EAST COAST RAILWAY

प्रधान मुख्य कार्मिक अधिकारी का कार्यालय/
Office of the Principal Chief Personnel Officer
रेल सदन, द्वितीय तल, भुवनेश्वर - 751017
Rail Sadan, IInd Floor, Bhubaneswar-751017

स्थापना क्रमांक/ Estt. Srl. No. 126/2020
पूतरे/कार्मिक/आर/ECoR/Pers/R/Reservation **Date: 11.09.2020**

सेवा मे,
सभी प्रमुख विभागाध्यक्षों/**समन्वयक विभागाध्यक्षों, पू त रे/भुवनेश्वर**
मं.रे.प्र/व.मं.का.**अधिकरी/मं.का.अधिकारी-खोरधारोड,वालातेरू, संबलपुर,**
मु.कारखाना **प्रबंधक/कारखाना कार्मिक अधिकारी- मंचेश्वर, अतिरिक्त रजिस्ट्रार/रेल दावा अधिकरण,**
उ.मु.का अधिकारी(नि.)/भुवनेश्वर
महा सचिव/इकोर श्र. कां., महा सचिव/इकोर श्र. यू.,
महा सचिव/एआई ओ बी सी आर ई ए, महा सचिव/ ए आई एस सी एस टी आर ई ए

Sub: Hon'ble Supreme Court's Order dated 11.10.2018 (In Civil Appeal No. 10396/2018 in the matter of Ganjam Marotrao Nimje and Ors. Vs. RBI & Ors.), and Order, dated 10.10.2018 (Civil Appeal No. 10387-10388/2018 in the matter of S.G. Barapatre & Others Vs. Shri Ananta Ganjam Gaiki & Others), regarding Halba Koshti.

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उपर्युक्त विषय पर रेलवे बोर्ड पत्र सं.- 2018-E(SCT)1/25/2 दिनांक 14.08.2020 की प्रतिलिपि सूचना मार्गदर्शन एवं आवश्यक कार्रवाई हेतु अग्रेपित है।

A copy of Railway Board's Lr. No. 2018-E(SCT)1/25/2 Dated 14.08.2020 on the above quoted subject is forwarded herewith for information, guidance and necessary action.

Encl: As above,

(R.N.A.Parida)
Chairman Railway Recruitment Cell
***For* Principal Chief Personnel Officer**

प्रतिलिपि प्रेपित/Copy to :

1) महाप्रबंधक के सचिव/पूर्व तट रेलवे, भुवनेश्वर
2) मुकाधि/मुकाधि(प्रशा.), उप म.प्र, अध्यक्ष(रेलवे भर्ती प्रकोष्ठ)
3) उप मुख्य प्रबंधक(मू.प्रौ), उप मुकाधि(औ.सं.एवं कल्याण), वकाधि(इंजी.)
4) वकाधि(स्टाफ), वकाधि(मुख्या. एवं न्याया.)
5) मुकाधि के निजी सचिव/महा.कार्मिक अधि.(मुख्या.),महा.कार्मिक अधि.(कल्याण), महा.कार्मिक अधि.(बिल),

RS 507 2/9/20

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

40/IR
CA/RRC

36

No. 2018-E(SCT)I/25/2

New Delhi, dated 14.08.2020

Pl. spk.

E. Co. R. Bhubneswar

The General Manager (P)
All Indian Railways and Production Units

Sub: Hon'ble Supreme Court's Order, dated 11.10.2018 (In Civil Appeal No.10396/ 2018 in the matter of Gajanan Marotrao Nimje and Ors. Vs. RBI & Ors.), and Order, dated 10.10.2018 (Civil Appeal No. 10387-10388/ 2018 in the matter of S.G. Barapatre & Others Vs. Shri Ananta Gajanan Gaiki & Others), regarding Halba Koshti.

3/9/2020

Ref: (i) Railway Board's letter No. 2013-E(SCT)1/31/4 dated 30.10.2013.
(ii). Railway Board's letter No. 2018-E(SCT)I/25/2 dated 24.09.2018.

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A copy of the Ministry of Personnel, Public Grievances and Pensions' (Department of Personnel & Training) OM F.No. 36012/ 12/2013-Estt.(Res) dated 24.07.2020 on the above subject is enclosed herewith for information.

DA : As above.

