

22 R D Sawant

working with the Central
Railway, Matunga, Mumbai
(By Adv. Mr. G K Masand)

V/s.

1. Union of India
2. General Manager
Central Railway
Bombay VT
3. Chief Electrical Engineer
Central Railway
Bombay
4. Sujan Singh
working as Deputy Chief
Electrical Engineer (G)
in the Carriage and Wagon
Workshop, Central Rly.,
Bombay

(By Mr. M I Sethna, Central
Government Senior Standing
Counsel with Mr. V G Rege and
Mr. S C Dhawan, Counsel)

.. Respondents

O.A. 511/88

S P Inamdar
(By Adv. Mr. V K Pradhan)

.. Applicant

V/s.

1. Union of India
through PMG
Maharashtra Circle
Mumbai
2. The Chairman
Postal Service Board
New Delhi-1
3. The PMG
Maharashtra Circle
Bombay-1
4. Shri M R Hile
P.M. HSG-I
Nariman Point PO
Bombay

5. L B Bhavar
 P.M. HSG-I
 Jalgaon HPO
 Jalgaon

6. C Nimkar
 P.M. HSG-I
 Malegaon HPO
 Malegaon

(By Mr. P.M. Pradhan,
 Central Government Standing
 Counsel)

.. Respondents

O.A. 636/88

1. Welfare Association of SC/ST/BC
 in the Customs Central Excise
 Income Tax Department through
 its President Shri M G Nikale
 7/138 Jai Vikrant
 Sahakar Nagar Group 5
 Shell Colony Road
 Chembur, Bombay 71

2. Shri S M Khade
 Office Superintendent

(By Adv. Mr. D V Gangal)

.. Applicants

V/s.

1. Union of India
 through Secretary
 Ministry of Finance
 Department of Revenue
 New Delhi

2. The Collector of Customs
 New Customs House
 Bombay 400038

(By Mr. M I Sethna, Central
 Government Senior Standing
 Counsel)

.. Respondents

O.A. No. 403/89

1. All India SC/ST Association
 of Railway Employees
 (Rakot Division)
 through its President and
 Vice President
 C/o. G S Walia, Advocate
 CAT, Mumbai

2. R M Parmar
Office Superintendent
Divisional Office
Western Railway
Rajkot (Gujarat)

By Mr. G S Walia,
Counsel for Applicants

V/s.

Union of India
through the General Manager
Western Railway
Churchgate
Bombay 20

(By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
and Mr. V G Rege,
and Mr. NIK Srinivasan)

O.A. No. 425/89

1. All India SC/ST Rly.
Employees Association
having its office at
10/84 Sahakar Nagar No.5
Chembur, Mumbai-71

2. K M Uke
C/o. Shri D V Gangal
Advocate, CAT, Mumbai

(By Adv. Mr. D V Gangal)

V/s.

1. Union of India
Through General Manager
Central Railway
Mumbai

2. The Cheif Personnel Officer
Central Railway
Bombay

(By Mr. M I Sethna, Central
Government Senior Standing
Counsel, with Mr. V G Rege,
S C Dhawan and Mr. V S Masurkar
Counsel)

..Respondents

21.

2. R M Parmar
Office Superintendent
Divisional Office
Western Railway
Rajkot (Gujarat)

By Mr. G S Walia,
Counsel for Applicants

V/s.

Union of India
through the General Manager
Western Railway
Churchgate
Bombay 20

(By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
and Mr. V G Rege,
and Mr. NIK Srinivasan)

O.A. No. 425/89

1. All India SC/ST Rly.
Employees Association
having its office at
10/84 Sahakar Nagar No.5
Chembur, Mumbai-71

2. K M Uke
C/o. Shri D V Gangal
Advocate, CAT, Mumbai

(By Adv. Mr. D V Gangal)

V/s.

1. Union of India
Through General Manager
Central Railway
Mumbai

2. The Cheif Personnel Officer
Central Railway
Bombay

(By Mr. M I Sethna, Central
Government Senior Standing
Counsel, with Mr. V G Rege,
S C Dhawan and Mr. V S Masurkar
Counsel)

..Respondents

O.A. 856/89

1. All India SC/ST Railway Employees Association
Central Railway
Divisional Branch
Bhusaval
through its Divisional President V E Rajguru having their office at Quarter No.D/167, 12 Blocks Avmowry Road Bhusaval 425501

2. Shri G R Thakur
Chief Booking Supervisor
Central Railway, Jalgaon
Vitthal Peth; House No.520
Jalgaon

(By Adv. Mr. D V Gangal)

..Applicants

v/s.

1. The General Manager
Central Railway
Bombay VT
2. The Divisional Railway Manager
Central Railway
Bhusaval

(By Mr. M I Sethna, Special Counsel with Mr. S C Dhawan
Mr. V G Rege,
Counsel)

..Respondents

O.A. No.973/89

1. All India SC/ST Railway Employees Association through L D Jagzap Divisional Secretary Solapur Division 1/1 Sanjay Nagar Kumtha Naka, Solapur
2. Laxman Bhagwantrao Gaikwad Transportation Inspector Office of Divisional Railway Manager, Central Railway, Solapur Quarter No.RD.2/II/8/180, Modi Colony, Solapur

(By Advocate Mr. D V Gangal)

..Applicants

V/s.

