

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 282/98

THURSDAY, THIS THE 9TH DAY OF JULY, 1998.

C O R A M:

HON'BLE MR. A. V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

1. G. Somenathan Nair, S/o Gopalan Nair
Traffic Inspector, Divisional Head Quarters,
Southern Railway, Palakkad residing
at Sreepadam, Perunthalmanna.
2. V. Nandakumaran S/o S.P.R. Variyar
Station Master Grade-I, Coonoor residing at
120/C, Vagdevi, Ottupatturai, Coonor,
Nilgiri, Tamil Nadu.
3. V.R. Senkaranunni Menon S/o K. M. Balakrishna Menon
Station Master, Grade-I, Kalyi
4. C. Venu S/o late A. Chakrapani
Station Master Grade-I, Madukkarai
residing at N-17, Raghana, Gandhi Nagar,
Poochira, P.O. Puthupariyaram,
Palakkad District.

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented by the
Secretary to the Government,
Ministry of Railways, New Delhi.
2. The General Manager,
Southern Railway,
Madras.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Palakkad
4. T. Balakrishnan,
Traffic Inspector
Southern Railway,
Mangalore.
5. S. Elangovan, Station Master,
Southern Railway,
Kerur.

..Respondents

By Smt. Sumathi Dandapani

The application having been heard on 16.6.98, the
Tribunal delivered the following on 9.7.98:



O R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The applicants, who belong to the cadre of Station Superintendents / Traffic Inspectors working in the Southern Railway, feel aggrieved by the finalisation of the seniority list issued on behalf of the Chief Personnel Officer, Headquarters office, Personnel Branch of the Southern Railway, Chennai. That communication dated 27.1.88 is at A7 which has been impugned by the applicants.

2. The first applicant along with a few other similarly situated persons had approached this Tribunal earlier in O.A. 375/93. In the order which was passed in that case along with other related cases on 6.9.94 at A1 the following two issues were framed as the core questions under consideration there:

"(a) Whether reservation is to be applied on the cadre strength or on the vacancies arising; and

(b) whether seniority in the lower post among employees belonging to non-reserved and reserved category would be reflected in the higher post, irrespective of earlier promotions obtained by employees belonging to a reserved category."

3. This Bench then referred to various decisions and in particular to the decision of the Allahabad High Court in J.C. Mallick & Others Vs. Union of India and Others (1978

(1) SLR 844) and Vir Pal Singh Chauhan and Others Vs. Union of India and Others (1987) 4 ATC 685 (CAT)). Following the principles laid down in those cases and a few other related cases, which are mentioned in para 2 of that order this Bench held as follows:

"Following the precedents, we hold:



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

(b) that seniority vis-a-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.

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

(emphasis supplied)

4. One of the related cases which was also decided along with O.A. 375/93 with that common order, was O.A. 1793/92. This latter O.A. was taken up in appeal in SLP before the Hon'ble Supreme Court by the respondent Department, i.e. the Ministry of Railways. The Hon'ble Supreme Court in that Appeal passed the following order (R1).

"Delay condoned.

These matter are fully covered by the decision of this Court in P.K.Sabharwal & Others. Vs. State of Punjab and others (1995 (2)SCC 745) and Ajith Singh Januja and Ors Vs.State of Punjab and Others (AIR 1996 SC 178). The special leave petitions are therefore dismissed."

This order was dated 30.8.96 in Civil Appeal in SLP No. 10691/95.



5. In the meanwhile the first applicant had filed O.A. 1488/95 Impugning the Seniority List of the Station Supdts./Traffic Inspectors (the present cadre) which was published on a provisional basis. They also sought for a direction to be issued by this Bench to the respondents to make further promotions to the next higher grade carrying the scale of pay of Rs. 2375-3500 (unrevised) only on the basis of inter-se seniority of the officers in the entry grade. The same first applicant filed one more O.A.85/97 claiming that the respondents should prepare the final seniority list on the basis of the judgment of of this Bench in O.A. 375/93 and should review the promotions which had already been made. These two O.As i.e. O.A. 1488/95 and O.A. 85/97 and other connected matters, were disposed of by this Bench with an order dated 29.10.97. The operative part of that order is reproduced below:

