

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**



O.A No.571/2019
MA No.12/2020

Order reserved On: 04.12.2020

Pronounced On: 15.12.2020

(Through Video Conferencing)

**Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)**

Anita Rai Saxena,
W/o Sh. Sanjeev Kumar Saxena,
R/o 11-A, Amrit Puri-A (G.F.),
Gali No.2, East of Kailash,
New Delhi-110065.

Aged about 49 years
Senior Hindi Translator (Group – B)

-Applicant

(By Advocate: Mr. Ajesh Luthra)

Versus

All India Institute of Medical Sciences,
Through its Director,
Ansari Nagar,
New Delhi-110029.

-Respondents

(By Advocate Mr. Satya Swain)

ORDER

By Hon'ble Mr. Pradeep Kumar, Member (A)

1. This case pertains to All India Institute of Medical Sciences (AIIMS), New Delhi, which is an autonomous organisation under the Administrative Ministry of Health and Family Welfare under Government of India. It is alleged that certain promotions were due but have not been granted.
2. The applicant belongs to scheduled caste (SC) community and she was appointed as Junior Hindi Translator in pay scale of Rs.1400-2300 on direct recruitment basis in 1994 and joined AIIMS, New Delhi on 01.10.1994. She was promoted as Senior Hindi Translator in pay scale PB-2 + Grade Pay Rs.4600 on 14.01.2015 on her turn and on her own merit. As per the Recruitment Rules (RRs) the next promotion lies to the post of Hindi Officer in pay scale PB-3 + Grade Pay Rs.5400, after completion of 03 years of service as Senior Hindi Translator.
3. Accordingly, this promotion was due w.e.f. 14.01.2018. A draft seniority list of Senior Hindi Translator was published on 19.04.2018 and



objections were called. Since no such objections were received, this list became final. The applicant stands at serial no.1 in this seniority list.

4. There were three vacant posts of Hindi Officer and all of them were under unreserved category. A DPC was held in August, 2018, however the applicant was not considered. Two of applicant's juniors, both from unreserved category, were considered and promoted vide orders dated 29.01.2019. One post is still lying vacant.

5. The applicant preferred a representation on 06.08.2018 to Director, AIIMS, who is arrayed as the only respondent in this OA, followed by another representation dated 13.08.2018, when she was not being considered by the said DPC. Once the promotion orders for two juniors were issued, she preferred another representation to the respondents on 01.02.2019. She has been denied promotion on the plea that since the post is unreserved, she cannot be promoted as she belongs to reserved category.

However, her pleas were not accepted and her grievance was not redressed. The applicant also approached National Commission for SC. The



grievance, however, remained unresolved. Hence the instant OA has been filed.

Following relief has been sought:

- “a) Hold and declare that the applicant has wrongly been denied promotion to the post of Hindi Officer.
- b) Direct the respondents to consider the applicant for promotion to the post of Hindi Officer on her ‘own merit’ to the UR post/vacancy/roaster point w.e.f. the date her juniors have been promoted.
- c) Accord all consequential benefits including monetary and seniority benefits.”

6. The applicant relies upon the directions by Hon’ble Apex Court in **R.K. Sabharwal vs. State of Punjab**, 1995 SCC (2) 745 where the Hon’ble Court held that it is incumbent on State to reach a conclusion that backward classes, for whom reservation is made, are not adequately represented in State Services. Thereafter, post based roster needs to be followed especially for initial recruitment, wherein certain roster points need to be earmarked to the intended reserved community, to the extent of reservation to be achieved on running basis, wherein the roster point, which is not meant for a reserved community, can be occupied by a General as well as a reserved community candidate depending upon his/her turn in the select panel prepared as per the



method of appointment by promotion i.e. whether seniority-cum-suitability method or as per merit based method. As against this, the roster point for reserved community must necessarily be filled by a candidate belonging to that community only.

6.1 The operative part of this judgment reads as under:

“xxx xxx xxx

5. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve 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 Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen 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. While 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 per-centge 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 the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/ Rules providing certain percentage of reservations for the backward classes are operative the same have to be followed. Despite any number of appointment/promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and reject the same.

