



**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION Nos.308/2020,
370/2022 & 207/2023**

Dated this Monday, the 19th day of October, 2026

**CORAM: HON'BLE MS. RANJANA SHAHI, MEMBER (J)
HON'BLE MR. LOK RANJAN, MEMBER (A)**

(i) OA 308/2020 –

1. Puncham Singh S/o Late Shri Saudan Singh, Age 53 years, R/o 186, Janakpuri, Mala Road, Kota, presently working as Loco Pilot, Mail Express, Kota Junction, Kota (Group – C Post), (M) 9001015334.
2. Jagpal Singh S/o Shri Sitaram, Age 55 years, R/o 425, Gali No.5, Anand Vihar (Murgi Farm), Dadhwada, Kota Junction, presently working as Loco Pilot, Mail Express, Kota Junction, Kota (Group C Post), (M) 9001015285.
3. Indra Pal Singh, S/o Shri Balbir Singh, Age 55 years, R/o 601, Guru Nanak Plaza, Near Kherli Phatak, Station Road, Kota, presently working as Loco Pilot, Mail Express, Kota Junction, Kota (Group C post), Mobile 9001015755. **– Applicants**

Versus

1. Union of India through General Manager, West Central Railway, GM's Office West Central Railway, Jabalpur (M.P.) 482 001.
2. Divisional Railway Manager (Establishment), DRM's Office West Central Railway, Kota Division, Kota 324 002.
3. Prahlad Kumar Meena, S/o Shri Sukhram Meena, Aged 54 years, R/o House No.304, Namrata Aawas, Bajrang Nagar, Police Line, Kota 324 001.
4. Babu Lal Ahirwal, S/o Shri Ram Kishan, Aged 54 years, R/o Adarsh Nagar, Rangpur Road, Kota Junction, Kota 324 002.



5. Mukesh Kumar P. S/o Shri Paltoo Ram, Aged 50 years,
R/o B-68, Moti Nagar Extension, Thekda Road,
Borkheda, Kota 324 001 . - **Respondents**

(ii) OA 370/2022

Amit Kumar Sharma S/o Sh. Ashok Kumar Sharma,
Age about 32 years, Quarter No.H-8, Road No.2,
Ganpati Nagar, Railway Colony, Jaipur 302 006,
Presently working as Helper (Signal),
under C/o Senior Section Engineer (Signal),
Jaipur (Group D), Email – amitsharma3742@gmail.com,
Mobile No.7737287231. - **Applicant**

Versus

1. Union of India through General Manager,
North Western Railways, Head Quarter Office,
Near Jawahar Circle, Jagatpura, Jaipur 302 017.
2. Divisional Railway Manager,
North Western Railway, Power House Road,
Near Railway Station, Jaipur 302 006.
3. Senior Divisional Personnel Officer,
North Western Railway, Mandal Office, DRM Office,
Railway Station, Jaipur 302 006.
4. Rajesh Kumar Gosaiwal S/o Shri Shrawan
Office of Senior Section Engineer (Signal), Phulera,
District Jaipur 303 338.
5. Dulichand Meena, S/o Shri Chotu Singh
Office of Senior Section Engineer (Signal),
Bandikui, District Dausa 303 313. - **Respondents**

(iii) OA 207/2023

Deepak Kumar Gurjar S/o Shri Ramkaran Gurjar,
Age about 28 years, R/o VPO Badoli,
Tehsil & District Dausa 303 325,
Presently working as Junior Engineer, Construction,
Jaipur Division, North Western Railway, Jagatpura, Jaipur,
Group - C, (M) 9887591467,
Email ID : deepakgurjar333@gmail.com. - **Applicant**

Versus

1. Union of India through General Manager,
North Western Railways, Head Quarter Office,



Near Jawahar Circle, Jagatpura, Jaipur 302 017.

2. Divisional Railway Manager,
North Western Railway, Power House Road,
Near Railway Station, Jaipur 302 006.
3. Rahul Kumar Jareda, S/o Shri Raja Ram Meena,
R/o Village Post Mahaswa, Via Shree Mahaveer Ji,
Karauli 322 220, Presently working as Junior Engineer,
Electrical (TRD), Jaipur Division, North Western Railway,
NWR, Jaipur 302 017. - **Respondents**

Appearances –

Shri Shobhit Tiwari, learned counsel for the applicants in all the OAs.

Shri M.K.Sharma for the respondent Nos.1 and 2, Shri K.C.Meena, learned counsel holding for Shri Anupam Agarwal for the respondent No.3 and Shri R.D.Meena, learned counsel for the respondents in OA No.4 & 5 in OA No.308/2020;
Shri N.C.Goyal and Shri V.D.Sharma for the respondent Nos.1 to 3 in OA No.370/2022;

Shri Arun Sharma, learned counsel for the respondents in OA No.207/2023.