When the matter came up for hearing today, the learned counsel for applicants submitted that the Railway Board has since issued an order dated 21.8.97 in which the instructions have been issued on how the Supreme Court's judgment in R.K. Sabharwal Vs. State of Punjab (AIR 1995 SC 1371), Union of India and Others Vs. Virpal Singh Chauhan and Others (AIR 1996 SC 448) and J.N.Malik Vs. Union of India (1978 (1) SLR 844) are to be implemented. The grievance of the applicants will be crystallised after the implementation of these instructions and applicants will have to frame their grievances in an appropriate manner after the implementation of this order.

We, therefore, direct the respondents Railways to carry out the instructions in the circular of the Railway Board referred to above and draw the roster as directed therein within a period of three months and prepare a provisional seniority list on the basis of



the revised roster. Applicants will thereafter, be given adequate opportunity to represent if so advised against the provisional list drawn up in terms of the directions above. Respondent Railways will thereafter finalise the revised seniority list and communicate it to the applicants. Till this exercise is carried out the interim order already in force will continue."

(underlined for emphasis)

6. The respondents thereafter published the provisional combined seniority list for the cadre of Station Supdts./Traffic Inspectors in the scale of Rs. 2000-3200 (Rs. 6500-10,500) in the revised scale) on 16.12.97, a copy of which is available at A4. They also called for representation if any regarding the said provisional combined seniority list to be submitted before 5.1.98. The first applicant submitted his representation dated 22.12.97 in response thereto. His representation is found at A6. In the said representation, he requested the respondents to make a copy of the revised roster prepared as per the directions of this Bench, mentioned above, at A2, i.e. the order in O.As 1488/95 and O.A. 85/97, among other O.As. According to the first applicant that would enable him to make an effective representation against roster and in respect of the provisional seniority list. Nonetheless, in the representation the main grievance which was ventilated by the first applicant was as follows and we quote:

"In the Railway Board circular, it was directed that the officials in position as on 10.2.95 and to identify the posts at roster point against which each of them were appointed/promoted. Such an exercise is not undertaken as is evident from the provisional seniority list, which is only verbatim reproduction of the list which existed earlier.

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If the judgments of the Hon'ble Tribunals and those of the Supreme Court are understood correctly and implemented properly, the seniority in the entry cadre will be reflected in the promoted cadres. But, the benefit of such seniority will be available with effect from 10.2.95. This result can be achieved only by notionally working out the seniority of all employees in service as on 10.2.95 by a just and fair process, applying the law declared by the Court. One way of achieving the correct result in reckoning the seniority of those who were promoted on the basis of reservation with effect from the date on which they would have been promoted to the higher grade, had they been not granted the accelerated promotion on the basis of reservation. It may also be possible to achieve the same result by reckoning the seniority of those promoted on the basis of general merits (unreserved) with effect from the date of promotion of his immediate junior, who was promoted on the basis of reservation. The notional dates suggested above need only be taken as the basis of reckoning the seniority for further promotion and that is done, one who gets accelerated promotion on account of reservation will not have the benefit of unintended seniority.

As can be seen from the seniority list, almost more than 50% of the higher posts are held by members of the reserved community. Apparently, this is the result of grant of reservation coupled with

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accelerated seniority. Such a result will be
anilitative of the Constitutional mandate contained
in Article 335, according to which the claims of
members of SC & ST shall be taken into consideration,
consistently with the maintenance of efficiency of
administration.

By monopolising the higher position to reserved
category alone, the rights of those seniors in the
unreserved category for equality of opportunity is
denied. Therefore, a realistic and pragmatic approach
by the administration will be required, so as to avoid
infringement of legitimate expectation."

(emphasis supplied)

7. The reply given to that representation made by the first applicant is seen at A7 issued from the office of the Chief Personnel Officer, Southern Railway, Chennai dated 27.1.98. It was stated there that this representation had been carefully examined and that in obedience to the directions issued by this Bench, the roster had been recast as per the orders of the Railway Board dated 21.8.97. In the said reply it was also mentioned that since this Bench did not specifically direct that a copy of the revised roster should be circulated, the respondents did not find it necessary to circulate a copy of that revised roster.