14.8.2020

(U.N. Mehta)
Joint Director Estt.(Res.)I

E3/R
Pls publish in circular
10/9/20

F.No. 36012/12/2013-Estt.(Res)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training
North Block, New Delhi,
Dated the 24th July, 2020

OFFICE MEMORANDUM

Subject: Hon'ble Supreme Court's Order, dated 11.10.2018 (In Civil Appeal No.10396/2018 in the matter of Gajanan Marotrao Nimje and Ors. Vs. RBI & Ors.), and Order, dated 10.10.2018 (Civil Appeal No.10387-10388/2018 in the matter of S.G. Barapatre & Others Vs. Shri Ananta Gajanan Gaiki & Others), regarding Halba Koshti.

The undersigned is directed to refer to this Department's O.M. of even number, dated 8.4.2019 (**copy enclosed**), and to say that in pursuance of the above Judgements, dated 10.10.2018 and 11.10.2018, of the Hon'ble Supreme Court, the matter was considered in consultation with the Ministry of Law and Justice, who advised to seek comments of the concerned Ministries so that the Law Ministry could consider the matter again to furnish its opinion. However, this Department has not received any comments from any Ministry so far in the matter.

2. In the meanwhile, Hon'ble Supreme Court, vide its Order, dated 14.2.2020, in the Contempt Petition (Civil) No.84/2020, titled 'B.K. Manish Vs. Dr. C. Chandramouli, IAS' has directed this Department to modify the O.M., dated 8.4.2019, to bring it in conformity with its Order, dated 27.1.2020, given in the case titled 'Oriental Insurance Company Vs Pradip'.

3. Hon'ble Supreme Court, vide its Judgment, dated 27.1.2020, in the Civil Appeal No. 742/2020, in the matter of 'The Chief Regional Officer, Oriental Insurance Company Vs. Pradip' has held as under:

> *"....the decisions in Barapatre dated 10 October 2018 and Nimje dated 11 October 2018 were rendered in a context where, prior to the decision of the three judge Bench in FCI, the order of the High Court dated 1 November 2012 had attained finality. Since the order of the High Court inter partes had attained finality before the decision in FCI, the matter had to rest there. Both Barapatre and Nimje are decisions of a two judge Bench and do not lay down any principle of law contrary to the binding three judge Bench decision in FCI. Neither the DOPT circular dated 8 April 2019 nor the circular dated 20 June 2019 of the Department of Revenue can depart from the principles laid down*

in FCI. The circulars must hence be construed to apply only to the peculiar facts noted in Barapatre and Nimje which we have explained earlier. Any other construction of the circulars will render them ultra vires."

4. In view of the above, it has been decided to withdraw the OM of even number dated 8.4.2019.

(Sandeep Saxena)
Under Secretary to the Govt.of India

1. Secretaries of All the Ministries/Departments of the Government of India
2. Secretary, Ministry of Tribal Affairs.
3. Secretary, Department of Financial Services.
4. Secretary, Department of Public Enterprises.
5. Chairman, Railway Board, Ministry of Railways.
6. Secretary, National Commission for Scheduled Castes, Lok Nayak Bhavan, New Delhi.
7. Secretary, National Commission for Scheduled Tribes, Lok Nayak Bhavan, New Delhi.
8. Secretary, National Commission for Backward Classes, Trikoot-I, Bhikaji Cama Place, R.K.Puram, New Delhi.
9. The Registrar, Hon'ble Supreme Court of India with reference to the Hon'ble Supreme Court's Judgement dated 14.2.2020 in the Contempt Petition (Civil) No.84/2020 titled 'B.K. Manish Vs. Dr. C. Chandramouli, IAS'.
10. Hindi Section, DOPT for providing the Hindi Translation.
11. NIC, DOPT for placing on the website of the Department.

No.36012/12/2013-Estt.(Res)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
Establishment (Reservation-I) Section

.....

North Block, New Delhi
Dated 08.04.2019

OFFICE MEMORANDUM

Subject: **Orders of Hon'ble Supreme Court in Civil Appeal No 10396/2018 arising out of SLP No.13011/2018 Gajanan Marotrao Nimje & Others Vs RBI & Others and Civil Appeals Nos 10387-10388/2018 arising out of SLP Nos 18555-18556/2018 SG Barapatre & Others Vs Shri Ananta Gajanan Gaiki & Others regarding Appointment of candidates belonging to Halba/Halba Koshti/Koshti caste/community against vacancies reserved for the Scheduled Tribes; representations received - Regarding**

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With reference to the subject cited above, attention is drawn to the Hon'ble Supreme Court judgment dated 11.10.2018 in Civil Appeal No 10396/2018 arising out of SLP No.13011/2018 Gajanan Marotrao Nimje & Others Vs RBI & Others In which the Apex Court has, inter-alia, passed the following order:-

"..... all appellants (who are from Halba Koshti/Koshti/Halba communities) shall be placed below the list of the general category candidates as on 28.11.2000 and will be continued as such till their superannuation. All the benefits which the appellants earned as reserved category candidates after 28.11.2000 will be surrendered/ recovered. After 28.11.2000 the benefits available to the reserved category candidates will be given to the members of the reserved category regarding whom there is no dispute. There shall be no recovery of any benefits from the employees who are already superannuated...."