Reserved on 22.09.2026

Pronounced on 19.10.2026

ORDER

Per: Ms. Ranjana Shahi, Member (J)

All the three Original Applications, filed by the applicants, having common issues, with the consent and concurrence of the learned counsels appearing for the respective parties, it is deemed appropriate in the interest of justice to dispose of the matters by passing a common order.

1(a). All the learned counsels for the parties have argued their respective cases in the present batch of Original



Applications. For the sake of brevity and convenience, the facts stated in OA No.207/2023, which is being treated as the lead case, are taken into consideration for disposal of the entire batch. The decision rendered therein shall govern and apply ***mutatis mutandis*** to OA Nos.308/2020 and 370/2022, as the issues involved in all these matters are identical.

2. The present Original Application has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“10(i). To pass an appropriate order or direction whereby Notification dated 16.2.2023 be quashed and set-aside to the extent of providing one seat to ST candidate instead of UR candidate for the purpose for promotion on the post of Senior Section Engineer – Electrical TRD, with all consequential benefits and reliefs.

10(ii). To pass an appropriate order or direction, whereby Respondents be directed to prepare a fresh Eligibility List/Suitability List for the purpose promotion on the post of SSE – Electrical TRD after adjusting excess ST promote on their respective roster points, with all consequential benefits and reliefs.

10(iii). To pass an appropriate order or direction, whereby during pendency of the present Original Application, if any promotion / posting order or any other adverse order in terms of Notification dated 16.2.2023 is issued then same be taken on record and accordingly be quashed and set aside.

10(iv). To pass an appropriate order or direction, whereby Respondents be directed to conduct the Promotion exercise strictly in terms of Railway Board's RBE No.114/1997 dated 21.8.1997 and Letter dated 22.6.2022 & other timely instructions issued by the Railway Board excluding the stipulations provided in Letter dated 29.8.2022, with all consequential benefits and reliefs.

10(v). To pass an appropriate order or direction, whereby instructions dated 29.8.2022 be quashed and set-aside to the extent they provide for maintaining status quo in past case, providing veil to excess promoted SC/ST employees against UR roster points and not adjusting them against their SC/ST roster points.



10(vi). To pass an appropriate order or direction, whereby Respondents be directed to delete the incorrect endorsement in Roster Register for not adjusting the excess promoted ST employees against their respective roster points.

10(vii). Any other appropriate order or direction which the Hon'ble Tribunal may consider just and proper in the facts and circumstances of the case may also kindly be passed."

3. Once again, we have been called upon to adjudicate the issue of promotion of reserved category employees against unreserved promotional posts. The issue which is at the core of the controversies in the present OAs is whether an employee who has entered the service / appointed against a vacancy earmarked for a reserved category or has availed of promotion against a reserved category vacancy can later be promoted against the unreserved vacancies. In other words, "can a reserved category appointee / promotee be promoted against the unreserved vacancies".

4. **The authorities relied upon by the applicant's side are :**

(i) **R.K.Sabharwal Vs. State of Punjab**, (1995) 2 SCC 745;

(ii) **M. Nagaraj Vs. Union of India**, (2006) 8 SCC 212;

(iii) **Jitendra Singh & Anr. Vs. Union of India & Others** passed by this Bench of the Tribunal in OA No.421/2014 vide order dated 16.02.2024;

(iv) **Abdul Rashid Vs. Union of India and Others** decided on 04.04.2024 in D.B. Civil Writ Petition No.5558/2023 passed by Hon'ble High Court of Rajasthan;



(v) **Sam Divanni & Others Vs. Union of India and others**, decided on 17.12.2019 in OA No.368/2019 passed by Ernakulam Bench of this Tribunal;

(vi) **Union of India & Others Vs. Sam Divanni & Others** decided on 18.01.2021 by the Hon'ble High Court of Kerala at Ernakulam.

5. The authorities relied upon by the respondents' side are :

(i) The judgment passed by the Hon'ble High Court of Andhra Pradesh in WP Nos.28441/2025 and 1865/2026 decided on 17.07.2026;

(ii) **R.K.Sabharwal Vs. State of Punjab**, (1995) 2 SCC 745;

(iii) The judgment passed by the Hon'ble Supreme Court in the case of **Airport Authority of India and others Vs. Sham Krishna and others**, decided on 16.01.2026 reported in 2026 LiveLaw (SC) 63.

(iv) The judgment passed by the Hon'ble Supreme Court in the case of **Railway Protection Force & Ors. Vs. Prem Chand Kumar & Ors.** vide order dated 09.09.2025.

