

E.A. SATHYANESAN  
v.  
V.K. AGNIHOTRI AND ORS.

DECEMBER 18, 2003

[S.B. SINHA AND ARUN KUMAR, JJ.]

*Service Law :*

*Promotion—Reservation—Railways decision invoking 40-point roster on the basis of vacancies—Challenged before Tribunal—Tribunal holding that principle of reservation operates on cadre strength and seniority vis-à-vis reserved and unreserved categories in lower category would be reflected in promoted category notwithstanding earlier promotion on the basis of reservation—SLP filed by Railways dismissed as the case was covered by Sabharwal\* and Ajit Singh\*\*—Disposing of the contempt petition Tribunal observed that in Sabharwal and Ajit Singh, decision was directed to be applied with prospective effect—Held, the Tribunal committed a manifest error in declining to consider the matter on merits, upon the premise that Sabharwal and Ajit Singh-I had been given a prospective operation—The extent to which the said decisions had been directed to operate prospectively, has sufficiently been explained in Ajit Singh-II and reiterated in M.G. Badappanavar—Tribunal by reason of judgment dated 6th September 1994, directed the authorities and the Railway Administration to work out the reliefs in terms of the issues therein which direction has not been complied with—That being the position, it will be fit and proper if necessary directions, as required may be issued by the Tribunal.*

*\*R.K. Sabharwal & Ors. v. State of Punjab & Ors., [1995] 2 SCC 745, explained and relied on.*

*\*\*Ajit Singh Januja and Ors. v. State of Punjab and Ors., AIR (1996) SC 118=[1996] 2 SCC 715; Ajit Singh-II v. State of Punjab, [1999] 7 SCC 209 and M.G. Badappanavar & Anr. v. State of Karnataka & Ors., [2001] 2 SCC 666, relied on.*

*Union of India & Ors. v. Virpal Singh Chauhan & Ors., [1995] 6 SCC 684 and J.C. Malik v. Union of India, (1978) 1 SLR 844 (All.), referred to.*

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5629 of 1997.

From the Judgment and Order dated 25.2.97 of the Central Administrative Tribunal, Kerala at Ernakulam Bench in C.P. (C) No. 68/96 in O.A. No. 483 of 1991.

B C.S. Rajan, Fazlin Anam and E.M.S. Anam for the Appellant.

The following Order of the Court was delivered :

C The original applicant before the Tribunal is the appellant herein. The applicant filed an original application before the Tribunal questioning the decision of the Railway Administration of the Union of India to invoke the 40-Point Roster on the basis of vacancies arising and not on the basis of cadre strength of promotion. It is not in dispute that keeping in view a large number of decisions rendered by different Benches of the Central Administrative Tribunal, the Tribunal, *inter alia*, held that reservation cannot be allowed to be implemented at the promotional level and further the Roster Point has to be considered having regard to the cadre strength and not of the vacancies. It was directed :

E "Following the precedents, we hold :

(a) that the principle of reservation operates on the cadre strength;

F (b) that seniority *vis-à-vis* reserved and unreserved categories of employees in the lower category will be reflected in the promoted category also notwithstanding the earlier promotion obtained on the basis of reservation.

G Applying these principles, respondents-Railways will work out the reliefs. We are issuing the direction, as the apex Court thought that the judgments in force should be implemented. (interim orders in C.A. 2017/78)."

H The union of India preferred a special leave petition thereagainst which was marked as SLP(C) No. 10691/1995, and by an order dated 31st (sic) August, 1996, the said petition was dismissed stating :

“Delay condoned.

A

These matters are fully covered by the decision of this Court in *R.K. Sabharwal & Ors. v. State of Punjab & Ors.*, [1995] 2 SCC 745 and *Ajit Singh Januja and Ors. v. State of Punjab and Ors.*, AIR (1986) SC 1189. The Special Leave Petitions are therefore dismissed.”

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The appellant herein thereafter filed contempt petition before the Tribunal as its earlier order dated 8th September, 1994, had not been implemented within the period specified therein. The Tribunal, however, having regard to the observations made by this Court in its order dated 30<sup>th</sup> August 1996, observed that as both in the case of ‘*Sabharwal*’ (supra) as also in *Ajit Singh-I* (supra), the decision was directed to be applied with prospective effect the appellants were not entitled to any relief stating :

C

“Special Leave Petitions were not dismissed without reasons. Apex Court has given reason for dismissing the SLPs. When such reason is given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the Courts within the territory of India.”

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The tribunal, purporting to apply the principles laid down in the aforementioned cases, held that the respondents herein cannot be said to have disobeyed its directions and committed contempt.

The learned counsel for the appellant submits that the Tribunal misread and misapplied the decisions of this Court holding that the entire Judgment rendered by this Court in *Subharwal* and *Ajit Singh-I* had been given retrospective effect. The learned counsel for the appellant appears to be correct.

