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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA No. 2980/1997

New Delhi, this 8th day of March, 1999

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

S/Shri

1. C.P. Jayant
2. D.D. Nimesh
3. Harbagh Singh
4. Rakesh Kumar
5. Satya Ram
6. Nirmal Shankar
7. Kuldeep Singh
8. V.S. Verma
9. Chand Ram
10. Chatter Singh Gurian
11. Dharam Bir Singh
12. Bhagwan Singh
13. Pooran Singh
14. R.N. Meena
15. A.C. Meena
16. O.P. Meena
17. M.L. Meena
18. L.N. Meena
19. B.K. Pabri
20. R.N. Singh
21. Mohan Lal

(all working as Inspectors of Customs
& Central Excise, Delhi) .. Applicants

(through Shri M.R. Bhardwaj, Advocate)

versus

Union of India, through

1. Secretary
Department of Revenue
Ministry of Finance
North Block, New Delhi
2. Chief Commissioner of Customs &
Central Excise, Delhi Zone
CR Building, IP Estate, New Delhi
3. Commissioner of Customs & Central
Excise, Delhi I
CR Building, New Delhi
4. Secretary
Dept. of Personnel & Training
New Delhi

S/Shri
5. Attar Singh Vijayarania
6. R.S. Dhillon
7. A.K. Jain
8. P.S. Saini
9. K.C. Pande

AB

10. Smt. Saroj Dave
11. D.D.Kaushik
12. Anjula Rai Choudhary
13. R.K. Goyal
14. Ajit Singh
15. Ramesh Kumar Sharma
16. Vijay Kumar Anand
17. R.K. Arora
18. Virendra Arora
19. V.K. Bhardwaj
20. M.S. Negi
21. A.K. Gautam
22. B.B. Roy
23. Jagdish Singh Yadav
24. Ram Chander
25. Smt. Sarla Mujjo
26. R.K. Sethi
27. R.P. Kohli
28. R.N.Singh
29. J.M.L. Gaur
30. N.K. Batra
31. R.S. Sharma
32. Satya Narain Verma
33. Harish Kumar
34. Vishnu Dutt Gaur

(All through R-3) Respondents
(By Advocate Shri R.R. Bharati for official
respondents and Dr. Sumant Bhardwaj, Advocate
for private respondents No.5 to 34)

ORDER

Hon'ble Shri S.P. Biswas

The main legal question for determination in this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985 is whether Reserved category Scheduled Caste and Scheduled Tribe (SC/ST for short) candidates appointed/promoted to posts, under the Union of India, on the basis of their merit and seniority and not on the basis of reservation, should be counted against the percentage of posts reserved for them or whether they shall be adjusted against the posts meant for general category candidates. Other ancillary issues have also been raised for consideration.

2. The applicants, who are Group 'C' Inspectors in Central Excise and Customs (CE & C for short), have vehemently opposed the decision of the

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official respondents in counting 23 SC and 9 ST Inspectors (CE & C) promoted to the posts of Superintendents (Group B Gazetted) on their own merit and seniority, against the posts reserved for backward communities, thus illegally and arbitrarily denying promotions to the applicants herein. The applicants contend that if the 23 SC and 9 ST officers promoted on merits alongwith the general category officers, vide the impugned orders dated 30.09.97 (Annexure A-1) had been adjusted against the general posts as per the law laid down by the Hon'ble Supreme Court in the case of R.K. Sabharwal & Ors. vs. State of Punjab & Ors. (1995(1) SLR SC 791), they (applicants) would have been promoted against the reserved posts, against which respondents No.5 to 34 have been illegally promoted.

3. The Recruitment Rules for the post of Superintendent (CE & C) provide for 95% of the posts to be filled by promotion from the feeder grade of Inspectors and only 5% are to be filled up by direct recruitment. Inspectors who have put in 8 years of regular service in that grade are eligible to be considered for promotion on the basis of selection. The official respondents do not deny that there are reservations for SC/ST officers as per percentage prescribed by Government of India's present policy on reservation for these SCs/STs in promotional posts of Superintendent (CE & C) from the feeder grade of Inspectors to which the applicants belong.