(Emphasis supplied)

6.2 In compliance to this judgment, post based roster was issued by DoPT vide OM dated 02.07.1997.

7. It is further pleaded that the issue raised in the instant OA, was settled in **R.K. Sabharwal** judgment by Hon'ble Apex Court (paras 6 & 6.1 supra) and thereafter this issue has never been raised in any other case. Further, while adjudicating the **Jarnail Singh vs. Lachhmi Narain Gupta**, Special Leave to Appeal (C) No.30621/2011 and batch, a Division Bench of Hon'ble Supreme Court

vide, interim order dated 17.05.2018 had reiterated the same. This order reads as under:



“It is directed that the pendency of this Special Leave Petition shall not stand in the way of Union of India taking steps for the purpose of promotion from ‘reserved to reserved’ and ‘unreserved to unreserved’ and also in the matter of promotion on merits.

Post for further orders after summer vacation.”

The applicant pleads that this is only a reaffirmation of the direction given in **R.K. Sabharwal** case (supra) for the controversy at hand in instant OA.

8. Reliance has also been placed on DoPT OM dated 11.07.2002, which is reproduced as under:

“Subject: Reservation in promotion – Treatment of SC/ST candidates promoted on their own merit.

The undersigned is directed to say that this Department has been receiving references from various Ministries etc. regarding adjustment of SC/ST candidates promoted on their own merit in the reservation rosters introduced vide DOPT’s OM No.36012/2/96-Estt.(Res.) dated 2.7.1997. While it is clear from the OM dated 2.7.1997 that the SC/ST/OBC candidates appointed by direct recruitment on their own merit and not owing to reservation will be adjusted against unreserved points of the reservation roster, doubts have been raised about SC/ST candidates promoted on their own merit. It is hereby clarified that:-

- (i) The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against unreserved points.
- (ii) **If an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder**



grade, such SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion alongwith other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point.

(iii) SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.”

(Emphasis supplied)

8.1 It was further brought out that DoPT vide their OM dated 31.01.2005 clarified that OM dated 11.07.2002 (para-8 supra) will apply with effect from the date of issue, i.e., 11.07.2002. However, vide DoPT OM dated 10.08.2010 following clarification was issued:

“Subject: Reservation in promotion – Treatment of SC/ST candidates promoted on their own merit.

xxx xxx xxx

3. The matter has been examined in the light of the above referred judgments and it has been decided to withdraw O.M. No. 36028/17/2001-Estt. (Res.) dated 31.01.2005 referred to above. **It is clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against the unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method. These orders will take effect from 2.7.1997, the date on which post based reservation was introduced.”**

(Emphasis supplied)



9. In keeping with above, it was pleaded that a reserved community candidate whose turn has come for promotion, and who is otherwise eligible and fulfils the criteria on merit, cannot be denied the said promotion on the plea that post belongs to unreserved category and accordingly the OA needs to be allowed.

10. Per contra, respondents opposed the OA. It was pleaded that the matter of reservation in promotion was considered by the Hon'ble Apex Court in **Jarnail Singh** (para-7 supra) and certain interim directions were passed on 17.05.2018 and thereafter, while adjudicating SLP (C) No.31288/2017 connected to Special Leave to Appeal (C) No.20306/2017 the Hon'ble Apex Court held as under on 05.06.2018:

“Heard learned counsel for the parties. Learned ASG has referred to order dated 17.05.2018 in SLP (C) No.30621/2011. It is made clear that the Union of India is not debarred from making promotions in accordance with law, subject to further orders, pending further consideration of the matter. Tag to SLP (C) No.30621/2011.”

The above order refers to the interim direction dated 17.05.2018 in the SLP-30621/2011, which is already reproduced in para-7 above.



10.1 In follow up to these directives, DoPT issued another OM dated 15.06.2018, wherein the above decision was communicated. Thereafter SLP No.30621/2011 (**Jarnail Singh v. Lachhmi Narain Gupta**) came up again for hearing on 15.04.2019 when approximately 110 numbers of IAs tagged with this case were listed. Following interim directions were passed:

“Issue notice in the fresh matters. Until further orders, status quo, as it exists today, shall be maintained. List all the matters on 15.10.2019.”

However, it could not come up for hearing on 15.10.2019. It came up for hearing on 22.07.2020, when following order was passed:

“Let the instant application for clarification be considered at the time of final disposal of the main matter(s). List the main matter along with all connected matters after four weeks for final disposal.”

10.2 It was, therefore, pleaded that Hon’ble Apex Court ordered *status quo* and SLP No.30621/2011 is still pending adjudication.