The respondents have also stated as follows:

" You are further advised that the Railway Board vide
their letter dated 28.2.97 copy of which is enclosed
have laid down principles of determining the seniority
of staff belonging to SC/ST promoted earlier vis-a-vis
General/OBC staff promoted later. You may kindly
note that this modified rule for determining seniority
comes into effect with effect from 10.2.95. You have

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entered the grade of Rs.2000-3200 on 29.6.91 which is much before the crucial date of 10.2.95."

(Emphasis supplied)

8. The applicants feel that the decision taken by the respondents based on the above rational is not correct and according to them that position is not in accordance with the order passed by this Bench in O.As 1488/95 and O.A. 85/97 , along with some more related OAs which were disposed of by this Bench by that common order at A2, which we have already referred to and quoted from verbatim above.

9. The main grounds taken by the applicants for maintaining that impugned finalised seniority list of the Station Supdts./Traffic Inspectors in the pre-revised scale of Rs. 2000-3200 is invalid, are summarised below.

10. According to the applicants the contention of the respondents that they had actually prepared a revised post-based roster for the cadre of Station Supdts./Traffic Inspectors before they published the provisional seniority list for that cadre at A4 is not true. It is so because that order is dated 16.12.97 whereas under the order of the CPO, Personnel Branch, Headquarters Office, Southern Railway, Chennai circular instructions were issued dated 29.12.97, which for the first time prescribed the manner and the form in which the revised post-based roster had to be prepared. Therefore, the applicants have argued, the provisional seniority list could not have been prepared and published on 16.2.97 following the preparation of a revised post-based roster which was initiated only on 29.12.97.

11. The applicants have also questioned the rational behind the stand taken by the respondents and communicated

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to the first applicant through their letter dated 27.1.98 at A8 which we have already mentioned. The basic stand of the respondents is that the existing position of seniority for the SCs and STs in the cadre of Station Supdts./Traffic Inspectors cannot be changed because the principles laid down by the Hon'ble Supreme Court do not contemplate any revision of those seniority positions, if their promotions to this cadre of Station Supdts./Traffic Inspectors had taken place prior to 10.2.95. According to the applicants such a stand is based on a misconception of the principles laid down by the Hon'ble Supreme Court both in R.K. Sabharwal Vs. the State of Punjab and Union of India Vs. Virpal Singh Chauhan, which two rulings were specifically attended to in the A2 order of this Bench. They have further contended as follows:

"Prospectivity as far as the present case is concerned means and can mean only one thing. Prospectivity in granting benefits like further promotion, and not unsettling the promotion already granted. It does not and cannot mean that seniority also will be revised prospectively. Respondents failed to understand this Annexure A9 in so far as it is prospective only is illegal.

The Supreme Court never intended the SC/ST candidates to get accelerated seniority along with their accelerated promotion on account of reservation. The respondents Railways are over reaching the direction of the Hon'ble Apex Court.

The judgment of this Hon'ble Tribunal which became final does not permit prospective implementation of

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the principle of seniority. Assuming that a
prospective implementation is possible in law,
seniority in accordance with rules must be reflected
in the gradation list as on 10.2.95, and all future
promotion must be based on such gradation list. Any
promotion made prior to 10.2.95 may not be affected.

This is just, reasonable and proper way of implementing a revised seniority with prospective benefits avoiding perpetuation of injustice.

(highlighted by us)

12. Given the history of this case and the developments which have taken place so far both on the plane of rules which should govern the promotion of these different categories of employees, as laid down by the Hon'ble Supreme Court and on the plane of the more specific order passed by this bench at A2 in O.A. 1488/95 and O.A.85/97, it has become necessary for us to examine carefully whether in the first instance, the applicants were rendered unable to make an effective representation against the Provisional Seniority List published with the communication dated 16.12.97 (A4) on the alleged ground that the revised post-based roster which should have been the basis for the revision of the earlier provisional seniority list had not been made available to the applicants in spite of their request for the same.