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In *R.K. Sabharwal & Ors. v. State of Punjab & Ors.*, [1995] 2 SCC 745 two contentions were raised before this Court which are :

“(1) The object of reservation is to provide adequate representation to the Scheduled Castes/Tribes and Backward Classes in

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A services and as such any mechanism provided to achieve that end must have nexus to the object sought to be achieved. The precise argument is that for working out the percentage of reservation the promotees/appointees belonging to the Scheduled Castes and Backward Classes whether appointed against the general category posts or against the reserve posts are to be counted. In other words if more than 14% of the Scheduled Caste candidates are appointed/promoted in a cadre on their own merit/seniority by competing with the general category candidates then the purpose of reservation in the said cadre having been achieved, the Government instructions providing reservations would become inoperative.

(2) Once the posts earmarked for the Scheduled Castes/Tribes and Backward Classes on the roster are filled the reservation is complete. Roster cannot operate any further and it should be stopped. Any post falling vacant, in a cadre thereafter, is to be filled from the category – reserve or general – due to retirement etc. of whose member the post fell vacant.”

The first contention raised on behalf of the appellants therein was not accepted. However, the second contention was dealt as under :

“We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100-point roster, 14 posts at various roster points are filled from amongst the Scheduled Caste/Scheduled Tribe candidates, 2 posts are filled from amongst the backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by 31.12.1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16%

to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner.”

Therein this Court also considered the decision of the Allahabad High Court in *J.C. Malik v. Union of India*, [1978] 1 SLR 844 (All.), which has also been referred to by the Tribunal in the aforementioned Judgment.

Having said so, this Court, however, directed that the interpretation as regards the working of the roster and the findings on the said point shall be operative prospectively. What was, thus, made prospective was the application of the judgment.

In *Union of India & Ors. v. Virpal Singh Chauhan & Ors.*, [1995] 6 SCC 684 this Court referring to *Sabharwal* (supra) held :

“It may be partly because the rule now enunciated in *R.K. Sabharwal*, [1995] 2 SCC 745 was not being followed. It may also be that such a result has been brought about by a combined operation of the factors mentioned in (i) and (ii). The fact remains that the situation – assuming that it is what is described by the general candidates – cannot be rectified with retrospective effect now. The Constitution Bench in *R.K. Sabharwal* too has directed that the rule enunciated therein shall have only prospective operation. So far as the present appeals are concerned, it is sufficient to direct that the Railway authorities shall hereinafter follow rules (i), (ii) & (iii) (stated in para No. 29) with effect from the date of Judgment in *R.K. Sabharwal*, i.e., 10.2.1995.”

“Learned counsel have sought to bring to our notice individual facts of some of the appeals before us but we do not propose to enter into those facts or make any pronouncement thereon. The

A proper course, in our considered opinion, is to send all these matters back to the Tribunal to work out the rights of individuals concerned applying the three principles aforesaid. The appeals are accordingly disposed of in the above terms and matters remanded to the respective Tribunals. Writ petitions are dismissed. No costs.”

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Yet again in *Ajit Singh Januja & Ors. v. State of Punjab & Ors.*, [1996] 2 SCC 715 this Court referring to *Sabharwal's* case as also to the other decision, held as under :

C “As such it will be only rational, just and proper to hold that when the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the Scheduled Caste/Tribe who had been given accelerated promotion against the post reserved for him.

D Whenever a question arises for filling up a post reserved for Scheduled Caste/Tribe candidate in a still higher grade then such candidate belonging to Scheduled Caste/Tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in a still higher grade then the general

E category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority-cum-merit or merit-cum-seniority. If this rule and procedure is not applied then result will be that majority of the posts in the higher grade shall be held at

F one stage by persons who have not only entered service on the basis of reservation and roster but have excluded the general category candidates from being promoted to the posts reserved for general category candidates merely on the ground of their initial accelerated promotions. This will not be consistent with the

G requirement or the spirit of Article 16(4) or Article 335 of the Constitution.

H According to us, the Full Bench was not justified in saying in the case of *Jaswant Singh v. Secy. to Govt. of Punjab* that non-consideration of Scheduled Caste candidates against general

category posts on the basis of their prior promotion will be hit by Articles 14, 15 and 16 of the Constitution. That view shall be deemed to be against the pronouncement of this Court by the nine-Judge Bench in the case of Indra Sawhney as well as the view expressed by the Constitution Bench in the case of R.K. Sabharwal. Accordingly, the appeals are allowed and that part of the judgment of the Full Bench in the case of *Jaswant Singh v. Secy. to Govt. of Punjab* is reversed.”