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4. The Departmental Promotion Committee (DPC for short) met on 23-24th of June, 1997 to prepare the select list of promotion to the posts of Superintendents (CE & C) from amongst the eligible officers in the feeder grade. A total of 160 vacancies, including 138 newly sanctioned posts and the existing and anticipated vacancies upto 31.3.98, were reported to the DPC by Respondent No.1 (Min. of Finance/Department of Revenue). The break-up of 160 vacancies for several categories was as follows:-

<u>Category</u>	<u>No of Vacancies</u>
1. General	124
2. Reserved -	
(i) Scheduled Castes	24
(ii) Scheduled Tribes	<u>12</u>
Total :	<u>160</u>

The DPC recommended a select list of 162 officers for promotion to the post of Superintendent Grade 'B'. Among the 162 officers whose names figured in the select panel, there are 29 SC and 12 ST officers.

5. Respondent No.3 (Commissioner of Customs & Central Excise, Delhi) issued orders on 30.9.97 promoting 134 Inspectors including 23 SC and 9 ST officers to the grade of Superintendent (CE & C) besides regularising 5 ad hoc promotions, vide Establishment Order No. 275/1997 dated 30.9.97 which is now under challenge.

6. The consideration of officers for promotion by the DPC was based on the seniority list of Inspectors as on 31.12.93 issued by R-3. The cases of officers whose names appeared from Sl. No. 110 downwards in the seniority list were considered by the DPC for promotion against the newly sanctioned posts.

7. Before we examine rival contentions of the contending parties, we first dispose of the preliminary objection regarding the maintainability of the O.A.

Dr. Sumant Bhardwaj, learned counsel for the private respondents contended that filing of this OA was premature as the applicants did not wait for a decision on the representations made by them. Hence the O.A. was not maintainable because of non-exhaustion of alternative remedies available to them under the Rules as required under Section 20 of the AT Act, 1985.

Shri M.R. Bhardwaj, learned counsel for the applicants strongly opposed the above contention and brought to our notice that R-2 had informed some of the applicants who met him (R-2) in connection with grievances set out in their representations. The applicants were told that in view of the instructions contained in DoPT's OM dated 2.7.97 the SC/ST officers who were promoted on their own merit and not because of any rule of reservation had to be adjusted against the reserved posts as the expression 'ordinarily' has been judicially interpreted as meaning a large majority of cases but not invariably. We see considerable force in the submissions made by the learned counsel for the

applicants. The objections of Dr. S. Bhardwaj in respect of non-maintainability of the OA cannot, therefore, be sustained. Shri Bharati contended that the above instructions are applicable only at the time of initial appointments obtained on the basis of merit at the stage of direct recruitment and not for determination of reserved posts at the time of appointment by promotion. He further submitted that since the above OM was given effect from the date of issue, viz. 2.7.97, the selections in the present case having been finalised prior to 2.7.97, are not to be disturbed and necessary adjustments will have to be made in future.

8. Shri M.R. Bhardwaj, learned counsel for the applicants contended that the applicants who belong to SC/STs have been unlawfully denied promotions to the posts of Superintendent (CE & C) as 23 SC and 9 ST officers who have been promoted on their own seniority and merit (and not because of any rule of reservation) have been counted against the posts reserved for SC/ST officers. He submitted further that if the official respondents had followed the law laid down by the Constitution Bench in R.K. Sabharwal's case (supra) by excluding the aforementioned 23 SC and 9 ST officers to determine the number of posts reserved for SC/ST officers, the applicants would have been promoted against the posts illegally offered to the private respondents 5 to 34 by means of promoting them against the existing rules/regulations.