13. On this particular score we are unable to agree with the learned counsel for the applicants that the failure of the respondents to make available a copy of the revised post based roster to the applicants in response to their representations against the said revised provisional seniority list, has in any manner, prejudiced their right to

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make an effective representation against that list. Our decision on this point is based squarely on the fact that the basic challenge to the provisional seniority list, as we have quoted above from the illustrative representation made by the first applicant against that list was the application of a particular working rule for retrospective revision of the existing inter-se seniority between the reserved categories of SCs/STs and others in the cadre concerned. Since it has been clearly admitted by the respondents that the revised roster had not been prepared based on that principle of retrospectivity, the applicants, in effect, did have the same opportunity of stating their case against the provisional seniority list as if the roster based on that principle, not acceptable to them, had been made available to the applicants. This right of representation the applicant doubtless had which they actually exercised. It is an entirely different matter that the respondents did not agree that the manner, in which the applicants wanted the working rule or the doctrine of retrospectivity vis-a-vis prospectivity to be applied, was the correct manner. In fact this basic disagreement was communicated to the first applicant through A7 dated 27.1.98 in response to his representation, which we have already mentioned.

14. We may now examine what the basic position of the applicants is in respect of the principles to be followed in revising the seniority list of Station Supdts./Traffic Inspectors. According to the applicants the principle laid down by the Hon'ble Supreme Court in Sabharwal's case and Virpal Sing Chauhan's case mentioned above enjoins upon the administration to restore the inter-se seniority of



employees belonging to the categories other than SC/ST vis-a-vis those coming under SC/ST categories from the time of their first promotion from the initial cadre. It is evident that this would entail re-working the seniority positions in each of the intermediate promoted cadres based on the original seniority of the employees in the initial cadre.

15. The applicants have maintained that the revision of the inter-se seniority positions should be based on the now well established principle of post-based roster for each tier of promotion after providing for percentage based allocation of posts for the reserved categories and specification of individual slots therein based on such reservation. They have contended further that the employee belonging to the unreserved categories should be accorded revised seniority positions in a given cadre, after re-working the inter-se seniority on the above lines. Thereafter, based on such revised seniority positions, wherever promotions to the next higher cadre are being and have been given since 10.2.95, i.e. the effective date for following the decision of the Hon'ble Supreme Court on post-based reservation in Sabharwal's case, such promotions should be regulated. They have argued that this revision in the present and given cadre can only be based on the inter-se seniority positions in the initial cadre of the employees belonging to unreserved categories vis-a-vis the employees belonging to reserved categories like SC/ST. They have further maintained that the above working rule must be followed irrespective of the fact that some or most of the promotees belonging to these reserved categories now



working in a given cadre may have been promoted to various intermediate cadres including the cadre immediately below the given cadre, or further down the line, and even though the promotions granted to these employees of the reserved categories to the some or all of the intermediate cadres may have been based on their seniority determined by the length of service in those respective immediate cadres.

16. We observe that the above represents the essence of the arguments advanced on behalf of the applicants.

17. The learned counsel for the applicants, while strenuously arguing in favour of this approach, has relied strongly upon the ruling of the Hon'ble Supreme Court in *Ajit Singh Januja Vs. State of Punjab* (AIR 1996 SC 181) where according to him the principle of retrospectivity was clearly laid down.

18. Finally, the applicants had sought the following reliefs:

i) To quash Annexure A7 seniority list and to direct the respondents to prepare a revised seniority list based on a post based roster in full compliance with Annexure A2 final order and also following the principles laid down by the Apex Court in *Virpal Singh Chauhan's case*, by resorting to entry level seniority in all promoted cadres.

ii) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and

iii) Grant the costs of this Original Application."