10.3 It was also pleaded that the matter pertaining to reservation in promotion, now stands referred to a larger bench of the Hon’ble Apex Court.



11. In keeping with above, it was pleaded that the applicant, even though the applicant is the senior-most candidate amongst senior Hindi Translators, which is the feeder post for the post of Hindi Officer, she cannot be promoted against an unreserved post, as she belongs to reserved community and this status remains unchanged despite her last promotion as Sr. Hindi Translator on merits (para-2 supra). In this regard, reliance was placed on DoPT OM dated 11.07.2002 (para-8 supra).

12. However, on receipt of her representation, respondent-AIIMS had referred the matter to Ministry of Health and Family Welfare for clarification. In turn, the Ministry referred the matter to DoPT. The response of DoPT was advised to AIIMS vide Ministry of Health & Family Welfare letter dated 16.07.2019. This reads as under:

“Sub: Clarification regarding reservation in promotion in view of DoPT instructions dated 15.6.2018 –reg.

Sir,

I am directed to refer to Institute’s letter no.F.2-2/2018-Estt (RCT) dated 05.04.2019 on the above subject and to say that the matter was examined in the Ministry and referred to DoPT for clarification in the matter. DoPT has clarified that clarification to the above can be given only after the Hon’ble Supreme Court decides that pending case on “own merit”.



DoPT has also stated that Administrative Department has to implement the provisions of OMs issued by DoPT from time to time and DoPT cannot deal with individual cases of various departments.

2. In view of the above, the Institute is requested to take action as per DoPT OM dated 15.6.2018.”

12.1 Thereafter AIIMS again sought clarification from Ministry of Health & Family Welfare, who in turn referred the matter of Ministry of Law & Justice, who replied that “*the action may be taken as per comments of DoPT.*”

Accordingly, AIIMS was advised by Ministry of Health & Family Welfare vide their letter dated 27.11.2019 to refer the matter to DoPT.

12.2 In keeping with above, following was prayed in the counter-reply by respondents:

“THAT the AIIMS, New Delhi has been conducting Departmental Promotion Committee's as per the latest DoP&T guidelines/OM dated 15.06.2018. Therefore, promotions are made only of reserved candidates to reserved seats and un-reserved candidates to un-reserved seats.

5. PRAYER

In view of the facts explained in the preceding paragraphs, it is prayed that *ibid* Original Application be dismissed, as the case is devoid of substance and merits on consideration.”

13. The applicant rebutted the contentions put-forth by the respondents. It was pleaded that after



the interim directions dated 17.05.2008 were passed in **Jarnail Singh** (para-7 supra), detailed order has also been passed in this SLP by the Hon'ble Apex Court on 26.09.2018 and as per this detailed order there is no change in respect of the issue at hand in this OA and, therefore, the directions as were held in **R.K. Sabharwal** (para-6.1 supra) continue to be fully applicable. Accordingly, the *status quo* order dated 15.04.2019 (para 10.1 supra), relied upon by the respondents, does not alter the situation at all and **R.K. Sabharwal** continues to be fully applicable.

13.1 It was further pleaded that the directions, to refer the issue of reservation in promotion to a larger bench, were passed in **State of Punjab & Ors. v. Davinder Singh & Ors.**, in Civil Appeal No.2317 of 2011 and batch, decided on 27.08.2020 by the Hon'ble Apex Court wherein following was held:

“40. **There is cry, and caste struggle within the reserved class as benefit of reservation in services and education is being enjoyed, who are doing better hereditary occupation.** The scavenger class given the name of *Balmikis* remains more or less where it was, and so on, disparity within Scheduled Caste is writ large from various reports. The sub-classification was made under Section 4(5) of the Punjab Act to ensure that the benefit of the reservation percolate down to the deprived section and do not remain on paper and to provide benefit to all and give them equal treatment, whether it is violative of Article 14? **In our opinion, it would be permissible on rationale basis to make such**



sub-classification to provide benefit to all to bring equality, and it would not amount to exclusion from the list as no class (caste) is deprived of reservation in totality. In case benefit which is meant for the emancipation of all the castes, included in the list of Scheduled Castes, is permitted to be usurped by few castes those who are adequately represented, have advanced and belonged to the creamy layer, then it would tantamount to creating inequality whereas in case of hunger every person is required to be fed and provided bread. The entire basket of fruits cannot be given to mighty at the cost of others under the guise of forming a homogenous class.