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9. Shri Bhardwaj submitted that the apex court in R.K. Sabharwal's case (supra) has held that "Despite any number of appointees/promotees belonging to the backward classes against general category posts, the given percentage (of reservation) has to be provided in addition". He also drew our attention to the ruling of the Hon'ble Supreme Court in U.O.I. Vs. Virpal Singh Chauhan (1995(6) SCC 684) wherein, while confirming the law laid down in R.K. Sabharwal's case, the apex court clarified that "while determining the number of posts reserved for being filled by the reserved category officers in a grade, the officers belonging to the reserved category but selected/promoted on their own merit (and not by virtue of any rule of reservation) shall not be counted as reserved category officers". The learned counsel contended that in the light of the aforesaid legal position, counting of the SC/ST officers promoted as Superintendents (CE & C) on their own merit and seniority as reserved category officers was patently illegal.

10. It was further submitted on behalf of the applicants that promotion made vide impugned order dated 30.9.97 were from amongst the Inspectors whose names figured between Sl. Nos. 110 and 244 of the latest seniority list dated 31.12.93 and that the junior most reserved category Inspector promoted was at Sl. No. 234 of the above seniority list. Whereas the name of the senior most general category private respondent promoted stood at Sl. No. 244 of the said list. Hence, all the reserved category officers promoted vide the impugned order are senior to the private respondents (general

category officers). He accordingly asserted that as the reserved category officers had been promoted on their own seniority and merit, counting them against reserved posts was illegal, arbitrary and malicious.

11. Shri R.R. Bharti, learned counsel for the respondents opposed the applicants' claim in the OA on various grounds. In the counter reply, the official respondents have contended that the DPC had prepared the select panel keeping in view the instructions regarding reservation in posts to be filled by promotion through selection from Grade 'C' to Grade 'B', issued by the Deptt. of Personnel & AR in their OM No. 10/41/73-Estt. (SCT) dated 20.7.74 as amended by OM No. 36021/7/75-Estt. dated 25.2.76 which provide that if candidates from the SC & STs obtain on the basis of merit with due regard to seniority, on the same basis as others, less number of vacancies than that reserved for them, the difference should be made up by selecting candidates of these communities who are in the zone of consideration irrespective of merit but who are considered fit for promotion. It has further been stated that the DPC noted that 29 SC and 9 ST candidates got selected in the above process and the difference of 3 ST candidates was made up by picking them up from the extended zone of consideration.

12. Shri Bharti further clarified that for 160 vacancies reported to the DPC, normal zone of consideration of officers in the feeder grade of Inspectors was 324 (i.e. twice the no. of vacancies plus four) as per the instructions on the subject. He

also submitted that the Bench mark for selection for promotion in the present case was 'good' i.e. only those officers who obtained the grading of 'good' in the assessment made by the DPC were included in the select panel.

13. The learned counsel contended that the reservation quota for the SC/ST was worked out entirely as per the roster points and that the percentage of reservation has been fully maintained and as such there was absolutely no violation of the law laid down by Hon'ble Supreme Court in R.K. Sabharwal's case. He further argued that while preparing a combined select panel of general and reserved category candidates, no separate bench mark for SC/ST officers was prescribed and as such the reserved category officers whose names got included in the first 124 places, could not be treated as general category officers. As per the counsel, applicants were labouring under wrong notion that SC/ST officers who were high in the seniority list and got included in the select panel should not be treated as reserved category officers for the purposes of determining the availability of reserved posts. In support of his stand aforementioned, he placed reliance on the judgement of the Hon'ble Supreme Court in P. Seshadri Vs. U.O.I. & Ors. (1995 (3) SLJ SC 222) decided on 9.3.95.

14. The learned counsel for the official respondents argued that the expression "appointed" in para 2 of the DoPT's OM dated 2.7.97 was issued in compliance with the Supreme Court's orders in R.K.

Sabharwal's case and only those SC/ST candidates who were appointed at the initial stage i.e. by direct recruitment have to be treated to have been appointed against the general posts, if they had obtained merit equal to those of the general category officers and the SC/ST promotees have to be counted against the reserved posts. He further submitted that since the selection by the DPC in the present case had been made prior to the issue of the abovesaid OM dated 2.7.97, those selections could not be disturbed.