19. The official respondents have opposed the reliefs claimed by the applicants. They have stated that they have faithfully carried out the directions given by this Bench in O.As. 1488/95 and O.A. 85/97, amongst other O.As, seen at A2. According to them, they had prepared the revised post-based roster based on the Railway Board Circular dated 21.8.97 prior to the publication of the provisional seniority list, basing that provisional seniority list on such a revised post-based roster and particularly reflecting therein the revised seniority positions of those promoted to the cadre of Station Superintendents/Traffic Inspectors after 10.2.95. They have averred further that the revised seniority list so prepared was based on the inter-se positions of such employees in the cadre immediately below, irrespective of whether after 10.2.95 some of the employees belonging to the reserved categories; were promoted earlier than those belonging to the unreserved categories. They have stated that thereafter, they had called for representations, if any, against the said provisional seniority list and that it was only after considering those representations that they finally published the impugned seniority list at A7.

20. The official respondents have specifically maintained that all the applicants having been promoted to the given cadre of the Station Superintendents/Traffic Inspectors prior to 10.2.95, they could not be given the benefit of the above revised allocation of seniority positions. Following the principles laid down by the Hon'ble Supreme Court in the above two cases, i.e., Sabharwal's case and Vir Pal Singh Chauhan's case, the respondents have essentially argued, there is no warrant for revising the inter-se seniority position in the given cadre of Station Superintendents/Traffic Inspectors by reflecting the inter-se seniority of all the

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employees as it stood in the initial cadre.

21. The learned counsel for the respondents has specifically argued that no such exercise is contemplated under any of the rulings of the Hon'ble Supreme Court mentioned in the directions issued by this Bench in the order at A.2 or under the circular instruction of the Railway Board issued in August, 1997, which has been referred to in that order.

22. Finally the respondents have denied that non-production of the post-based roster has in any manner affected the right of the applicants in making a proper and effective representation against the provisional seniority list. It has been pointed out further by them that under the direction of the Bench at A2 there was no such stipulation either.

23. We have already considered this last point and we are in agreement with the contention made on behalf of the respondents on this particular aspect of the present case.

24. The respondents have finally prayed for the dismissal of the O.A.

25. We have carefully gone through the pleadings and materials made available to us by the parties and heard the learned counsel appearing for them.

26. To consider the main grievances of the applicants and the issues involved in the present O.A. a good starting point would be to consider what exactly are the directions given by this Bench in O.As.1488/95 and 85/97 at A2. We have already reproduced that short common order passed by this Bench in these two OAs, inter alia.

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27. It is evident that in terms of A2, the allegation of inadequate or improper compliance of these directions made against the respondents by the applicants will primarily have to be examined with reference to the ruling laid down by the Hon'ble Supreme Court in Sabharwal's case and then in Vir Pal Singh Chauhan's case.

28. In Sabharwal's case the Hon'ble Supreme Court has unequivocally laid down the following principles.

- (i) "..... the percentage of reservation for the purpose of promotion in the promoted cadre, has to be worked out in relation to the number of posts which form the cadre strength. The concept of vacancy has no relevance in operating the percentage of reservation."
- (ii) "When all the roster points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre had full representations of the Scheduled Castes/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong."
- (liiii) "..... 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 reserved 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

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point it would be open to the State Government to carry forward the point in a just and fair manner."

29. This order of the Supreme Court, from which the above excerpts have been quoted, was delivered on 10.2.95 and it was laid down by the Hon'ble Supreme Court subsequently that the above principles will only have prospective effect. We observe that the object, which the Hon'ble Supreme Court decided should primarily be achieved by the preparation and operation of a post-based roster in the above manner, is what has been described in the same Sabharwal's case as "the balance between the reserved category and the general category shall always be maintained". As we shall see later, because of accelerated promotions based on seniority in an intermediate feeder cadre, i.e, above the very initial cadre, granted to the reserved category against the slots which were technically general category slots, this balance can hardly be achieved even in future, if the principle of post-based roster is applied only prospectively for a given cadre which is situated several tiers above the initial cadre. However, while interpreting the above principle of post-based roster and the manner of its preparation and application as laid down in Sabharwal's case, the administration is required to follow the rules specifically laid down by the Hon'ble Supreme Court subsequently in that context.