6. First we shall take up the judgments relied upon by the applicant. The judgment of the Hon'ble Apex Court in the matter of **R.K.Sabharwal Vs. State of Punjab** and the judgment of the Hon'ble Apex Court in the matter of **M. Nagaraj Vs. Union of India** had already been considered by us in addition to the



judgment of the Hon'ble Apex Court in **K.Manorama Vs. Union of India & Others** reported in (2010) 10 SCC 323, the judgment passed by the Hon'ble High Court of Punjab and Haryana dated 15.07.2011 in the case of **Lachhmi Narain Gupta and others Vs. Jarnail Singh and others**, reported in MANU/PH/3767/2011 and the judgment of the Hon'ble High Court of Rajasthan in CWP No.2773/2012 (**Union of India and others Vs. Lokesh Kumar Saini and others**) decided on 11.11.2013 in **Jitendra Singh and Another Vs. Union of India and others**. As such, we are reproducing the relevant extract from the judgment passed by us in the case of **Jitendra Singh and Another Vs. Union of India and others** vide order dated 16.02.2024 :-

"3. The Hon'ble Supreme Court in the case of R.K. Sabbarwal had prescribed the post based roster system. The relevant portion is reproduced hereunder: -

"(Para 5).....The numerical quota of posts is not shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/ promotees occupy the posts meant for them in the roster. The operation of the roster and the running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at Roster - points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be short-fall nor excess in the percentage of reservation."



The above mentioned observation of the Supreme Court in R.K. Sabbarwal clearly laid down the principle of compartmentalization. According to the compartmentalization, SC/ST employees will be allowed to compete in 'Open Category' only at the time of initial recruitment and not thereafter, as they will than strictly be guided according to their roster points. **In other words after the initial recruitment reserved category employees will not be allowed to interpolate between the categories.**

The above observations of the Hon'ble Supreme Court have further been endorsed upon in **recent judgment of K. Manorama**. The relevant portion of the judgment is reproduced hereunder: -

"14.....In view of this position, there is no occasion to apply the instruction contained in Railway Board's letter dated 29.7.1993 nor the propositions in R.K. Sabharwal's judgment (supra) to the present case. Even otherwise, the principle that when a member belonging to a Scheduled Caste gets selected in the open competition field on the basis of his own merit, he will not be counted against the quota reserved for Scheduled Castes, but will be treated as open candidate, will apply only in regard to recruitment by open competition and not to the promotions effected on the basis of senioritycum-suitability."

In view of these observations of the Hon'ble Supreme Court the judgment dated 14.09.2006 passed by CAT, Madras and judgment dated 20.08.2009 passed by the Hon'ble Madras High Court becomes per-incuriam, when it is passed in ignorance of the relevant provision of the Constitution of India and other governing rules and regulations and it is not in consonance with the judgment of Apex Court or so to say, it is against the law laid down by the Apex Court, which is binding on all the Courts under Article 141 of the Constitution. Therefore, OM dated 10.08.2010 deserves to be quashed and set aside.

4. The applicants have stated that the Punjab and Haryana High Court on 15.07.2011 in the case of Lachmi Narain Gupta and Ors. vs. Jarnail Singh had passed the following order; -

"40. As a sequel to the above discussion, the judgment of the Tribunal is set aside. The instructions dated 31.1.2005 (R-2) stands withdrawn on 10.8.2010 (P-10). Therefore, no order is required to be passed in respect of those



*instructions dealing with the subject of reservation in promotion and the treatment of SC/ST candidates promoted on their own merit. **Likewise, the instructions dated 10.8.2010 (P-16) are hereby quashed because they are in direct conflict with the view taken by the Constitution Bench in M. Nagaraj's Nagaraj's case (supra) and Suraj Bhan Meena's case (supra).** It is further directed that the seniority and promotion of the Income Tax Inspectors shall be made without any element of reservation in promotion.*

41. The writ petition stands disposed of in the above terms."

An OA No. 62/2011 was preferred before this Tribunal challenging the OM dated 10.08.2010 and consequential orders issued by the respondent railways and this Tribunal vide its order dated 26.11.2011 had quashed the OM dated 10.08.2010 and RBE No. 126/2010. The order dated 26.11.2011 passed by this Tribunal has been challenged before the Hon'ble Rajasthan High Court by the respondent- railways in D.B. Civil Writ Petition No. 2773/2012. The said Writ Petition came up for adjudication before the Hon'ble High Court and the Hon'ble High Court passed the following order:-

"After taking note of the submissions made, this fact remains undisputed that para-3 of the circular, which has been referred to by the Id. Tribunal in para-3 of the order impugned dt.26.11.2011 of DOPT's order dt.10.08.2010 is the same which the petitioner has referred to in their circular RBE No.126/2010 dt.14.09.2010 and once the order of DOPT dt.10.08.2010 has been quashed & set aside by the High Court of Punjab & Haryana and SLP is pending before the Apex Court and interim protection has not been granted to the parties, in our considered view, it will be in the interest of justice that those who have been promoted prior thereto, may not be disturbed but at the same time further appointment/promotions, if allowed, ignoring the circular RBE No.126/2010 dt.14.09.2010, may create legal complications. However, the petitioner is at liberty to take further action after the final outcome of the pending SLP before the Apex Court or in terms of any interim direction, if passed by the Apex Court pending SLP, regarding appointment/promotion, etc.