Union of India through

1. The General Manager
Central Railway
Bombay VT

2. Chief Personnel Officer
Central Railway
Bombay VT

(By Mr. M I Sethna, Special
Counsel with Mr. S C Dhawan
and Mr. V G Rege,
Counsel)

T.A. No. 22/91

All India SC/ST Railway
Employees Association
through U D Phulpagar
President of Running Staff
Branch, Office at Block No.A-40
Nava Yashodhara Cooperative
Housing Society, Bhandup Village
Mumbai-78

(By Adv. Mr. D V Gangal)

..Respondents

..Applicants

1. The Union of India
through Ministry of Transport
Department of Railways
Railway Board
New Delhi 110001

2. General Manager
Central Railway
Bombay VT, Mumbai

3. The Divisional Railway Manager
Central Railway,
Mumbai

4. The Assistant Labour Commissioner(C)
(Government of India)
Sprott Road,
Baltard Estate,
Mumbai 400038

(Respondents 1 to 3 by Mr. M.I.
Sethna, Central Government Senior
Standing Counsel, with Mr. V.G Rege
and Mr. S.C Dhawan, counsel)

..Respondents

T.A. No.33/91

1. Madhukar A. Kamalpurkar
2. Anant S. Nitkanthan
3. Narayan D. Upasani

(By Adv. Mr. G D Samant)

. . . Applicants

V/s.

1. The Union of India
through Ministry of Transport
Department of Railways
Railway Board
New Delhi 110001
2. General Manager
Central Railway
Bombay VT, Mumbai
3. The Chief Commercial Superintendent
Central Railway
Mumbai
4. Chief Claims Officer
Central Railway
Bombay

(By Mr. M I Sethna, Special
Counsel with Mr. S C Dhawan
and Mr. V G Rege,
Counsel)

. . . Respondents

T.A. No.34/91

1. V H Jariwalla
2. R K Gupta
3. M G Shahani
working in the Western
Railway, Bombay

(By Advocate Mr. G K Masand)

. . . Applicants

V/s.

1. Union of India through
General Manager
Western Railway
Churchgate, Mumbai

2. Railway Board through
its Chairman
Rail Bhawan, New Delhi
3. Shri M N L Sharma
Divisional Railway Manager
Western Railway
Bombay

(By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
Mr. V G Rege, & Mr. N K Srinivasan
Counsel)

.. Respondents

O.A. 484/93

1. Shiv Dutt
2. G M Sharma
3. T Sundaram
4. Puran Singh
5. Smt. Rajamma N
6. P. Bhatnagar
7. R. Verma

(By Adv. Mr G S Walia)

.. Applicants

V/s.

1. Union of India
through Secretary
Railway Board,
Ministry of Railway,
New Delhi 110001
2. General Manager
Western Railway
Churchgate, Mumbai 20
3. I G Shrimali
4. M L Sivasai

Respondents 3 and 4 working
as APOs

(By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
and Mr. V G Rege,
Counsel, for Respondents
Nos. 1 and 2 only)

.. Respondents

O.A. No. 485/93

1. L.P. Mishra
2. Manohar P.Tahiliani
3. Bhika Ramji
4. B.P. Singh

All working as Ticket
Checking Staff in the
Commercial Department
of Bombay Division
Western Railway,
Bombay - 400 008

(By Adv. Mr.G.S.Walia)

..Applicants.

V/s.

1. Union of India through
General Manager,
Western Railway,
Churchgate,
Bombay -400 020;
2. Divisional Railway Manager,
Western Railway,
Bombay Central,
Bombay - 400 008.

(By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
and Mr. V G Rege,
Counsel)

..Respondents

O.A. No.487/93

1. Harinder B.Samant
2. J.R.Singh

Working as Station Supdt.
Western Railway,
Bombay.

(By Adv. Mr.G.S.Walia)

..Applicants

V/s.

1. Union of India
through General Manager
Western Railway
Churchgate
Mumbai 400020

2. Divisional Railway Manager
Western Railway
Bombay Central
Bombay 400008

(By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
and Mr. V G Rege,
Counsel)

.. Respondents

Mr. D V Gangal, Counsel

.. for Intervenors

O.A.571/93

1. D M Karane

2. T N Pandey

Working as Head Clerk
Western Railway
Bombay

(By Adv. Mr. G S Walia)

.. Applicant

v/s.

1. Union of India

2. General Manager
Western Railway
Churchgate
Bombay

3. District Controller of
Stores, Western Railway,
Mahalakshmi
Mumbai 11

4. Mannaram G.

5. Brijraj Kaloo

6. P S Khetre

7. Smt. S H Worlikar

8. K N Azare

9. Smt. J J Arde

(Respondents 1 to 3 by
(By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
and Mr. V G Rege, Counsel)

Respondents 4 by
Adv. Mr. D V Gangal)

.. Respondents

O.A. 596/93

1. Manohar J. Gujjar
2. Anilkumar S. Shirolekar
3. Smt. Usha Sudhir Oak
4. Babubai Vaja
5. S N Singh

all working in the Western Railway, Bombay

(By Adv. Mr. M S Ramamurthy
with Mr. Ramesh Ramamurthy)

Applicant

V/s.

1. Union of India
through General Manager
Western Railway
Churchgate
Mumbai
2. Senior Divisional Office,
Manager(E), Western Rly.,
Bombay Central, Mumbai-8
3. The Secretary
Railway Board
Ministry of Railways
Rail Bhavan
New Delhi
4. Chief Personnel Officer
Western Railway
Churchgate, Mumbai
5. Shri B N Sonavaria
Chief Luggage Clerk
Western Railway
Bombay
6. All India S.C. / S.T.
employees Association

(Respondents 1 to 4
By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
Mr. V G Rege, & N K Srinivasan
Counsel)

Respondents

Shri D V Gangal, Counsel, for
Respondent No.6

O.A.No.622/93

1. Mrs. R R Samant
working as Chief Clerk
Western Railway HQ Office
(Establishment-Policy)
Churchgate, Mumbai

2. Smt. Mariyamma Joy
working as Head Clerk
Establishment Section
HQ Office, Churchgate
Mumbai

(By Adv. Mr. G S Walia) ..Applicant

V/s.

1. Union of India
through Secretary
Railway Board
Ministry of Railways
New Delhi-1

2. General Manager
Western Railway
Churchgate
Mumbai 400001

(By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
Mr. V G Rege, & N K Srinivasan
Counsel)

..Respondents

O.A.No.680/93

1. Smt. Bharti Gajjar
2. P.K. Lotlikar
3. M.S. Thakur
4. S.T. Khadiye
5. Hari Sisodia
6. X M Parmar
7. Smt. P G Mirani
8. C K Sheikh
9. K P Joshi

10 Smt. Chitra Gharat

11 C P Lopes

all working with the
Western Railway,
Mumbai

(By Adv. Mr. G K Masand)

..Applicants

V/s.