30. In Virpal Singh Chauhan's case in para 24 of their judgment, the Hon'ble Supreme Court laid down the principle of revision of seniority in the following terms:

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"It was held by this Court that such a concession can also be provided under Article 16(4). In short, it is open to the State, if it is so advised, to say that while the rule of reservation shall be applied and the roster followed in the matter of promotions to or within a particular service, class or category, the candidate promoted earlier by virtue of rule of reservation/roster shall not be entitled to seniority over his senior in the feeder category and that as and when a general candidate who was senior to him in the feeder category is promoted, such general candidate will regain his seniority over the reserved candidate, notwithstanding that he was promoted subsequent to the reserved candidate. there is no unconstitutionality involved in this. It is permissible for the State to so provide."

(underlined by us)

However, in para 27 of the same judgment the Hon'ble Supreme Court has held as follows:-

"We are of the opinion that the aforesaid circulars/letters provided for reservation in favour of Scheduled caste/Scheduled Tribe candidates, rosters and their operation and on the subject of seniority as between general candidates and reserved category candidates, being in the nature of special rules prevail over the general instructions contained in Col.I of the Indian Railway Establishment Manual, including those contained in paras 306,309 and 319 et al. Accordingly, we agree with the conclusion of the

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Tribunal in the order under appeal (Virpal Singh Chauhan), though we may not agree with all the reasons given by the Tribunal. In other words, we may not agree with the view expressed by the Tribunal that a harmonious reading of clauses (1) and (4) of Article 16 should mean that a reserved category candidate promoted earlier than his senior general category candidate in the feeder category shall necessarily be junior in the promoted category to such general category candidate. No such principle may be said to be implicit in the said clauses. But inasmuch as the Railway Board's Circulars herein concerned do provide specifically for such a situation and since they cannot be said to be violative of the constitutional provisions, they must prevail and have to be given effect to. It is not brought to our notice that the said instructions are inconsistent in any manner with any of the statutory provisions or statutory rules relevant in this behalf." (underlined by us)

31. The position emerging from the rulings of the Hon'ble Supreme Court quoted above appears to us to be that it is permissible to prescribe that the inter-se seniority of the employees belonging to unreserved category vis-a-vis those belonging to the reserved categories like SCs/STs in the feeder cadre will be restored in the promoted cadre even if the employees belonging to the general category are promoted later than the employees belonging to the reserved categories.

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32. However we are unable to persuade ourselves that the rulings of the Hon'ble Supreme Court in the above two celebrated cases specifically enjoin upon the administration to follow this principle of restoration of inter-se seniority from all the intermediate feeder cadres right upto a given cadre from which further promotions after 10.2.95 are being considered.

33. On the other hand the entire set of reliefs prayed for by the applicants in this case are based squarely on such a requirement. We are therefore unable to agree with the applicants that such a requirement to be complied with by the administration has indeed been laid down as a rule by the Hon'ble Supreme Court in the two cases discussed above.

34. Since the learned counsel at the stage of arguments referred pointedly to Januja's case (AIR 1996 SC 1189), it may be necessary for us to refer to the rule laid down in that case by the Apex Court. We observe that in this case the Hon'ble Supreme Court had also discussed the judgments in Virpal Singh Chauhan's case, in Sabharwal's case and in the earlier Indra Sahney's case (1992)Sup.3 SCC 217. We quote the relevant paras from that judgment of the Hon'ble Supreme Court in Januja's case, below:

"16. We respectfully concur with the view in Union of India v. Virpal Singh Chauhan JT(1995) 7 SCC 231,(supra) that seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e., with reference to their inter se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give

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the accelerated 'consequential seniority'. If a Scheduled Caste/Scheduled Tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category candidate is promoted later to that higher grade the general category candidate shall regain his seniority over such earlier promoted scheduled caste/tribe candidate. As already pointed out above that when a scheduled caste/tribe candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such scheduled caste/tribe candidate, in this process he does not supersede his seniors belonging to the general category. In this process there was no occasion to examine the merit of such scheduled caste/tribe candidate vis-a-vis his seniors belonging to the general category. 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~~ for him. Whenever a question arises for filling up a post reserved for scheduled caste/tribe candidate in 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 still higher grade then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of

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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 one stage by person who have not only entered in service on 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 requirement or the spirit of Article 16(4) or Article 355 of the Constitution.