Counsel for respondents has brought to our notice that the circular RBE No.126/2010



dt.14.09.2010 has been issued from Railway Board and it is based on the DOPT's circular dt.10.08.2010 but as per his information still the exercise is being undertaken in terms of the circular dt.14.09.2010 in other Divisions of the Railways.

There is no need to pass any further order since the circular of RBE No.126/2010 dt.14.09.2010 has been taken note of by us and it cannot be given effect to pending SLP and is binding upon the Railways Administration, in particular.

Accordingly, the writ petition stands disposed of, as indicated above.

XXXX

8. *Heard both sides at length and after perusing the various judgments passed by the Hon'ble Supreme Court in R.K. Sabbarwal and subsequently in K. Manorama and Hon'ble High Court of Punjab and Haryana as well as by the Hon'ble High Court of Rajasthan, Jaipur Bench and the order dated 16.12.2013 passed by the Bombay Bench of this Tribunal and the order dated 26.11.2011 passed by this Bench of the Tribunal in OA No. 62/2011, it has emerged that the crux on the issue as it stands today is that RBE circular No. 126/2010 dated 14.09.2010 already stands quashed. The instructions dated 10.08.2010 have also been quashed as they have been held to be in direct conflict with the view taken by the Constitution Bench in M. Nagaraj's case and Suraj Bhan Meena's case, by the Hon'ble High Court of Punjab and Haryana vide its order dated 15.07.2011, which has been observed and followed by the Hon'ble High Court of Rajasthan in D.B. Civil Writ Petition No. 2773/2012 (UOI & Ors. vs. Lokesh Kumar Saini & Ors.) observing that ".....once the order of the DOPT dated 10.08.2010 has been quashed & set aside by the High Court of Punjab & Haryana and SLP is pending before the Apex Court and interim protection has not been granted to the parties, there is no need to pass any further order since the circular of RBE No. 126/2010 dated 14.09.2010 has been taken note of by us and it cannot be given effect to pending SLP and is being upon the Railway Administration in particular. Accordingly, the Writ Petition stands disposed of, as indicated above."*

9. *Since RBE No. 126/2010 dated 14.09.2010 already stands quashed as on date and the principle of "on their own merit" has been considered to be limited only at the level of initial recruitment, ... In other words, the SC / ST employees once recruited against the reserved category cannot be allowed to change their category at the*



level of promotion on the basis of "on their own merit".

10. *The respondents in order to justify their action have carved out a superfluous ground that RBE No. 126/2010 is applicable to all categories except the running cadre. The circular RBE No. 126/2010 and the judicial pronouncements on the subject especially the judgment of the Hon'ble High Court of Punjab and Haryana dated 15.07.2011 in the case of Lachmi Narain Gupta and Ors. vs. Jarnail Singh quashing it nowhere makes distinction between running cadre and other cadres.*

11.

12. ***Since the RBE No. 126/2010 dated 14.09.2010 already stands quashed as on date, its application and making promotion by applying the principle laid down therein of promoting reserved category employees against unreserved posts is bad in law. This seniority list which results in shrinking of the unreserved posts is contrary to the legal position as it stands today pending the SLP before the Hon'ble Apex Court. Hence, the selection list / suitability list dated 11.07.2014 (Annexure A/1) and the Office Note dated 18.06.2014 (Annexure A/2) are hereby quashed and set aside.***

13. *Accordingly, the present Original Application is allowed. No order as to costs.*

14. *In view of the order passed in the Original Application, all the pending Misc. Applications, if any, stand disposed off."*

7. The above-cited judgment passed by this Bench of the Tribunal was considered and referred to by the Hon'ble High Court of Rajasthan while adjudicating upon the challenge to the earlier judgment dated 02.02.2023 passed by this Bench of the Tribunal in another case titled as Abdul Rashid Vs. Union of India. When the same was under challenge before the Hon'ble High Court of Rajasthan (Jaipur Bench) in DB Civil Writ Petition No.5558/2023, wherein, the Hon'ble High Court quashed the order dated 02.02.2023 passed earlier by this Bench



of the Tribunal and, instead, referred to the judgment dated 30.01.2024 passed by us in the above-cited case of **Jitendra Singh** (supra) in OA No.421/2014.