1. Union of India through
General Manager
Western Railway
Mumbai

2. Railway Board
Ministry of Railways
Rail Bhawan
New Delhi 1

3. Divisional Railway Manager
Western Railway
Churchgate, Mumbai

4. All India SC/ST Railway
Employees Association

(By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
and Mr. V G Rege,
Counsel)

..Respondents

Mr. D V Gangal, counsel, for

Respondent No.4

OA 703/93

1. Hardeo Singh
2. S N Bailkeri
3. V K Nair
4. R B Yadav
5. Hamid Khan
6. Momin Farook

all working with the
Western Railway
Mumbai

(By Adv. Mr. G S Walia)

..Applicant

V/s.

1. Union of India through
Secretary, Railway Board,
Ministry of Railways,
New Delhi
2. The General Manager
Western Railway
Churchgate
Mumbai
3. Divisional Railway Manager
Western Railway
Churchgate
Mumbai

(By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
and Mr. V G Rege,
Counsel)

.. Respondents

O.A. No. 727/93

1. L C Awasthi
2. V P Salvi
3. D K Tiwari
4. C S Bhamakrishnan
5. B C Dave
6. O P Sharma
7. Siyvester
8. Raju M Pore
9. P G Gurav
10. K B Tiwari

all working as guards
in the Western Railway
Mumbai

(By Adv. Mr. M S Ramamurthy)

.. Applicants

v/s.

1. Union of India
through General Manager
Western Railway
Mumbai

2. Secretary
Railway Board
Ministry of Railways
Rail Bhavan
New Delhi
3. Divisional Railway Manager
Western Railway
Mumbai
4. Senior Divisional Personnel
Officer, Western Railway,
Bombay Central, Mumbai
5. All India SC/ST Railway
Employees Association

(Respondents 1 to 4

By Mr. M I Sethna, Special
Counsel with Mr. A L Kasture
and Mr. V G Rege,
Counsel
Shri D V Gangal, counsel for
Respondent No.5

.. Respondents

DATED THIS 31st DAY OF MARCH, 1997

CORAM : Hon'ble Shri B S Hegde, Member(J)
Hon'ble Shri P P Srivastava, Member(A)

ORDER

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[Per: P P Srivastava, Member(A)]

1. The history of these cases starts with the decision of Allahabad High Court in J.C. MALIK's case [J.C. MALIK & ORS. V. UNION OF INDIA & ORS. 1978 SLJ 401] in Civil Misc. Writ Petition No.1809 of 1972 decided on 09.12.1972. The Union of India had challenged the said decision in the Hon'ble Supreme Court by filing Civil Appeal No.2017 of 1978. On 27.10.1978 the Hon'ble Supreme Court granted special leave to appeal. On 24.2.1984 the Hon'ble Supreme Court has passed the following order:

"Any promotions made during the pendency of the appeal will be subject to result of the appeal. Counsel for the appellants, Union of India, has no objection to it."

The above order was further amplified by the Hon'ble Supreme Court on 24.9.1984 which read as under:

"We clarify our order dated February 24, 1984 by directing that the promotions which may be made hereafter, will be strictly in accordance with the judgment of the High Court and such promotions will be subject to the result of the appeal. If any promotions have been made after February 24, 1984 otherwise than in accordance with the judgment of the High Court, such promotions shall be adjusted against the future vacancies."

2. In some of the T./O.As. viz., T.A.Nos. 160/86; 236/86; 275/86; 281/86; 420/86; 488/86; 33/91; 34/91 and O.A. Nos. 209/86; 29/87; 88/87; 484/93; 485/93; 487/93; 571/93; 596/93; 622/93; 680/93; 703/93; and 727/93 an interim order was passed by this Tribunal on 24.4.1987, the operative portion of which reads as under:

INTERIM ORDERS

1. The promotions which may be made hereafter by the respondents will be strictly in accordance with the judgment of the Allahabad High Court in Civil Misc. Writ No. 1209 of 1972, in J C MALIK & Others v. Union of India and others reported in 1978 SLJ 401 and such Promotions will be subject to the final result of the cases. If any promotions have been so far made otherwise than in accordance with the judgement of the Allahabad High Court, such promotions shall be adjusted against the future vacancies.

2. It is hereby clarified that if any Scheduled Caste/Scheduled Tribe candidate is appointed or promoted in his present cadre on the basis of his overall merit and/or seniority and not on the basis of reservation alone, the respondents are not prevented from promoting him to the higher cadre if he is found otherwise suitable for promotion, even if the reservation quota fixed for Scheduled Caste/Scheduled Tribe candidate has been already achieved in the higher cadre.

3. The respondents shall not follow the directions or instructions given by the Railway Board or other authorities in respect of promotions if and to the extent they are inconsistent with this interim order.

4. If the respondents have made some promotions on the basis of the orders passed by the High Court of Judicature at Bombay these promotions should not be disturbed. However, these promotions will be subject to the final decisions in the cases.

5. However, all the promotions in future should be made by the respondents in accordance with this interim order.

6. This interim order should be followed subject to the direction given in each case.

3. The Tribunal also observed in para 20 of its order dated 24th April 1987 as under:

"20. We deem it necessary to point out that at the beginning of the arguments, it was generally agreed that (i) the cases would be heard finally only after the Supreme Court decides the point in the appeal pending before it against the judgment of the Allahabad High Court in J.C. MALIK's case; (ii) if any promotions are granted in view of the orders passed by the High Court they should not be disturbed till the cases are decided finally; and (iii) future promotions should however be given in view of the interim order which we would be passing."