17. According to us, the Full Bench was not justified in saying in the case of Jawant Singh v. Secretary to Govt. of Punjab (1989)4 SLR 257(FB) (supra) that non consideration of Scheduled Castes candidates against general category posts on 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 Judges Bench in the case of Indra Sawhney 1992(Supp)3 SCC 217(supra) as well as the view expressed by the Constitution Bench in the case of R.K.Sabharwal(1995) 2 SCC 745(supra)".

35. We find thus that it is only in Juneja's case mentioned above that clear principles of retrospectivity for revision of inter se seniority were laid down by the Hon'ble Supreme Court. The applicants' case before us in our opinion, is well supported by the principles laid

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down by the Hon'ble Supreme Court in Januja's case.

36. We have also noted that the said ruling of the Hon'ble Supreme Court in Januja's case was pronounced by a three member Bench, though the decision in Virpal's case was rendered by a smaller Bench of two members.

Further, our attention has pointedly been drawn to the case, Sube Singh Bahmani vs. State of Haryana and others reported in (1997)(6) SCC 765. Here a two member Bench of the Hon'ble Supreme Court has discussed the decision in Januja's case and directed as follows:

"It, however, appears that in the ultimate order passed in the said case, this court allowed retrospective operation of the above principle of seniority in the matter of promotion, although in Virpal's case only prospective operation was indicated. It also appears that later on, persons who were affected on account of giving such retrospective operation to the principle of seniority, made an application for clarification of the said order in Januja's case, but such application was dismissed without making any observation on the question of prospectivity or retrospectivity. Since the correctness of the ultimate decision in Januja's case has been raised and a large number of persons are likely to be affected if retrospective operation is given on the basis of the ultimate order made in Januja's case we feel that it would be only proper if these matters are considered by a three-Judge Bench." (underlined by us)

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37. We have not been told that since the above order was passed, the Hon'ble Supreme Court has further pronounced on the matter.

38. In the above circumstances the only valid position that one can maintain is that the clear principle of retrospectivity to be applied all the way to the initial feeder cadres, laid down in Januja's case, has now become somewhat doubtful of application and the administration cannot be called upon to implement that principle compulsorily in all cases.

39. The Railway Board circular dated 21.8.97(A3), which is the other pillar on which the applicants have based their case, lays down the following principles for the preparation of the post-based rosters. We quote:-

"4. The principles for preparing the rosters elaborated upon in explanatory notes are briefly recapitulated below:-

(a) The number of points in the roster be equal to the number of posts in the cadre.

In case there is any increase or decrease in the cadre strength in future, the roster shall be expanded or contracted correspondingly.

(b) Cadre, for the purpose of roster, shall mean a particular grade and shall comprise the number of the posts to be filled by a particular mode of recruitment in terms of the codal manual provisions or Railway Board's instructions issued from time to time.

Thus in a cadre of, say 200 posts where the recruitment rules prescribed a ratio of 50:50 for direct recruitment and promotion, two rosters one for direct recruitment and another for promotion (where reservation in

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promotion applies) each comprising 100 points shall be drawn upon on the lines of the respective model rosters. The cadre also means the sanctioned temporary posts, workcharted posts, supernumerary posts, shadow posts in the grade.

"5..... This will be done starting from the earliest appointment made and making appropriate remarks 'utilised by SC/ST/OBCs/General' as the case may be, against each point in the rosters as explained in explanatory note as given in the Annexure.1. In making these adjustments, the appointments of candidates belonging to the SC/ST/OBCs which were made on merit (and not due to the reservation) are not to be counted towards reservation. In other words they are to be treated as general category appointments.