8. The relevant extract of the aforesaid judgment dated 04.04.2024 passed by the Hon'ble High Court of Rajasthan (Jaipur Bench) in the aforementioned Civil Writ Petition No.5558/2023, in the case of **Abdul Rashid** (supra) is reproduced below :-

“12. Learned Tribunal itself when it was seized with the similar matter in *Jitendra Singh Vs. Union of India & Ors. : Original Application No.421/2014* decided on 30.01.2024 has quashed the selection list and office note, which have applied RBE No.126/2010.

13.

14.

15. In Lokesh Kumar Saini's case also, the learned Tribunal had directed the respondents not to give effect to RBE No.126/2010 as OM dated 10.08.2010 having been quashed by the Punjab & Haryana High Court, there was no reason for the respondents to promote respondent No.5 on the basis of RBE No. 126/2010. Thus, we are of the considered view that any order passed or list issued relying on OM dated 10.08.2010 after it was quashed by the Punjab & Haryana High Court cannot be sustained for the very reason that if OM dated 10.08.2010 stands quashed, then no orders can be passed in furtherance of a quashed Office Memorandum.

16. Learned Tribunal has further erred in dismissing the Original Application on the ground that the petitioner had approached after an inordinate delay. We may point out that immediately after a proposed seniority list was issued wherein respondent No.5 was shown in an unreserved category, the petitioner approached the learned Tribunal. It is clear that if roster is applied, then as and when any vacancy arises, vacancy is to be filled by the same category of employee. Since the post, on which respondent No.5 was considered, is an unreserved post, promotion could not take place on the basis of RBE No.126/2010 as OM dated 10.08.2010 already stands



quashed by the Punjab & Haryana High Court.

17. Learned Tribunal has clearly not appreciated the contentions of learned counsel for the petitioner that a member belonging to SC/ST Category cannot be promoted to unreserved roster-point. We thus, deem it appropriate to allow the writ petition.

18. It is important to note that an undertaking has been given on behalf of Union of India before the Apex Court that promotions will be made only category-wise i.e. from General to General, from SC to SC and from ST to ST. Since roster-point was not available for SC candidate, respondent No.5 could not have been placed over and above the petitioner, who was belonging to an unreserved category. The writ petition is, accordingly, allowed. The order dated 02.02.2023 passed by the Central Administrative Tribunal, Jaipur Bench and the order passed in Review Application No.2/2023 are quashed and set aside. Original Application filed by petitioner bearing No.393/2014 is allowed. The office note dated 18.06.2014 issued relying on the quashed OM is also set aside. The respondent-Union of India is directed to pass necessary orders.

19. All the pending applications also stand disposed off."

9. Similarly, the Hon'ble High Court of Kerala at Ernakulam, vide judgment dated 18.01.2021 in the matter of **M.Dhinu Rakesh & Others Vs. Sam Divanni & Others**, while considering the undertaking given by the Solicitor General of India before the Hon'ble Apex Court, adjudicated against the promotion of reserved category candidates to unreserved post. The relevant extract of the same is reproduced below :-

"14. As already stated, the principal question to be considered is whether the undertaking given by the Solicitor General before the Apex Court still holds good. The order dated 5/6/2018 of the Apex Court only indicates that the promotion shall be carried out in accordance with law. As rightly pointed out by learned counsel for respondents, the said order cannot be interpreted to mean that reserved category members can be promoted to unreserved posts."



10. This judgment of the Hon'ble High Court of Ernakulam was challenged by the Union of India before the Hon'ble Supreme Court in the matter of **Union of India and others Vs. Sam Divanni & Others**, but the same was dismissed by the Hon'ble Apex Court vide order dated 28.03.2022.

11. In the case of **M. Nagaraj Vs. Union of India**, challenges were made to the constitutional validity of the 77th, 81st, 82nd and 85th Constitutional Amendments, which were enacted by Parliament to restore and protect reservation in promotions for Scheduled Castes and Scheduled Tribes. The Constitution Bench of the Hon'ble Supreme Court upheld the constitutional validity of the 77th, 81st, 82nd and 85th Constitutional Amendments concerning reservation in promotions in favour of Scheduled Castes and Scheduled Tribes. However, the Court categorically held that the grant of reservation in promotions is not automatic merely by virtue of the enabling constitutional provisions. The Hon'ble Supreme Court observed that :

“Articles 16(4A) and 16(4B) are enabling provisions and that the State, before exercising such power, must satisfy certain constitutional requirements. The State is required to collect quantifiable data demonstrating the backwardness of the class concerned, inadequacy of representation in public employment, and maintenance of efficiency in administration as contemplated under Article 335 of the Constitution. Reservation cannot result in reverse discrimination and ordinarily cannot breach the ceiling limit of 50% as recognized in Indra Sawhney Judgment, the exercise of reservation by the State remains subject to judicial review where the constitutional parameters are not complied with.