XXX XXX XXX

51. The interpretation of Articles 14, 15, 16, 338, 341, 342, and 342A is a matter of immense public importance, and correct interpretation of binding precedents in *Indra Sawhney and other decisions*. Though we have full respect for the principle of *stare decisis*, at the same time, the Court cannot be a silent spectator and shut eyes to stark realities. **The constitutional goal of social transformation cannot be achieved without taking into account changing social realities.**

52. We endorse the opinion of a Bench of 3 Judges that *E.V. Chinnaiah* is required to be revisited by a larger Bench; more so, in view of further development and the amendment of the Constitution, which have taken place.

We cannot revisit *E.V. Chinnaiah* being Bench of coordinate strength. We request the Hon'ble Chief Justice to place the matters before a Bench comprising of 7 Judges or more as considered appropriate.”

(Emphasis supplied)

It was thus pleaded that the issue referred to a larger bench pertains to sub-classification within the quota for reservation and not the issue raised in the instant OA.



13.2 It was, therefore, pleaded that the OA needs to be allowed with all consequential benefits.

14. Matter has been heard at length. Shri Ajesh Luthra, learned counsel represented the applicant and Shri Satya Swain, learned counsel represented the respondents.

15. The controversy, raised in the instant OA, lies in a narrow compass: whether a reserved category candidate who is next in turn for promotion on his/her own merit, can be promoted on an unreserved vacant post.

The issue was deliberated in **R.K. Sabharwal** (para-6.1 supra) and was settled wherein it was held that it is incumbent on State to reach a conclusion that backward classes, for whom reservation is made, are not adequately represented in State Services. Thereafter, post based roster needs to be followed especially for initial recruitment, wherein certain roster points need to be earmarked to the intended reserved community, to the extent of reservation to be achieved on running basis, wherein the roster point, which is not meant for a reserved community, can be occupied by a General as well as a reserved community candidate depending upon



his/her turn in the select panel prepared as per the method of appointment by promotion i.e. whether seniority-cum-suitability method or as per merit based method. As against this, the roster point for reserved community must necessarily be filled by a candidate belonging to that community only.

This position has remained unchanged.

16. The interim directions dated 17.05.2018 by Hon'ble Apex Court in **Jarnail Singh** case (para-7 supra), which has been relied upon by the respondents, are also to the effect that promotion for 'reserved to reserved' and 'unreserved to unreserved' as well as on merit can be continued. Thereafter, detailed order was also passed by Hon'ble Apex Court in this **Jarnail Singh** case on 26.9.2018 wherein this position remained unchanged. The order dated 15.04.2019 (para 10.1 supra) to maintain *status quo*, therefore, does not alter the directives, which were given in **R.K. Sabharwal** (para-6.1 supra).

17. The respondents have referred the issue of promotion of applicant, for clarification to DoPT as well as Ministry of Health & Family Welfare, who in turn have also consulted Ministry of Law & Justice



for clarity. They had clarified to act as per DoPT directives. The DoPT directives were issued on 11.07.2002, 31.01.2005, 10.08.2010 and 15.06.2018 (para-8 supra).

In none of these directives there is any prohibition that a reserved category candidate cannot be promoted in his/her turn on merit for a vacancy which may be earmarked for unreserved category.

Therefore, while an unreserved category candidate can be promoted against an unreserved vacancy only, a reserved category candidate can be promoted to a reserved vacancy as per reservation as well as he/she can be considered for promotion against an unreserved vacancy if he/she happens to be the next candidate in line for promotion on merit.

18. In view of the foregoing, there is merit in the OA and it needs to be allowed. Accordingly, OA is allowed.

19. The respondents are directed to consider the applicant for the vacant post of Hindi Officer by constituting a review DPC. In case she is found fit for promotion, she shall be granted promotion from



the same date her juniors were promoted, and she shall also be granted pay fixation at par with her juniors, who were promoted vide orders dated 29.01.2019. The due arrears shall also be paid.

This entire exercise shall be completed by the respondents within a period of 08 weeks from the date of receipt of a certified copy of this order. No costs.

Pending MA also stands disposed of.

(R.N. Singh)
Member (J)

(Pradeep Kumar)
Member (A)

‘San.’