4. In O.A. Nos. 484/93; 485/93; 487/93; 571/93; 596/93; 622/93; 680/93 and 727/93 the Tribunal passed

an interim order dated 5.10.1993. In these OAs besides the question raised in Mallik's case, the question of granting seniority to SC/ST employees was also raised. In para 20 of this interim order the Tribunal has mentioned as under:

"20. The position so far as the interim orders which are required to be passed today is concerned is that the employees of SC/ST will not be entitled to claim seniority on the basis of his date of entry in the promotional cadre if he has got into the cadre on account of his belonging to SC/ST. It is only the other category which we have mentioned who would be entitled to compete for the general seats.'

5. In some of these OAs the challenge to letter dated 16.6.92, Exhibit "A" to O.A.596/93 M J Gajjar & Ors. Vs. Western Railway was made. On this issue the Tribunal has passed interim orders which are enumerated in para 21 of the order dated 5.10.93, which read as under:

"21. That takes us to the letter dt.16.6.1993 (sic 1992) Exhibit 'A' to O.A.No. 596/93 M J.GUJJAR & ORS. V. WESTERN RAILWAY which has been challenged as being contrary to the interim directions issued by the Full Bench. The Boards letter purports to show that it was being issued on the basis of the directions of the Full Bench and the orders of the Supreme Court in J.C.MALLIK's case. The submission of Shri Ramamurthy learned counsel for applicant in OA No.596/93 was that though the Railway Board purported to act within the directions aforesaid, the instructions are contrary to the directions of the Supreme Court and the Full Bench. Exception was taken to Clause 3.1 which proscribed the manner of holding selection and

confirming the panel because it prescribed a relaxed standard in respect of SC/ST candidates even while competing for the post of general category. The language used is ambiguous though the learned counsel for respondent railways contended that the instructions in clause 3.1 were confined only to the manner in which the reserved posts are to be filled and there was no question of leapfrogging. Our attention was drawn to clause 'd' of page 2 of the written statement in OA 680/93. Clause 'd' reads:

"(d) It is submitted that for making good deficiencies of 15 and 7-1/2 per cent, the principle of 40 point roster will be applied and after making good this deficiencies, the normal rules of seniority will be applied wherein any employee in the higher grade are senior to all employees in the lower grade and the employees whose names are borne on the earlier panel are senior to all these employees, whose names are borne selected in the subsequent panel, irrespective of the facts that they have accelerated promotion or otherwise."

"What the respondent railways understand by the existing procedure is what is stated in clause (d) page 2 of the written statement, the effect of which will be to make eligible, candidates who have come by way of reservation also, to compete for the general posts which are to be filled on merit. Even the standard for filling the general category is not to be observed in their case but a relaxed standard would be applied when they compete for the post of general category. This will be contrary to the interim directions which were given by the Benches of the Tribunal in accordance with the order passed by the Full Bench and would not be permissible as long as an interim direction stands. Examples 2 & 3 show that when they have to apply a 3X formula, the scales will be weighted in favor of the reserved category to the detriment of the general category and the reserved categories would make inroads on the posts which would otherwise be available for the non-reserved category. There cannot be any objection to a candidate from the SC/ST who has come by way of merit competing with the open categories on the basis of his own merit. There can be no limit to the vacancies being filled on the basis of merit even by the persons belonging to the SC/ST but the result of the instructions issued by the letter dated 16.6.92 would be to prefer the less meritorious to the meritorious beyond the reserved quota of 15 & 7-1/2 per cent

respectively for the SC & ST and this would be contrary to the directions issued by the Tribunal in consonance with the observation of the Full Bench. The letter dated 16.6.1992 cannot be permitted to be enforced due to the preference sought to be given and its operation shall have to be stayed until the final decision of these matters.

6. In OA No. 680/93 BHARTI GUJJAR Vs. WESTERN RAILWAY and in OA No. 727/93 AWASTHI Vs. WESTERN RAILWAY, the petitioners seek a direction to promote employees against additional vacancies arising out of restructuring without reservation for SC/ST. The Tribunal passed interim order on this issue in para 22 of order dated 5.10.93 which reads as under:

"22. In OA No. 680/93 Bharti Gujjar v. Western Railway and in OA No. 727/93 Awasthi v. Western Railway the petitioners seek a direction to promote employees against additional vacancies/posts arising out of restructuring order of cadres without reservation for SC/ST employees. The restructuring is based on the instructions dated 27.1.93, Exhibit "A" to OA No.727/93 and it does not result in creation of additional vacancies but upgradation of existing posts. Annexure A-iii gives the position regarding the existing percentage and the revised percentage, resulting in upgradation after the restructuring. In view of the decision of this Tribunal (Allahabad Bench) in OA No. 414/87 N.K.SARNI v. DIRECTOR GENERAL, RDSO, decided on 31.5.88 the applicants would be entitled to ask for relief if reservation is sought to be introduced in the matter of upgradation of the existing posts. The learned members observed in para 15 that law is very clear that in matters of promotion reservation would apply but the point is whether the upgradation is promotion at all and this was answered in the negative by holding that upgradation was not promotion and that therefore the roster could not apply for filling the upgraded posts."

The operative portion of this interim order has been made in paras 23 and 24 which reads as under:

"23. (i) that the vacancies available from time to time should be filled up in accordance with the 40 point roster scheme subject to the condition that the members of SC/ST do not exceed 15 and 7-1/2 per cent respectively at any given point of time and if a person belonging to the SC/ST is promoted on his own merit and not in a reserved vacancy then for the purpose of this interim order such appointment will be excluded while computing the required percentage. Any promotion that would be made in pursuance of this order will however be subject to the result of the applications and in the light of the clarification which we have given in the body of this judgment.

"24. (ii) that while filling the upgraded posts on account of restructuring which do not involve expansion of the cadre, the reservation shall not be resorted to.