Accordingly, it is clear that while the constitutional amendments enabling reservation in promotions were upheld by the Hon'ble Apex Court, their implementation was made conditional upon the State fulfilling the constitutional requirements through objective and quantifiable material."

12. Now we deal with the authorities cited by the respondents' side.

In the **judgment of the Hon'ble High Court of Andhra Pradesh in WP Nos.28441/2025 and 1865/2026, decided on 17.07.2026**, the Hon'ble High Court has dealt with the constitutional validity of "reservation in promotion with consequential seniority" and has accordingly allowed the Writ Petition while quashing the impugned order dated 21.10.2024 passed by the Hyderabad Bench of this Tribunal. However, we have noticed that the Hon'ble High Court has not dealt with the aspect that the Hon'ble High Court of Punjab and Haryana, in **Lachhmi Narain Gupta Vs. Jarnail Singh** (supra) had quashed the notification dated 10.08.2010 providing for reserved category candidates to be promoted against unreserved vacancies (mere citing the contentions of either side could not be said to have been dealt with by the Court). It has also not dealt with the fact that, in Contempt Petition No.314/2016 in SLP No.4831/2012 (**Samta Andolan Samiti Vs. Shri Sanjay Kothari and others**), the Learned Solicitor General of India had given an undertaking before the Hon'ble Apex Court that "*no further promotion of*



reserved category persons to unreserved posts will be made”.

13. Both the cases relied upon by the respondents i.e. **Airport Authority of India and others Vs. Sham Krishna and others** and **Railway Protection Force & Ors. Vs. Prem Chand Kumar & Ors.** pertain to appointment / recruitment and not to promotions whereas, the case at hand pertains to promotion.

Conclusion -

14. The DoPT issued OM dated 10.08.2010, pursuant to which Railways issued RBE No.126/2010 dated 14.09.2010, providing for the promotion of reserved category candidates against unreserved vacancies on the principle of “*on their own merit*”. It came to be challenged before the Hon’ble High Court of Punjab and Haryana and in **Lachhmi Narain Gupta Vs. Jarnail Singh** (supra) and the Hon’ble Punjab and Haryana High Court quashed the same, holding it to be “*in direct conflict with the view taken by the Constitution Bench in M.Nagaraj’s case (supra) and Suraj Bhan Meena’s case*”. This was challenged before the Hon’ble Supreme Court. Where the issue of “on own merit basis” promotion of reserved category candidates on unreserved vacancies is still pending and so is the CP No.314/2016 in SLP No.4831/2012 where in the Learned Solicitor General had given a specific undertaking that “*no further promotion of reserved category persons to unreserved posts will be made*”.

15. It is to be noted that there are three distinct issues :



- (i) Recruitment of candidates belonging to reserved communities against unreserved vacancies based on their own merit;**
- (ii) Reservation in promotion;**
- (iii) Promotion of reserved category candidates on unreserved vacancies on their own merit.**

(i). Recruitment of candidates belonging to reserved communities against unreserved vacancies based on their own merit – As regards the first issue, i.e. Appointment / Recruitment of candidates belonging to reserved communities securing recruitment against unreserved vacancies based on securing / achieving merit, the same is well settled and permissible and is not under challenge in the present case.

(ii). Reservation in promotion – As to the second issue of reservation in promotion, the same has been considered and adjudicated upon by no less than the Constitution Bench of the Hon'ble Apex Court in **M.Nagaraj's** case. While upholding the Constitutional Amendments in Article 16(4) enabling reservation in promotion, its implementation was made conditional upon the State fulfilling the constitutional requirements. Even the grant of reservation in promotion was not held to be automatic but was to be implemented on fulfillment of the conditions, and the same view has also been taken by the Hon'ble Apex Court in its subsequent judgment dated 18.01.2022 titled as **Jarnail Singh and others Vs. Lachhmi Narain Gupta and others**, Civil Appeal No.629/2022 arising out of SLP (C) No.30621/2011, following



which the DoPT issued OM dated 12.04.2022 regarding **reservation in promotion**. The relevant extract of the same is reproduced below :-

*“The undersigned is directed to bring to your notice the judgement dated 28.01.2022 of the Supreme Court of India in the case of **Jarnail Singh and Ors. V. Lachhmi Narain Gupta and Ors.** (Civil Appeal No. 629 of 2022 arising out of SLP (C) No. 30621 of 2011) and other connected matters. Pursuant to this judgement, the Ld. Attorney General for India has rendered his considered opinion in the matter.*

2. *In the judgement dated 28.1.2022, the Supreme Court has set out the conditions that are to be satisfied by the Government for the purpose of implementing the policy of reservation in promotions. These conditions are :*

(i) Collection of quantifiable data regarding inadequacy of representation of Scheduled Castes and Scheduled Tribes;

(ii) Application of this data to each cadre separately; and

(iii) If a roster exists, the unit for operation of the roster would be the cadre for which the quantifiable data would have to be collected and applied in regard to the filling up of the vacancies in the roster

This judgement currently holds the field.