15. Besides the issue raised in para 7, Dr. S. Bhardwaj, counsel for private respondents, also raised the following issues while opposing the reliefs prayed for by the applicants in this OA.

(i) the percentage of reservation for SC/ST officers has to be worked out on the basis of roster points taking into consideration the total cadre strength. With the promotion of SC/ST officers vide order dated 30.9.97, the representation of those belonging to SC/STs in the cadre of the Superintendents (CE & C) is full conforming to the percentage of reservation prescribed for them as per rules. Hence, counting of these SC/ST officers in the general category is neither warranted nor would it be justified on the basis of the policies of reservation.

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(ii) Some of the applicants had already gained seniority over the private respondents because of jumping from their original seniority inter se as Inspector consequent upon their earlier confirmation against the reserved posts.

(iii) The SC/ST officers were initially appointed on the basis of selections made by the Staff Selection Commission as Inspectors against reserved posts. And to give them promotions again on the basis of reservation is not envisaged under the provisions of the Constitution and policies of reservation and would amount to conferring double benefits on the SC/ST officers.

(iv) Based on the contention aforementioned, Dr. Sumant Bhardwaj made categorical statement indicating that SC & ST officers are not eligible for reservation in promotions.

16. We have heard at length the learned counsel for both parties and have gone through the documents on record including the written submissions filed by the learned counsel for the applicants as well as official respondents.

The main thrust of applicants' attack is that treating SC & ST officers promoted on their own seniority and merit, and not by virtue of any rule of reservation, against the posts reserved for those castes and tribes is patently illegal being violative of the judgement dated 10.2.95 of the Constitution Bench of Hon'ble Supreme Court in the case of R.K. Sabharwal (supra), reiterated by the apex court in U.O.I. Vs. Virpal Singh Chauhan (1995(6) SCC 684).

17. The legal position that emerges from the apex Court's judgements and orders in the above cited two cases can be summed up by reproducing the relevant extracts as herein below:

(A) In para 4 of Sabharwal's case, their Lordships held that "When percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserved points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of the reserved categories and the candidates belonging to the general category are not to be considered for the post of reserve categories. On the other hand, the reserved category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16 (4) of the Constitution of India permits the State Governments to make any provision for the reservation of appointments or posts in favour of any backward class of

citizens which in the opinion of the State is not adequately represented in the services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State services. In doing so, the State Government may take the total population of a particular backward class and its representation in the state services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. As mentioned above, the roster point which is reserved for a backward class has to be filled by way of appointment/promotion of a member of the said class. No general category candidate can be appointed against the slot in the roster which is reserved for the backward class.

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"Despite any number of appointees/promotees belonging to the backward class against the general category posts the given percentage has to be provided in addition" (emphasis ours).

(B) The controversies on the basic issue raised herein have been set at rest by their Lordships in para 29 of Virpal Singh Chauhan's case (supra). It has been held therein: "Be that as it may, as a result of the

decision in R.K. Sabharwal, and the views and findings recorded by us herein above, the following position emerges:

(i) Once the number of posts reserved for being filled by reserved category candidates in a cadre, category or grade (unit for application of rule of reservation) are filled by the operation of the roster, the object of rule of reservation should be deemed to have been achieved and thereafter the roster cannot be followed except to the extent in para 5 of R.K. Sabharwal. While determining the said number, the candidates belonging to the reserved category but selected/promoted on their own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates (emphasis ours)?

18. We find that according to the rule enunciated by the Constitution Bench of the Hon'ble Supreme Court in R.K. Sabharwal's case and reiterated by the apex court in UOI vs. Virpal Singh Chauhan, SC/ST officers appointed/promoted on their own merit shall be counted against the general posts and that the number of posts reserved for those castes/tribes should be determined by excluding the SC/ST candidates who got promotion on their own merit. It is also clear that the above rule

comes into force from 10.2.95 i.e. the date of pronouncement of the judgement in R.K. Sabharwal's case.