(iii) that the Respondent railways are restrained from acting upon and giving effect to the instructions contained in Railway Board letter dated 16.6.1992 under General Manager's letter dated 1/20.7.92 and the further instructions of the General Manager(E) under letters dated 1.9.92 and 28.4.93 until further orders as they are not in conformity with the interim direction given by the Tribunal in pursuance of the Full Bench decision and the directions of the Supreme Court in J.C. MALLIK's case."

7. These interim orders dated 5.10.1993 came for review by a series of Miscellaneous Petitions and Review Petitions which were disposed of by a common order dated 11.10.1994 and the miscellaneous petitions and review petitions for changing the interim orders were dismissed.

8. In T.A. Nos. 509/87; 511/87; 512/87; 513/87; 514/87; 515/87; 516/87; 22/91; and O.A. Nos. 425/89; 274/87; 349/87; 636/88; 403/89; 856/89; 973/89 All India SC/ST Associations are the applicants. Since the issues involved in all these OAs were dependent

upon the final outcome of decision of Hon'ble Supreme Court in J C MALLIK's case, these were also placed in sine-die list along with all other T.A/O.As. After final decision in the case of J.C. MALIK all these matters have been heard as a group. We have heard all the counsel in these cases and perused the records. The main issues involved in these cases are as under:

- (i) Whether the reservation for SC / ST in promotion would be on the vacancy or cadre ?
- (ii) How the Seniority of the SC / ST employees is to be determined vis-a-vis the general community candidates for promotion to unreserved (general) posts ?
- (iii) Whether the reservation would apply in case of restructuring of cadre when total strength of the cadre does not vary ?

9. All these OAs were kept in the sine-die list as the judgment in the case of J C MALLIK was awaited. The Hon'ble Supreme Court has finally decided the appeal of the Union of India against the judgment of Allahabad High Court in JC MALLIK's case in Civil Appeal No.2017/78 on 26.7.1995. The order of the Hon'ble Supreme Court reads as under:-

"This appeal is directed against the judgement of the Division Bench of the Allahabad High Court dated December 9, 1977. It relates to reservation in the matter of promotion for

employees belonging to Scheduled Castes and Scheduled Tribes in the Railways. While construing the Circular of the Railway Board dated April 28, 1970, the High Court has held that the said reservation should be made on the basis of the posts in the cadre and not on the basis of the vacancies occurring during a particular year. This view of the High Court has been approved in the recent judgement of the Constitution Bench of this Court in R.K. SABHARWAL & ORS Vs. STATE OF PUNJAB AND ORS [1995(2) SCC 745] wherein it has been observed:

"A Division Bench of the Allahabad High Court in J.C. MALIK Vs. UNION OF INDIA interpreted Railway Board's circular dated 28.4.1970 providing 15% reservations for the Scheduled Castes. The High Court held that the percentage of reservation is in respect of the appointment to the posts in a cadre. On the basis of the material placed before the High Court it reached the conclusion that if the reservation is permitted in the vacancies after all the posts in a cadre are filled then serious consequences would ensue and the general category is likely to suffer considerably. We see no infirmity in the view taken by the High Court."

"The learned Additional Solicitor General has submitted that the application of this principle may create difficulties in cases where the total number of posts in the cadre is not sufficient for the application of roster in respect of the reservation for Scheduled Castes and Scheduled Tribes. By way of illustration he has pointed out that under 100 point roster the reservation for Scheduled Castes can only be made at point No.7 while for Scheduled Tribes at Point No.14 and that if the strength of the cadre is less than seven there can be no reservation for Scheduled Castes because the roster cannot be applied and similarly if the cadre strength is less than 14 there can be no reservation for Scheduled Tribes since the roster would not apply. In the facts of this case this question does not arise. We, therefore, do not propose to go into the same. Having regard to the decision of the

Constitution Bench of this Court in SABHARWAL's case (Supra) the appeal fails and it is accordingly dismissed. No costs.

"Review Petition and IAs are also dismissed."

10. The learned counsel for the respondents Mr. M I Sethna as well as learned counsel for the intervenors on behalf of the SC and ST Association Mr. D V Gangal have submitted that the question of reservation being applicable on the basis of vacancies or on the basis of posts stands completely settled after the SABHARWAL's decision [1995 SCC (L&S) 548] by the Hon'ble Supreme Court which has also been relied in the judgment of J C MALIK. The only question which remains to be decided is the date from which the reservation is required to be applied on the basis of posts and not on the basis of vacancies. The contention of the learned counsel for the official respondents Mr. M I Sethna as well as Mr. Gangal counsel for the intervenors is that SABHARWAL's judgment is required to be implemented prospectively i.e., from the date of judgment which is February 10, 1995. The learned counsels have argued that in view of the prospective application of SABHARWAL's judgment, the reservation should be continued upto February 10, 1995 on the basis of vacancies and the rosters in terms of the Railway Board's letter dated April 28, 1970 which was the subject matter of controversy in J C MALIK's case. The learned counsels have further argued that the stay orders granted by the Tribunal therefore would have to be vacated and the reservation according to the rosters on

the basis of vacancies as was being done before the stay order would have to be continued upto 10th February, 1995, the date of SABHARWAL's judgment. The learned counsels have further argued that all the promotions which have been made as a result of the interim orders granted upto 10.02.1995 by the Tribunal in various OAs would have to be reversed.

11. Learned counsel for the applicants in some of the OAs Mr. G S Walia, Mr. G K Masand, Mr. Ramamurthy submit that interim orders were passed by the Tribunal in terms of the interim order passed by the Hon'ble Supreme Court in J C MALIK's case and all the TAs/OAs were kept in sine-die list awaiting the decision of J C MALIK's case. The appeal in J C MALLIK's case has been dismissed by the Hon'ble Supreme Court and therefore the decision of the Allahabad High Court that the reservation should be on the basis of posts in the cadre and not on the basis of vacancies occurring during a particular year has become final. Result of the above decision is that the interim orders which were granted in various OAs under consideration stand confirmed on this point. The various OAs wherein the controversy was that the reservation should be on the basis of vacancies and not on the basis of posts in the cadre, would have therefore to be disposed of on the basis of final order in J C MALIK's case and the orders would be applicable from the date various interim orders were granted. The learned

counsel's for the applicants in some of the OAs further contended that any other view would negate the decision of the Hon'ble Supreme Court in J.C. MALIK's case.