2. A similar stand has been taken by the Hon'ble Supreme Court in Civil Appeals Nos 10387-10388/2018 arising out of SLP Nos 18555-18556/2018 SG Barapatre & Others Vs Shri Ananta Gajanan Gaiki & Others dated 10.10.2018 as under:-

" ..... For all purposes, those people will get themselves arrayed in the general category as on 28.11.2000 and placed below the last of the general category candidate as on that date."

3. All Ministries/ Departments are requested to furnish action taken in the light of the above judgements. Copies of the aforesaid judgements are annexed herewith for ready reference.

R Saraswat

(Raju Saraswat)
Under Secretary to the Govt.ofIndia
Tele/Fax-23092110

1. Secretaries of All the Ministries/Departments of the Government of India
2. Secretary, Ministry of Tribal Affairs.
3. Secretary, department of Financial Services.
4. Secretary, Department of Public Enterprises.
5. Chairman, Railway Board Ministry of Railways.
6. Secretary, National Commission for Scheduled Castes, Lok Nayak Bhavan, New Delhi.
7. Secretary, National Commission for Scheduled Tribes, Lok Nayak Bhavan,New Delhi.
8. Secretary, National Commission for Backward Classes, Trikoot-I,Bhikaji Cama Place, R.K.Puram, New Delhi.
9. Hindi Section, DOPT for providing the Hindi Translation.
10. NIC, DOPT for placing on the website of the Department.

ANNEXURE

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 10396/2018
(ARISING FROM SLP (C) NOS. 13011/2018)

GAJANAN MAROTRAO NIMJE & ORS. APPELLANT(S)

VERSUS

THE RESERVE BANK OF INDIA & ORS. RESPONDENT(S)

WITH

C.A. NO(S). 10402/2018 @ SLP(C) NO. 18557/2018

C.A. NO(S).10397-10398/2018 @ SLP(C) NO. 15818-15819/2018

C.A. NO(S). 10399-10400/2018 @ SLP(C) NO. 15820-15821/2018

C.A. NO(S).10401/2018 @ SLP(C) NO. 16125/2018

C.A. NO(S).10403-10404/2018. @ SLP(C) NO. 18746-18747/2018

J U D G M E N T

KURIAN, J.

Leave granted.

2. The appellants have been in the service of respondent/Reserve Bank of India for about two decades or more and majority of them are in the fag end of their service. We are informed that some of

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NARESH KUMAR YADAV
Date: 2018.10.13
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Reason:

them have even superannuated. The appellants are before this Court, aggrieved by the judgment dated 13.04.2018 whereby the Division Bench of the High Court has issued a direction to terminate them from service and also to recover all the benefits they have earned in service. Such an order was passed on the basis that none of the appellants belong to the Scheduled Tribe category whereas their initial appointment was on that basis.

3. This litigation has a little other background. In Writ Petition No.1512 of 2004 before the same High Court at the same Nagpur Bench had occasion to deal with the same issue. It appears, the writ petitioners in all the matters taking note of the efflux of time of were not inclined to go for a verification of the caste status, bereft of any supporting materials in view of the lapse of long years.

4. At paragraph 18 of the common common judgment dated 01.11.2012 it has been hence held as follows:-

> "18. ...It is declared that the petitioners would be entitled to protection of their appointments. It is further declared that if any benefits are granted after 28.11.2000 on the basis that they belong to Scheduled Tribes, the respondent Authorities are at

liberty to withdraw the said benefits and restore the position as on 28.11.2000. The respondents to take further necessary steps in accordance therewith."