19. We have also perused the minutes of the DPC which met in June, 1997 to prepare the panel for promotion to the posts of Superintendent (CE & C) from the feeder grade of Inspectors. We find that out of 30 SC officers promoted vide the impugned order dated 30.9.97, the DPC graded two as 'Excellent' and 24 as 'very good' and four as 'good' and out of 9 ST officers promoted, 8 have been graded 'very good' and one as 'good'. Out of 105 general category officers (including 30 private respondents), 11 were graded 'Excellent', 86 'very good' and 8 'good' by the DPC. There can, therefore, be no doubt that apart from the fact that all the reserved category officers promoted are not only senior to the private respondents but they also have comparable merit equal to that of the general category officers.

20. Adverting to the contention of the official respondents that the DPC prepared the select panel strictly following the instructions contained in OM dated 20.7.74 read with OM dated 25.2.76, we are of the firm view that their contentions and reliance are highly misplaced. The instructions in the aforesaid two OM's only empower the authorities to ensure that all the posts reserved for SC/ST officers are filled from among the reserved category officers whose names figure in the normal zone of consideration and if such officers get less number of posts than those reserved for them, the

deficiency shall be made up by selecting reserved category officers from the extended zone irrespective of comparative merit but who are considered fit for promotion.

In the present case, the main question is whether the SC/ST officers promoted on the merit basis equal to that of the general category officers should be treated to have been appointed against general posts and the required percentage of reserved posts be accordingly offered separately to SC & STs.

In the light of law enunciated by the Hon'ble Supreme Court which came into operation from 10.2.95 as referred to in paras 16, 17 and 18 aforementioned, the answer to the above question has to be only in the affirmative.

It is thus obvious that the instructions relied upon by the official respondents have no application to the facts and circumstances of the present case.

21. Shri Bharti, learned counsel for the official respondents drew our attention to para 2 of DoPT's OM No. 36012/2/2/96-Estt.(R) dated 2.7.97, which provides that 'persons belonging to the reserved categories, who are appointed on the basis of merit and not on account of reservation are not to be counted towards the quota meant for reservation?'

Shri Bhatri contended that the above instructions are applicable only at the time of initial appointments obtained on the basis of merit at the stage of direct recruitment and not for determination of reserved posts at the time of appointment by promotions. He further submitted that since the above OM was given effect from the date of issue, viz. 2.7.97, the selections in the present case having been finalised prior to 2.7.97, are not to be disturbed and necessary adjustments will have to be made in future.

We do not find any merit in the above contentions. The rule enunciated by the apex court in R.K. Sabharwal's case (supra) became operative from 10.2.95 from which date post-based roster replaced vacancy-based roster. Executives cannot choose a date on their own to give effect to the law laid down by the Hon'ble Supreme Court.

22. We are also not impressed with the contention of the learned counsel for the official respondents that the expression "appointed" occurring in para 2 of the OM dated 2.7.97 covers only the initial appointments of the reserved category candidates through direct recruitment and not those made by promotions.

It would suffice to point out that the Constitution Bench of the Supreme Court while enunciating the rule that reserved category candidates appointed/promoted on their own merit shall not be counted against the reserved posts, have persistently used the expressions "appointed/ promoted" or

“appointees/promotees” in their judgement in R.K. Sabharwal's case. In Virpal Singh Chauhan's case, the apex court while clarifying the rule enunciated in R.K. Sabharwal's case, has stated that “the candidates belonging to the reserved category but selected/promoted on their own merit (and not by any rule of reservation) shall not be counted as reserved category candidates”²³. We may also refer to the definition of the expression “appointment” by the nine member Bench of the Hon'ble Supreme Court in **Indira Sawhney and Ors. Vs. UOI & Ors.** JT 1992 (6) SC 273 indicating that the aforesaid expression “takes in appointment by direct recruitment, appointment by promotion and appointment by transfer”²⁴ (emphasis ours).

In view of the above discussion, the interpretation by the respondents of the word “appointed” occurring in para 2 of DoPT's OM dated 2.7.97 is entirely misplaced.

