority is that the private respondents are within the zone of consideration due to the applicability of rule of reservation.

6. The learned counsel, appearing on behalf of the official respondents, has twin facets of pleas to argue to resist the grant of favourable consideration of the plea raised on behalf of the applicants. The first objection which he raises is that the BSNL (a



dispensation to which the applicants as also private respondents herein belong) is currently in the process of obtaining quantifiable data for being able to decide the adequacy or otherwise of the reserved category candidates in the relevant cadre. That the exercise aforementioned is yet to conclude is beyond the pale of controversy during the course of hearing.

7. The view by the Hon'ble Apex Court in M.Nagraj's case was categorical in announcing that reservation in promotions could be validly given only after the competent authority had obtained the quantifiable data to record a finding that the reserved category candidates were not adequately represented in the services. Since that exercise yet in the BSNL dispensation is yet to conclude, we cannot validate the declaration on the part of the competent authority in applying the rule of reservation. By the very of nature of things, the relevant exercise is to conclude in the first instance and the application of rule of reservation has to come above thereafter.



8. The learned counsel, appearing on behalf of the official respondents, further argues that the present O.A. is not maintainable as it tends to ventilate a grievance of public interest hue. The learned counsel buttress the plea raises by averring that the

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applicants are far junior in hierarchy and that they would not, in any case, make the grade, even if denial of consideration to private respondents would come about.

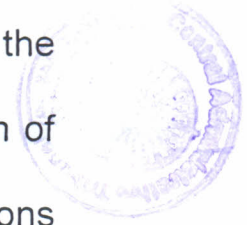
9. That plea is resisted by the learned counsel for the applicants by arguing that certain information obtained by the applicants, by a resort to the provisions of the R.T.I. Act, indicates the availability of large number of vacancies (537 for the general category candidates) as also the fact that the applicants are within the zone of consideration. It is also argued, in the alternative, that the proposed promotion to the private respondents cannot be validly granted by applying the rule of reservation just because people in the general category and senior in placement to the applicants opt to refrain from raising a challenge thereto. The learned counsel for the applicants assures that the number of vacancies are vacant (in the cadre of Accounts Officer is much large). Reliance in that support of that averment, which is based upon the information obtained under the R.T.I. Act. That information indicates that "there is overall shortage of above 40%" is available in the grade of Accounts Officer/Junior Accounts Officers". It has further been argued that in



the light thereof, the applicants would surely be within the zone of consideration for promotion to the posts of Accounts Officers.

10. We find ourselves in the agreement with the plea canvassed on behalf of the applicants. It being the presently conceded position that the exercise reportedly underway at the hands of the BSNL for obtaining quantifiable data is yet to conclude, the competent authority cannot be allowed to apply the rule of reservation in promotion on the basis of the official documentation based information obtained under the R.T.I. Act, the applicants have been able to prove that there are adequate number of vacancies which puts them within the zone of consideration. Even if, however, it is assumed for the sake of arguments that the applicants are not the immediately affected employees, their locus to obtain invalidation of the impugned view cannot be challenged just because few persons high up in the seniority have opted to refrain from raising a challenge thereto.

11. In reiteration, thus, of the view obtained in O.A.No.308/CH/201, we would allow the O.A. by categorically holding that the BSNL dispensation is not entitled to presently make



reservation in promotions in view of the non- compliance with the view obtained by the Hon'ble Apex Court in M.Nagraj's case (supra).



12. The parties shall bear their own costs of the cause in the facts and circumstances of the case.

(RANBIR SINGH)
MEMBER (A)

(JUSTICE S.D.ANAND)
MEMBER (J)

Dated: March 21, 2013.

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उप-निर्देशक / Deputy Registrar
केंद्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
चण्डीगढ़ बेंच, चण्डीगढ़
Chandigarh Bench, Chandigarh