5. Based on the judgment referred to above, the Reserve Bank of India issued a comprehensive circular on 01.07.2013. The relevant paragraphs of the circular read as follows:-

"As you are aware, the issues relating to verification of Caste Certificate and its validation, non-submission of documents for verification of the caste/tribe claims by the concerned employees have been persisting for a long time and have been matter of concern for the Bank. With a view to resolving the problem, the entire gamut of the issues related to scrutiny of Caste Certificate etc. has been reviewed and it has been decided to take action as under:

A. The services of the employees belonging to Halba, halba Koshti/Koshti caste/community, who were appointment against vacancies reserved for the Scheduled Tribe and who have been confirmed in the services of the Bank before November 28, 2000, may be protected. Such employees, thereafter, will be treated as employees belonging to General Category, with the following conditions.

(i) The employee concerned would give an undertaking to the effect that he/she

would give up their claim as belonging to Scheduled Tribes and would not seek any benefits in support of their claim subsequently.

(ii) No benefit will accrue to them on the basis of reservation after the aforesaid date i.e. November 28, 2000.

(iii) The above decision is subject to outcome of the Writ Petition No.1562 of 2004 filed before the High Court of Judicature at Bombay Bench at Nagpur.

The undertaking as mentioned at (i) above shall be obtained from employees concerned before issuing the office order protecting their services in the Bank.

B. The services of other employees belonging to Scheduled Tribe appointed against vacancies reserved for Scheduled Tribe and, who have not submitted their Caste Certificate for verification/validation and/or their Caste Certificate has been invalidated etc. and have been confirmed in the services of the Bank before November 28, 2000 may also be protected. Such employees, thereafter, may be treated as belonging to General Category on the conditions indicated against A(i) to (iii) on pre page."

6. The High Court has unfortunately missed to take note of this circular while passing the impugned judgment. It is also significant to note the prayers in the writ petition leading to the impugned

judgment. Prayers (a) to (f) read as follows:-

"(a) by an appropriate writ, order and/or direction, direct the respondent no.1-Reserve Bank of India to keep the respondent Nos.5 to 140 below the last candidate in the seniority list of Open Category as on 28th of November, 2000;

(b) by an appropriate writ, order and/or direction, hold that the respondent Nos.5 to 140 are not entitled for any benefit inclu6ding the benefit of Time Bound Promotion, Assured Promotion, Personal Promotion etc. before the last Open Category Candidate in the seniority list Open Category Candidates as on 28th of November, 2000;

(c) by an appropriate writ, order and/or direction, direct the respondent No.1-Reserve Bank of India to withdraw the benefits granted to the respondent Nos.5 to 140 after they are treated as Open Category Candidates with effect from 28th of November, 2000;

(d) by an appropriate writ, order and/or direction, direct the respondent No.1-Reserve Bank of India to fill in the backlog of Scheduled Tribe Category as on 28th of November, 2000 pursuant to the absorption of respondent nos.5 to 140;

(e) by an appropriate writ, order and/or direction, direct the respondent No.1-Reserve Bank of India to recover the benefits including the arrears of salary extended to respondent Nos.5 to 140;

(f) by an appropriate writ, order and/or

direction, direct the respondent no.1-Reserve Bank of India to withdraw the Office Order Staff No.89/2013-14, dated 24th of December, 2013."

7. Apparently, there was some confusion with regard to the implementation of the judgment dated 01.11.2012 in the judgment in Writ Petition No.1512/2004 and connected matters.

8. Based on6 the recent judgment of this Court passed in Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira and Others, reported in (2017) 8 SCC 670, the High Court passed the impugned order directing the termination and recovery of the benefits.

9. We are afraid, in the peculiar background of the appellants and the history of the previous litigation of the same issue, the High Court is not justified in passing such an omnibus order. There is no case for anybody leave alone the writ petitioners that at the time of entry in service, the appellants played any fraud. There was no case that the petitioners therein had played any fraud in obtaining the certificate or employment. In any case the appellants, it is pointed out that, even assuming that they do not belong to Scheduled Caste or Scheduled Tribe, fall either under the most backward

or under the backward category, who were also entitled to some reservation at the time of recruitment. In order to avoid any litigation on this aspect only, the High Court in its wisdom passed the judgment dated 1.11.2012, that all the petitioners therein will be put in the general category.

10. It will be relevant to note that the common judgment dated 01.11.2012 was challenged before this Court and the special leave petition(s) and the review petition(s) were also dismissed.

11. Having regard to the background, as above, we are of the view that the appellants are entitled to the protection granted by the same High Court in the judgment dated 1.11.2012 in Writ Petition No.1512/2004. In any case the parties to the writ petition cannot be disturbed collaterally and the judgment operated as a judgment in rem in view of the circular dated 1.7.2013 issued by the Reserve Bank of India and since the litigations were pursued by the respective associations.