23. It may further be pointed out that in continuation of their OM dated 2.7.97 referred to above, the DoPT have, vide their subsequent OM No.36011/1/98-Estt(Res) dated 1.7.98, clarified that reserved category officers who are selected on the same standard as applied to general candidates shall not be adjusted against the reserved posts: only those SC/ST candidates who are selected by applying relaxed standards and whose names figure in the extended zone of consideration for promotion are to be counted against the reserved vacancies inasmuch as they would be deemed as unavailable for consideration against the unreserved

vacancies. The beginning of para 3 of the aforementioned latest circular throws sufficient light on the main issue under dispute herein when it mentions that (In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies)?

The above instructions have obviously been issued to give effect to the rule enunciated by the Hon'ble Supreme Court in R.K. Sabharwal(supra) that the SC/ST candidates who are appointed/ promoted on their own merit shall not be counted against the reserved posts. Since the judgement of apex court came into force from 10.2.95, the above instructions are deemed to be applicable from that date.

In view of the above clarifications dated 1.7.98, though issued belatedly, the controversy about the application of the rule enunciated by the apex court to the reserved category officers appointed either by direct recruitment or by promotion is no more res integra. The details in the circular dated 1.7.98 take care of the contentions by Dr. Sumant Bhardwaj (counsel for private respondents) that SC & ST officers are not eligible for reservation in promotion. In fact, such an issue raised now need not detain us any longer. Even before 1.7.98, this very issue was well settled by the apex court in **Comptroller and Auditor General of India, Gian Praksh/New Delhi & Anr. Vs. K.S.Jagannathan & Anr.** (1986) 2 SCC 679. In para 22 therein, it has been held that "The object of the said OM dated 21.1.77 is to

provide an adequate opportunity of promotion to the members of the SC/STs. By reason of the provisions of Article 16(4) of the Constitution a treatment to the members of the SC/STs different from that given to others in matters relating to employment or appointment to any office under the State does not violate the Fundamental Right to equality of opportunity for all citizens in such matters guaranteed by Article 16(1) of the Constitution. It is now well settled by decisions of this Court that the reservation in favour of backward classes of citizens, including the members of the SC and STs, as contemplated by Article 16(4) can be made not merely in respect of initial recruitment but also in respect of posts to which promotions are to be made²².

24. We also find the reliance placed by the learned counsel for the official respondents on the judgement of the Supreme Court in P. Seshadri (supra) is of no avail to him since the facts and circumstances of that case are distinguishable from those of the present one. The above judgement deals with the questions of placement of reserved category officers whose names figured in a combined select list. The apex court has held that such officers have to be picked up from the panel for posting according to the availability of reserved posts.

25. Learned counsel for the official and private respondents vehemently urged before us that computation of percentage of reservation for the SC/ST candidates has to be done in relation to the total number of posts comprising the cadre and not in relation

to the vacancies. They submitted that taking into account the number of reserved category officers promoted in the order dated 30.9.97 the representation of SC/ST officers in the total cadre strength of Superintendent which was said to comprise of more than 400 posts is already in excess of the prescribed percentage of reservation for these communities. Accordingly, they submitted that counting the SC/ST officers promoted on their own merit and seniority alongwith the general category officers, as general category officers, was not warranted.

26. We may point out that in R.K.Sabharwal's case, the petitioners had contended that the number of promotees/appointees belonging to the reserved categories in a cadre are to be counted to work out the prescribed percentage of reservation and that the reserved category candidates can take advantage of the reservation made in their favour till their representation in the service cadre including those appointed against general posts reaches the prescribed representation. It was further contended that for working out the number of reserved posts the promotees/appointees belonging to reserved categories, whether on general or reserved posts, are to be counted. The above contentions were rejected by the Constitution Bench in R.K. Sabharwal (supra) and enunciated the rules already discussed in paras 16 and 17 aforesaid. In view of the apex court's ruling, the contention of the counsel for the official and private respondents are to be noted for rejection only.