12. It has been further argued that the postdating of the judgement in R.K. SABARWAL's case by the constitutional bench of the Hon'ble Supreme Court is only for the purpose of administrative convenience and it does not give legality to the claim of the respondents that the reservation is required to be continued on the basis of vacancies even where the administration had been stopped from doing so on the basis of the interim orders passed by the Tribunal in line with the interim order which the Hon'ble Supreme Court had passed in the case of J.C. MALIK. It has been also argued that the cases where the roster is still being applied on the basis of vacancies, for some reason or the other, the respondent Administration would have to take action to workout the rosters in terms of SABHARWAL's judgement from February 10, 1995. In those cases where the reservation is being continued on the basis of vacancies for some reason or the other would have to fall in line with the decision of the SABHARWAL's case from February 10, 1995. Such orders which would have been passed on the basis of reservation on the basis of vacancies, if challenged, would be protected upto February 10, 1995 because of the prospective application of the SABHARWAL's judgement. This is not the position in the present cases where the stay orders are passed by the Tribunal in terms of interim orders passed by the Hon'ble Supreme Court in J.C. MALIK's case.

13. After hearing both the counsels on this issue, we are of the view that the decision in J.C.MALIK's case by the Hon'ble Supreme Court confirms the interim stay which was granted by the Hon'ble Supreme Court and therefore all the interim orders granted by the Tribunal in terms of interim orders by Hon.S.C. in J.C.MALIK case stand protected by the decision of J.C.MALIK's case by the Hon'ble Supreme Court. We are, therefore, of the view that wherever the interim orders have been passed by the Tribunal directing the administration to follow the interim orders passed by the Hon'ble Supreme Court in J.C.MALIK's case which have been enumerated in Para 1 above, there would be no question of cancelling those stay orders upto 10th February, 1995. And therefore there will be no question of directing the filling up of the posts on the basis of application of rosters on vacancies. In those cases where the reservation is being continued on the basis of vacancies for some reason or the other would have to fall in line with the decision of the SABHARWAL's case from February 10,1995. Such orders which would have been passed on the basis of reservation on the basis of vacancies, if challenged, would be protected upto February 10,1995 because of the prospective application of the SABHARWAL's judgement.

14. The Constitutional Bench judgment by the Hon'ble Supreme Court in R.K.SABHARWAL's case is the final

authority on issue of reservation and application of roster. In Para 5 the Hon'ble Supreme Court has brought out the position of law on the issue of reservation. The para reads as under:-

"5. We see considerable force in the second contention raised by the learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Schedule Castes/Schedule Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts..." are reserved for members of the Scheduled Castes and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Castes. To illustrate, first post in a cadre must go to the Scheduled Caste and therefore the said class is entitled to 7th, 15th, 22nd and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their

population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Schedule Caste persons holding the posts at roster points 1, 7, 15 retire then these slots are to be filled from amongst the person belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation."

15. In Para 6 the Hon'ble Supreme Court has elaborated on the expression "posts" and 'vacancies' and has brought out clearly the difference between the two. This para reads as under:-

"6. The expressions 'posts' and 'vacancies', often used in the executive instructions providing for reservations, are rather problematical. The word 'post' means an appointment, job, office or employment. A position to which a person is appointed. 'Vacancy' means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a post in existence to enable the 'vacancy' to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation 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."

The Hon'ble Supreme Court has further brought out in Para 7 as to how the rosters would be operated and has observed as under:-

" 7. When all the roster points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full

representation 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."

In the end the Hon'ble Supreme Court has directed, that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively.

16. The respondents administration has taken a position in their affidavit filed in various OAs, that the policy of Government concerning reservation for SC/ST, is that the reservation is to be made for the vacancies occurring from time to time and not for the posts in the cadre and the roster is required to operate as a 'running account' for filling the vacancies. The respondent administration has also filed copy of the supplementary affidavit filed by the administration in the Hon'ble Supreme Court in J.C.MALIK's case which is placed at Exhibit 'D' of OA.NO. 231/86, that is the affidavit by Shri S.D.Dariya,

Addl. Director Establishment (Resvn.), Railway Board, New Delhi. In Para 6 of this affidavit the respondent administration has brought out policy of the Govt. in the case of reservation. Para 6 reads as under :-

"6. The Policy of the Government: From the very inception of the principle of reservation for Scheduled Castes/Scheduled Tribes, has been to relate the percentage of reservation to the available number of vacancies and not to the total number of posts available in the cadre. The Hon'ble High Court has made an error in interpreting para 2 of the Railway Board's Letter dated 20.4.1970. The said paragraph has to be read with paragraph 1 of Board's letter dated 27.8.1968 and has to be understood in the broader context of the entire gamut of reservation rules and orders issued by the Government from time to time both in initial appointments as well as in promotions. In this connection, I crave leave to invite attention of this Hon'ble Court to the following letters :-

1. M.H.A. Resolution No.42/21/49-NGS dated 13.9.1950
2. Railway Board's letter No.E.50cm1/7/3 dated 18.6.1953 (Annexure-II)
3. -do- No.E.55CM1/3 dated 5.10.1955 (Annexure-III)
4. -do- No.E(SCT)62CM15/10 dated 24.12.1963 (Annexure-IV)
5. -do- No.E(SCT)68CM15/10 dated 27.8.1968 (Annexure-V)
6. -do- No.E(SCT)72CM15/5 dated 11.1.1973
7. -do- No.E(SCT)73CM15/13 dated 17.8.1974.

Items 1, 6 & 7 above have already been filed before this Hon'ble Court alongwith my Rejoinder affidavit dated 25.9.1978 as Annexures III & V & VI thereto.