12. Therefore, these appeals are disposed of as follows:-

In partial modification of the impugned judgments, it is ordered that all the

appellants shall be placed below the last of the general category candidate as on 28.11.2000 and will be continued as such till their superannuation. All the benefits which the appellants earned as reserved category candidates after 28.11.2000 will be surrendered/recovered. After 28.11.2000 the benefits available to the reserved category candidates will be given to the members of the reserved category regarding whom there is no dispute. There shall be no recovery of any6 benefits from the employees who are already superannuated. Action, if any, taken pursuant to the impugned judgment(s) will stand recalled and modified to the extent indicated hereinabove.

Needless to say that the notification dated 24.12.2013 will be appropriately reconsidered.

In view of this judgment, we request the High Court to dispose of all the contempt proceedings initiated against the officers of the Reserve Bank of India for non-implementation of the impugned judgment dated 13.04.2018.

13. Pending applications, if any, shall stand disposed of.

14. There shall be no orders as to costs.

.....J.
[KURIAN JOSEPH]

.....J.
[S. ABDUL NAZEER]

NEW DELHI;
OCTOBER 11, 2018

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 10387-10388/2018
(ARISING FROM SLP (C) NOS. 18555-18556/2018)

S.G. BARAPATRE & ORS. APPELLANT(S)

VERSUS

SHRI ANANTA GAJANAN GAIKI & ORS. RESPONDENT(S)

J U D G M E N T

KURIAN, J.

Leave granted.

2. Permission to file special leave petition(s) is granted.

3. The appellants are before this Court, aggrieved by the orders dated 13.04.2018 in Writ Petition No.6740/2016 and dated 4.5.2018 in Review Application No.491 of 2018 in W.P. No.6740 of 2016 passed by the High Court of Judicature at Bombay, Bench at Nagpur.

4. Some of the appellants are parties before the High Court. The appellants had declined to subject themselves to caste scrutiny and, therefore, pursuant to the directions of the High Court their services are to be discontinued and their payments or dues are not to be released. The High Court further directed to recover the payments already made. The relevant

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Date: 28-04-2018
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Reason:

paragraphs are set out below:-

> "65. The Food Corporation of India or the Reserve Bank of India shall forthwith discontinue and not release any payments or dues to the Respondent employees before this Court who have given up their castes and were/are still continued by them.
>
> 66. The Food Corporation of India or the Reserve Bank of India shall also initiate necessary steps within next two months to recover payments or dues released, from the Respondent employees before this Court who have given up caste claim."

5. However, we find that the very same issue was subject matter of consideration by the High Court leading to the judgment dated 1.11.2012 in Writ Petition No.5198/2009 and connected cases, in the case of appellants herein.

6. In paragraph 18 of the judgment, the Division Bench of the High Court held as under:-

> "18. In that view of the matter, we find that the petitioners are entitled to limited relief, that they are praying for. In the result, the impugned show cause notices are quashed and set aside. It is declared that the petitioners would be entitled to protection of their appointments. It is further declared that if any benefits are granted after 28.11.2000 on the basis that they belong to Scheduled Tribes, the respondent Authorities are at liberty to

withdraw the said benefits and restore the position as on 28.11.2000. The respondents to take further necessary steps in accordance therewith."

7. The Employer, namely, Food Corporation of India challenged that order and filed special leave petition(s) before this Court, which was dismissed by order dated 12.04.2013. Review Petition(s) was also attempted and the same was also dismissed by order dated 26.02.2014.

8. Therefore, the said judgment qua the employees, who were parties to those writ petitions have become final. The benefits which have been granted, as per the judgment specifically referred to in paragraph 18 of the judgment, which is extracted above, cannot be taken away in collateral proceedings.

9. We make it clear that the employees covered by the said judgment shall only be entitled to the benefits which have been granted specifically in paragraph 18 of the judgment referred to above. For all purposes, those people will get themselves arrayed in the general category as on 28.11.2000 and placed below the last of the general category candidate as on that date.

10. The impugned orders will stand modified to the above extent. The appeals are, accordingly, disposed of.

11. Pending applications, if any, shall stand disposed of.

12. There shall be no orders as to costs.

.....J.
[KURIAN JOSEPH]

.....J.
[S. ABDUL NAZEER]

NEW DELHI;
OCTOBER 10, 2018.