27. We are equally unimpressed by the other contention of the learned counsel for the private respondents that claiming promotion on the basis of reservation would amount to conferring double benefits on the reserved category officers as they had availed the benefit of reservation policy earlier at the time of their confirmation as Inspectors. Undisputedly, the present policy on reservation provides promotion inter alia from Group C to Group B posts. The reserved category officers in the feeder grade of Inspectors (group C) cannot be denied promotion to the post of Superintendent (Group B) on the alleged ground that they had availed themselves of the benefit of reservation at the time of confirmation as Inspector. We find an answer to such a plea against double benefits in the judgement of the apex court in the case of **Jagdish Lal & Ors. Vs. State of Haryana & Ors.** JT 1997 (5) SC 387 decided on 7.5.97. Upholding the view of the Hon'ble High Court, their Lordships in the Supreme Court in para 18 of the judgement held that where reserved category candidates (SC/STs) have been promoted earlier to a general category candidate, their seniority in the new cadre ranks from the date of their joining on promotion and this seniority does not and cannot have the effect of getting wiped out after the promotion of the general candidate from the respective date of promotion and general candidate remains junior in the higher echelon to the reserved candidates'. We do not, therefore, find any substance in the above contention made by Dr. Suman Bhardwaj.

28. The last issue raised by the learned counsel for private respondents relates to the allegation that some of the reserved category officers now promoted vide order dated 30.9.97 had gained seniority as they jumped over some general category Inspectors because of their earlier confirmation.

Learned counsel for the applicant Shri M.R. Bhardwaj brought to our notice that under the earlier instructions issued by the DoPT, there was reservation for SC/ST employees in confirmation, and consequent upon earlier confirmation of such employees they would have gained seniority over some general category employees. Those instructions were subsequently modified in DoPT's OM No.18011/1/86-Estt(D) dated 28.3.88 and reservation in confirmation was done away with. He contended that if some reserved category officers in the present case had gained seniority prior to 28.3.88 because of their earlier confirmation the private respondents should have raised the issue when the alleged jumping took place if they were otherwise aggrieved. They cannot agitate the matter at this distant point of time. We find considerable force in the above contention of the applicants. Raising of this point by the private respondents at this late stage has no relevance, as promotions have been made on the basis of the accepted seniority list of Inspectors as it existed on 31.12.93 which has never been challenged.

29. In the light of the above detailed discussions, the OA deserves to be allowed and we do so

accordingly with the following directions:

(A) Annexure A-1 order dated 30.9.97 shall stand set aside to the extent of promotions granted to respondents No. 5 to 34 in violation of the law laid down on 'reservation' as brought out in paras 16, 17 & 18 of this order.

(B) Official respondents shall count 23 SC and 9 ST officers against general category posts since they have been promoted on their own seniority and merit and not by virtue of any rule of reservation as per rules enunciated by the Apex Court in R.K. Sabharwal.

(C) After adjusting the above officers, as in (B) above, against the general category posts, official respondents shall determine the number of reserved posts that should get filled up by SC/ST officers in the grade of Superintendents as per rules of reservation (in addition to the posts against which the officers of these communities were promoted on their own merit) and make offers of appointment/promotion in terms of rules and regulations on the subject.

(D) Official respondents shall consider those of the applicants and other eligible SC/ST officers who are in the zone of consideration for promotion against reserved posts worked out in the manner referred to at sub-paras (B) and (C) aforesaid against 160 posts for which the DPC met on 23-24.6.97. If found suitable, they shall be promoted with effect from 30.9.97 with consequential benefits as regards seniority in the grade of Superintendent. No backwages, however, shall be paid since they have not shouldered responsibilities of higher posts.

(E) In compliance with our orders aforesaid, official respondents shall hold review DPC to consider cases of applicants and other eligible SC/ST officers for promotion against reserved vacancies now being occupied by Respondents No. 5 to 34. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

(F) There shall be no order as to costs.

Locom
(S.P. Biswas)
Member (A)

Hyd 10.3.99.
(T.N. Bhat)
Member (J)