3.

4.

5. *Since the **Jarnail Singh** batch of cases is pending in the Supreme Court of India, any promotion order issued shall be subject to further orders that may be passed by the Supreme Court in the said batch of cases.”*

In other words, even reservation in promotion is not unconditional or automatic.

The stipulation in paragraph No.5 of the above-cited



OM, which states that any promotions made shall be subject to the outcome of the **Jarnail Singh's** case (batch of cases) pending before the Hon'ble Supreme Court, does not mean that the Government / Departments can make promotions contrary to or without fulfilling the conditions laid down by the Hon'ble Supreme Court in the abovementioned judgment dated 28.01.2022. We have noticed that there is an attempt in some sections within the respondent-department to circumvent the stipulation in Clause 5 of the above-cited OM dated 12.04.2022 and to interpret it otherwise. Clause 5 applies only to reservation in promotion and, by no means, applies to 'on own merit basis' promotion of reserved-category candidates on unreserved seats. In fact, in the matter of reservation in promotion, the Coordinate Bench of Jabalpur Bench of this Tribunal passed a judgment in the case of **Skandh Shrivastava and others Vs. Union of India and others** decided on 29.07.2025 held as follows :

*"11. In view of the above referred categorical declaration of law by the Hon'ble Apex Court in **M.Nagaraj** (supra) coupled with the judgment passed by the Hon'ble Supreme Court in **Jarnail Singh** (supra) case we are of the considered view that no authority or Government can follow the rule of reservation in promotions in the current scenario. Hence, the action of the respondents in following the rule of reservation in promotions is unsustainable.*

12. Therefore, we set aside the impugned letter dated 10.02.2023 (Annexure A/5) and the seniority list issued in pursuance to the same vide order dated 26.06.2023 (Annexure A/8) is set aside. The respondents are directed to carry out due modification in the seniority list by allotting the correct seniority to the applicants vis-à-vis the private respondents."

(iii). **Promotion of reserved category candidates on**



unreserved vacancies 'on their own merit' – Now, coming to the third issue of promotion of reserved category candidates against unreserved vacancies 'on their own merit', **which is the subject matter of the present case**, the DoPT OM dated 10.08.2008 and the Railway Board RBE No.126/2010 dated 14.09.2010, which provided for the promotion of reserved category persons to unreserved posts, were quashed and set aside by the Hon'ble High Court of Punjab and Haryana in **Jarnail Singh's** case. The SLP against the said judgment is still pending before the Hon'ble Supreme Court. In Contempt Petition No.314/2016 in SLP (C) No.4831/2012 in the matter of **Samta Andolan Samiti Vs. Shri Sanjay Kothari and others** (supra), the Learned Solicitor General of India has given a specific undertaking before the Hon'ble Supreme Court, following which the Railway Board issued RBE No.117/2016 on 30.09.2016. The relevant extract of the same is reproduced below :-

"The aforesaid Contempt Petition (C) No. 314/2016 in SLP (C) No. 4831 of 2012 came up for hearing on 29.09.2016. In follow up of hearing of the above mentioned contempt case, Shri Ranjit Kumar, the Learned Solicitor General of India vide his letter No. 'SG/2/2016-262(1)' dated 29.09.2016, has communicated and advised Mo Railways as under:-

*".....After hearing the matter for sometime, the Court felt that the main matter is required to be decided and therefore, adjourned the Contempt Petition to be decided along with the main matters and fixed the date of hearing for 22.11.2016 as the first case. **The court stated that if the Solicitor General wants to make a statement that no further promotions of reserved category persons to unreserved posts will be made relying on the circulars dated 10.08.2010 / 14.09.2010, then they would not pass any further interim order. I informed the court that***



*the Government would not pass any further order of promotion relying upon either of these two circulars or on the basis thereof. I also conveyed to the Court that I will write a letter informing of about my statement to the Court to you and to the Secretary, DOP&T and the Chairman, Railway Board. That is why I am addressing this letter to you so that **all the Departments are conveyed of the assurance given in the Court that in the matter of making any promotion of a reserved category officer/employee the Department concerned would not rely upon or make the basis of such promotion to an unreserved post based on the circulars dated 10.08.2010 and 14.09.2010 and that any violation thereof will bring about a definite contempt.....**"*