(See A3(A))

6.1 In this connection, attention is specifically invited to the M.H.A.'s Resolution mentioned at item (I) above, which states, *inter-alia* "the Government of India have decided to make the following reservations in recruitment to posts and services under them :- a) Scheduled Castes :- The existing reservation of 12 1/2% of vacancies filled by direct recruitment in favor of the SCHEDULED castes will continue in the case of recruitment to posts and services made, on all-India basis, by open competition, i.e. through the Union Public Service Commission or by means of open competitive tests held by any other authority. Where recruitment is made otherwise than by open competition, the reservation for Scheduled Castes will be 16-2/3% as at present.

b) Scheduled Tribes :- Both in recruitment by open competition and in recruitment made otherwise than by open competition there will be a reservation in favor of members of Scheduled Tribes of 5% of the vacancies filled by direct recruitment."

6.2 Reservation in vacancies and not in posts :- It will be pertinent to point out that the above Resolution makes a specific mention of 12 1/2% of vacancies in the case of Scheduled Castes and 5% of the vacancies in the case of Scheduled Tribes. These percentages have subsequently been enhanced in 1970 to 15% and 7% respectively. The Resolution also mentions reservation in recruitment which logically indicated the stage at which the reservations have to operate viz., the stage of recruitment and so has to be made against the vacancies for which the recruitment has to be carried out. The Government's policy-premises in regard to the reservation flow from this concept of vacancies, and not cadre posts."

17. Since the issue now stands settled finally by the judgement pronounced by the Constitutional Bench in Sabharawal's case, extract from which have been quoted in paras 14 and 15 it would become necessary for the respondent administration to review policy on the question of reservation. MHA circular resolutions make it clear that the policy of reservation is based on the

vacancies and not on the basis of cadre. Since the reservation according to vacancies has not been found to be according to the provisions of Art.16(4) by constitutional Bench in SABHARWAL case, it would become necessary for the Union of India to scrutinize all rules & regulations which have been formulated on the basis of MHA resolutions (which provide reservation on vacancies and not on cadre strength) and revise the same to conform to the judgement in SABHARWAL case. Rules for operating of 40 points roster which at present operates as a running account have also to be reviewed in terms of the observation of Hon'ble Supreme Court that the roster cannot operate as a running account and has to come to an end when all the post in the cadre have been filled by operation of roster.

18. The next question which has been raised before us is the seniority of reserved community candidates vis-a-vis the general community candidates for promotion to the general pools. The issue specifically to be decided by us in some of the TAs/OAs concerns the validity of respondent administration's letter dated 16.6.92. This letter was challenged in OA No.596/93 M J GUJJAR & Ors. and in some other OAs. The Tribunal after considering the arguments of both sides had passed an order staying the operation of letter dated 16.6.92, the relevant

portions of these interim orders are reproduced in para 5 of this judgment. The understanding of the respondent administration is that the accelerated promotion of the reserved community employees would give them the benefit of seniority from the date of their promotion in the higher cadre. This issue has been the subject matter in AJIT SINGH JANUJA AND OTHERS Vs. STATE OF PUNJAB AND OTHERS, (1996) 2 SCC 715 before the Hon'ble Supreme Court and the three Judges Bench has decided the issue holding that the accelerated promotion to reserve community candidates as a result of rule of reservation would not given them the benefit of accelerated seniority. The judgment of the Hon'ble Supreme Court in JANUJA's case has also considered in para 16 another judgement of the Hon'ble Supreme Court UNION OF INDIA Vs. VIRPAL SINGH CHAUHAN ETC., JT 1995(7) SC 231. The decision of the Hon'ble Supreme Court in JANUJA's case would determine the policy concerning grant of seniority to the reserved community candidates vis-a-vis general candidates in the case of promotion against general posts.

19. This view has also been taken by Hon'ble Supreme Court in their decision dated 15th March, 1996 arising out of OA No. 71/94 of Ahmedabad Bench of the Tribunal. This judgment of Hon'ble Supreme Court has been quoted in Ahmedabad Bench decision dated 3.6.96 in OA No.71/94 D V Pandya v. Union of India & Ors.

20. The question involved in these OAs. before the Ahmedabad Bench has been brought out in Para 1 which reads as under :-

" All these 10 OAs. were decided by this Tribunal as per order dated May 17,1994. The question involved in these OAs. is whether an employee who secured accelerated promotion by virtue of reservation orders made in favour of SC/ST candidates would be entitled to count for further promotion his seniority from the date of his promotion to such post or his basic seniority in the cadre from which he was promoted in the reservation quota will have to be taken into consideration?"

The Ahmedabad Bench followed the decision of the Calcutta Full Bench in OA.No.854/90 and another Full Bench decision of Hyderabad Bench in OA.No.759/87 and had held that for further promotion an employee was entitled to count seniority from the date of his regular promotion and that his basic seniority in the cadre from which he was promoted against reservation quota was not material for further promotion. This issue was challenged before the Hon'ble Supreme Court in one of the OAs i.e. OA.No.71/94, through Civil Appeal No.4729 of 1996 which was decided by the Hon'ble Supreme Court by its order dated March 15, 1996. The judgement of the Hon'ble Supreme Court has been quoted in Para 3 of the order dated 3.6.1996 of the Tribunal. The decision of the Hon'ble Supreme Court as quoted in para 3 reads as under:

"Leave granted.

The point involved for decision in this appeal as indicated at the beginning of the impugned order

made by the Tribunal is now settled by decisions of this Court, the most recent being Ajit Singh JANUJA and Ors. Vs. State of Punjab and Ors. (1996(2) SCALE 526). It has been clearly held that the benefit of the accelerated seniority obtained on promotion against any reserved vacancy to a candidate of that category is not available when relevance is of seniority for further promotion against a vacancy in the general category for which purpose the basic inter-se seniority or panel seniority counts. To this extent, the decision of the Tribunal has to be modified. The case of each promotee has to be examined in that light in accordance with the principle clearly stated in Ajit Singh's case. For this reason, the impugned order of the Tribunal is set aside and the matter is remitted to the Central Admn. Tribunal, Ahmedabad Bench for a fresh decision of O.A. in accordance with law."