The aforementioned decisions of this Court came up for interpretation before a Constitution Bench of this Court in *Ajit Singh-II v. State of Punjab*, [1999] 7 SCC 209. This Court upon considering the matter in great details held :

“We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, — *vis-à-vis* the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate – he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that *Virpal* [1995] 6 SCC 684 and *Ajit Singh* [1996] 2 SCC 715 have been correctly decided and that *Jagdish Lal* is not correctly decided. Points 1 and 2 are decided accordingly.”

As regards the interpretation as well as effect of the prospective operation of “Sabharwal” as also “Ajit Singh-I”, it was held respectively as under.

“It is axiomatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as *ad hoc*. This applies to reservation quota as much as it applies to direct recruits and promotee cases. If a court decides that in order only to remove hardship such roster-point promotees are not to face reversions,

- A — then it would, in our opinion be, necessary to hold — consistent with out interpretation of Article 14 and 16(1) — that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of the roster. In our view, while courts can relieve immediate hardship arising out of
- B a past illegality, courts cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10.2.1995 are protected, such promotees cannot claim seniority. Seniority in the
- C promotional cadre of such excess roster-point promotees shall have to be reviewed after 10.2.1995 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate. That disposes of the ‘prospectivity’ point in relation to Sabharwal.”
- D “Where before 1.3.1996, i.e. the date of Ajit Singh judgment at Level 3, there were reserved candidates who reached there earlier and also senior general candidates who reached there later (but before the reserved candidate was promoted to level 4) and when in spite of the fact that the senior general candidate had to be
- E treated as senior at Level 3 (in view of Ajit Singh), the reserved candidate is further promoted to Level 4 – without considering the fact that the senior general candidate was also available at Level 3 – then, after 1.3.1996, it becomes necessary to review the promotion of the reserved candidate to Level 4 and reconsider the same (without causing reversing to the reserved candidate who
- F reached Level 4 before 1.3.1996). As and when the senior reserved candidate is later promoted to Level 4, the seniority at Level 4 has also to be refixed on the basis of when the reserved candidate at Level 3 would have got his normal promotion, treating him as junior to the senior general candidate at Level 3.
- G *Chander Pal v. State of Haryana*, [1997] 10 SCC 474 has to be understood in the manner stated above.”

The same position was further reiterated by this Court in *M.G. Badappanavar & Anr. v. State of Karnataka & Ors.*, [2001] 2 SCC 666

- H in the following terms :



“There is no specific rule here permitting seniority to be counted A  
in respect of a roster promotion. In Ajit Singh-I a circular which  
gave seniority to the roster-point promotees was held to be  
violative of Articles 14 and 16. In Virpal which was later decided,  
this Court used the words ‘it is open to the State’ and it gave an  
impression that the State could give seniority to roster-point B  
promotees. But in Ajit Singh-II this aspect has since been  
clarified. It was held that seniority rules like Rules 2(C), 4 and  
4-A permitting seniority to be counted from the date of initial  
promotion, govern normal promotions made according to rules –  
by seniority at basic level, by seniority-cum-fitness or by seniority- C  
cum-merit or by selection – but not to promotions made by  
way of roster. The roster promotions were, it was held, meant only  
for the limited purpose of due representation of backward classes  
at various levels of service. If the rules are to be interpreted in  
a manner conferring seniority to the roster-point promotees, who D  
have not gone through the normal channel where basic seniority  
or selection process is involved, then the rules, it was held will  
be *ultra vires* Article 14 and Article 16 of the Constitution of  
India. Article 16 (4-A) cannot also help. Such seniority, if given,  
would amount to treating unequals equally, rather, more than  
equals.” E

In view of the aforementioned authoritative pronouncement we have  
no other option but to hold that the Tribunal committed a manifest error  
in declining to consider the matter on merits, upon the premise that  
Sabharwal and Ajit Singh-I had been given a prospective operation. The F  
extent to which the said decisions had been directed to operate prospec-  
tively, as noticed above, has sufficiently been explained in Ajit Singh-II  
and reiterated in *M.G. Badappanavar* (supra).

However, we may notice that in the decisions cited above, this Court G  
has refused to go into the individual cases and directed the parties to  
ventilate their grievances before the Tribunal. As noticed above, the  
Tribunal by reason of judgment dated 6th September 1994, directed the  
authorities and the Railway Administration to work out the reliefs in terms  
of the issues therein. It appears that the same has not been complied with.  
That being the position, it will be fit and proper if necessary directions, H

**A** as required, may be issued by the Tribunal. We hope and trust, keeping in view that the matter is pending for long time before the Tribunal, the same shall receive its expeditious consideration.

**B** We are therefore, of the opinion that the impugned judgment cannot be sustained and it is set aside accordingly. The appeal is allowed. As the respondents have not entered appearance we make no order as to costs.

R.P.

Appeal allowed.