(Circular dated 14.9.2010 as quoted by the Ld. SG be read as 01.09.2010 which is RBE 126/2010 dated 01.09.2010 issued based on DOP&T's O.M. dated 10.8.2010)

In view of the above assurance, received from the Ld. Solicitor General of India, it is advised that Railway Board's RBE No. 126/2010 dated 01.09.2010, is held in abeyance with immediate effect till further advice, and all further promotions of reserved category persons to unreserved posts will now be made by ignoring Railway Board's RBE No. 126/2010 dated 01.09.2010 which in turn was based upon the DOP&T's OM dated 10.08.2010 & under reference No. (i) & (ii) above."

16. From the above, it is evident that the Learned Solicitor General of India, in writing, communicated to the Government and it is loud and clear that only because the Learned Solicitor General of India made a statement that "no further promotion of reserved category persons to unreserved posts will be made relying on the Circular dated 10.08.2010 / 14.09.2010", "...they would not pass any further interim orders". Yet, we have noticed in various cases coming before us that certain individuals within the respondent-department are bent upon going ahead with the



promotion of reserved category persons to unreserved posts.

17. The DoPT OM as well as the Railway Board RBE No.117/2016, when stating that the promotion shall be subject to the outcome of the main SLPs pending before the Hon'ble Supreme Court, **do not mean that, in the meanwhile, the respondent-department can promote reserved category persons to unreserved posts and get away by merely writing in the promotion order that the promotions are subject to the outcome of the SLP.**

18. The very undertaking of the learned Solicitor General before the Hon'ble Supreme Court is to not promote reserved category persons against unreserved vacancies during the interim period till the pendency of the SLPs.

19. The Hon'ble High Court of Kerala, Ernakulam Bench, in the case of **M.Dhinu Rakesh & Others Vs. Sam Divanni & Others**, has also categorically stated in its judgment dated 18.01.2021 (the relevant extract of which is reproduced above in para No.9) that –

“14. As already stated, the principal question to be considered is whether the undertaking given by the Solicitor General before the Apex Court still holds good. The order dated 5/6/2018 of the Apex Court only indicates that the promotion shall be carried out in accordance with law. As rightly pointed out by learned counsel for respondents, the said order cannot be interpreted to mean that reserved category members can be promoted to unreserved posts.”

20. The respondents' side relied upon the Railway Board RBE No.147/2023 in which Hon'ble Supreme Court's judgment in **R.K.Sabharwal** (supra) has been cited as *“In this regard, it is*



stated that in R K Sabharwal judgment, Hon'ble Supreme Court has stated that reserved category candidates can compete for non-reserved post and in the event of appointment to the said post their number cannot be added or taken into consideration for working out the percentage of reservation. The aforesaid instructions were reiterated by the Hon'ble Supreme Court in Jarnail Singh judgment."

"However, as stated by the Hon'ble Court, so long as the instructions / Rules providing certain percentage of reservations for the backward classes are operative, the same have to be followed and despite any number of appointment / promotes belonging to the backward classes against the general category posts, the given percentage has to be provided in addition."

"Ministry of Railways is therefore advised to follow the Hon'ble Supreme Court judgments in cases of R K Sabharwal and Jarnail Singh i.e. reserved category candidates can compete for non-reserved post and in the event of their appointment to the said post, their number cannot be added or taken into consideration for working out the percentage of reservation."

The above is not in respect of promotion but is regarding recruitment.

21. We would like to emphasize that the judgment dated 28.001.2022 as well as the OM dated 12.04.2022 relates to **reservation in promotion** and not to the promotion of reserved category candidates against unreserved posts by taking the plea



of “on own merit”. However, certain sections within the respondent-department are trying to deliberately find ways to interpret / define and twist the above-cited judgments as well as the specific undertaking by their own Solicitor General.

22. The principle of “on own merit” is applicable only at the time of recruitment. However, those belonging to reserved categories, who entered the service availing reservation and / or have availed reservation in promotion, cannot claim “own merit basis” for promotion against unreserved post at any subsequent stage of their service, as per the law that stands as on date.

23. Accordingly, the impugned Notification dated 16.02.2023 is quashed, and the respondents are directed to prepare a fresh eligibility list / suitability list and promote only reserved category candidates against reserved posts and unreserved category candidates against unreserved post.

24. Accordingly, all the Original Applications are **allowed**.
No order as to costs.

25. Pending MAs, if any, stand closed.

(Lok Ranjan)
Member (A)

(Ranjana Shahi)
Member (J)

kmg*