6. Excess, if any, would be adjusted through future appointments and the existing appointments would not be disturbed.

7. While preparing post-based rosters, care should be taken to ensure that reserve roster points are spread over evenly and not kept together as far as possible."(emphasis supplied)

40. From the relevant extracts from the circular instructions issued by the Railway Board quoted above, it is again evident that even those instructions do not specifically require that the inter-se seniority in a given cadre between the promotees in that cadre belonging

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to the reserved categories for promotions effected prior to 10.2.95 will have to be reworked based on the principles laid down by the Hon'ble Supreme Court in Januja's case. It is so, because merit-based promotions from the intermediate cadres, i.e., just above the initial cadre, upwards right upto a given cadre are normally based on the principle of seniority and absence of adverse entries in the ACRs, unless such promotions are specifically based on selection, if so required under Cadre and Recruitment Rules. Thus, as the Railway Board circular at A3 prescribes that when based on merits SC/STs candidates have been promoted in the past, they will have to be as general category promotions, the reworking of seniority based on these instructions of the Railway Board can hardly be considered as supportive of the applicants' case.

41. We accept the position that if the principles laid down in Sabharwal's case are applied only for working out the inter-se seniority in a promoted cadre from a given cadre based on a post-based roster for the promoted cadre, where promotions take place after 10.2.95, the promotees who have obtained accelerated promotions based on the fact that they belong to the reserved categories will continue to occupy the slots meant even for the general categories in an overwhelming fashion in the promoted cadre. Thus the object of ensuring the balance based on equity and parity between the promotees belonging to the reserve categories who have obtained such accelerated promotion in the intermediate tiers of promoted cadres, vis-a-vis the promotees belonging to the unreserved categories which

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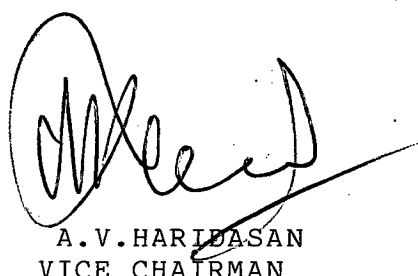
can reasonably be derived as a principle from Sabharwal's case cannot be achieved. That is the position because evidently the reserved category promotees who have already obtained accelerated promotions will have to be treated as if they have been promoted to the slots meant for unreserved categories by virtue of their seniority in the given cadre based on the length of service therein. However, as we have analysed above, the effect of the various rulings of the Hon'ble Supreme Court read with the Railway Board circular dated 1.8.97 does not point a clear way out of this situation which is legally binding.

42. In the absence of any such definitive and binding ruling of the Hon'ble Supreme Court we find ourselves unable to stretch the principle of equity and fair treatment and to call upon the administration to apply rigorously the principles laid down in Januja's case.

43. In the light of the detailed discussions made above, we cannot grant the reliefs prayed for by the applicants. In the result the application is dismissed. There shall be no order as to costs.



S.K. GHOSAL
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A1: Judgement in O.A.375/93 and connected cases dated 6.9.94 of the Central Administrative Tribunal, Ernakulam Bench.
2. Annexure A2: Common order dated 29.10.97 in OA 1488/95, 85/97 of the Central Administrative Tribunal, Ernakulam Bench.
3. Annexure A3: Railway Board Circular dated 21.8.97 No. 95-E(SCT)1/49/5(1) issued by Executive Director(Estt) (Res) Railway Board.
4. Annexure A4: Memo dated 16.12.97 No.P(S) 612/II/10/SSs TIS/Vol.III issued by Chief Personnel Officer, Head Quarters Office, Personnel Branch(Southern Railway) Chennai - 600 003.
5. Annexure A6: Representation dated 22.12.97 submitted by the 1st applicant to the Divisional Personnel Officer, Palghat.
6. Annexure A7: Seniority list along with the forwarding letter No.P(S) 612/II/10/SSs/TIs/Vol.III dated 27.1.98 issued by the Chief Personnel Officer, Southern Railway, Head Quarters Office, Personnel Branch, Chennai.
7. Annexure A8: Letter dated 27.1.98 No.P(S) 608/II/SMs/SN issued by the Chief Personnel Officer, Southern Railway, Headquarters Office, Personnel Branch, Chennai - 600 003.

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