The Ahmedabad Bench therefore on the basis of the above judgement dated 15.3.96 reviewed their decision in all the OAs. and has disposed of all the OAs. with the direction to the respondents to refix the seniority/promotion/reversion and take necessary suitable consequential steps in accordance with law laid down by the Hon'ble Supreme Court in the case of AJIT SINGH JANUJA. In view of the Hon'ble Supreme Court judgement dated 15.3.1996 which has been quoted above, we are of the opinion that the final authority on the question of determining the seniority of the reserved community candidate for further promotion to the general posts on the basis of their accelerated promotion is the Hon'ble Hon'ble Supreme Court decision in AJIT SINGH JANUJA's case.

21. It would be beneficial if some observations of the Hon'ble Supreme Court relevant to our case are reproduced

herein to understand the implication of the judgment. In para 3 at page 725 the Hon'ble Supreme Court has brought out the issue involved in JANUJA's case which reads as under:-

".... The controversy which has been raised in the present appeals is: whether, after the members of Scheduled Castes/Tribes or Backward Classes for whom specific percentage of posts have been reserved and roster has been provided having been promoted against those posts on the basis of "accelerated promotion" because of reservation of posts and applicability of the roster system, can claim promotion against general category posts in still higher grade on the basis of their seniority which itself is the result of accelerated promotion on the basis of reservation and roster? The learned counsel, appearing for the appellants, took a clear and definite stand that they have no grievance or objection if members of the Scheduled Castes or Backward classes, for whom reservation has been made and roster has been prescribed even in the promotional posts, get accelerated promotions against those posts. But the question is: whether, on this basis such "accelerated promotees" from lower grade to higher grade in service can claim promotion against the general category posts in still higher grade of service merely because they had been promoted before the general category candidates, who were senior to them in the lower grade and have been promoted later in their turn? In other words, is the benefit of extra seniority obtained by a reserved category candidate by earlier promotion under the reservation policy to the reserved post, also available to him for competing with his otherwise senior general category candidate, who got promoted to the same cadre later only because of the reservation policy, for promotion to a general category post also in the next higher grade."

In para 9 the Hon'ble Supreme Court has held that the benefit of accelerated seniority cannot be granted to the reserved community candidate on the basis of accelerated promotion against reservation point for the purpose of

further promotion against the general quota. Para 9 of the judgment reads as under:

.... The same principle which has been enunciated by the Constitution Bench in the aforesaid case shall be applicable whenever a member of Scheduled Castes or Backward Classes has got accelerated promotion to a higher grade and is to be considered for further promotion to a still higher grade against general category posts. The accelerated promotions are to be made only against the posts reserved or roster prescribed. There is no question of that benefit being available when a member of Scheduled Caste or Backward Classes claims promotion against general category posts in the higher grade. It need hardly be pointed out that such candidates who are members of the Scheduled Castes or Backward Classes and have got promotion on the basis of reservation and application of roster before their seniors in the lower grade belonging to general category, in this process have not superseded them, because there was no inter se comparison of merit between them. As such when such seniors who belong to general category, are promoted later it cannot be said that they have been superseded by such members of Scheduled Castes or Backward Class who have been promoted earlier. While considering them for further promotion against general category posts if the only fact that they have been promoted earlier being members of Scheduled Castes or Backward Class is taken into consideration, then it shall violate the equality clause and be against the view expressed not only in the case of R.K. SABHARWAL by the Constitution Bench, but also by the nine-Judge Bench in the case of INDRA SAWHNEY where it has been held that in any cadre reservation should not exceed beyond 50%."

On the question of filling reserved posts and general posts on promotion, Hon'ble Supreme Court has observed at the end of para 16 as under:

"... Whenever a question arises for filling up a post reserved for Scheduled Caste/Tribe candidate in a still higher grade then such candidate belonging to Scheduled Caste/Tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in a still higher grade then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority-cum-merit or merit-cum-seniority.

22. Circular dated 16.6.92 which has been stayed by the Tribunal has been challenged firstly on the ground that the provision in the circular granting seniority to the SC/ST as a result of accelerated promotion is against the provision of rules in the Indian Railway Establishment Manual. Paras 306, 309, 319 etc., of Indian Railway Establishment Manual, lay down that seniority would be governed by the position in the panel irrespective of the date of promotion. It is argued that the provision of circular dated 16.6.92 granting promotion from the date of entry into the grade completely overlooking the panel position is against the provisions of Indian Railway Establishment Manual. We are of the view that this argument would not hold good as the provision in the Establishment Manual are of general nature and the rules providing reservation are special rules which would override the general provision. Therefore, it would be within the powers of the Government to frame rules for providing seniority to the reserved community candidates which could be

different than general rules provided in the Indian Railway Establishment Manual. In this connection the Hon'ble Supreme Court's observation in para 27 of the VEERPAL SINGH CHAUHAN [JT 1995(7)SC 231] are relevant.

The Hon'ble Supreme Court has observed as under:

"27. We are of the opinion that the aforesaid circulars/letters providing for reservation in favor of Scheduled Castes/Scheduled Tribes 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 Volume-I of the Indian Railway Establishment Manual including those contained in Paras 306, 309 and 319 et al.

28. The circular dated 16.6.92 has also been challenged on the ground that the provisions concerning seniority in this circular are against the law laid down by the Hon'ble Supreme Court in JANUJA's case and the question of giving accelerated seniority as a result of accelerated promotion stands finally decided by the Hon'ble Supreme Court by their judgment in JANUJA's case.

In para 15 of the judgment it has been specifically brought out by the Hon'ble Supreme Court in the last few lines that giving accelerated seniority as a result of accelerated promotion for further promotion to general category posts would amount to discrimination under Articles 14 and 16 of the Constitution of India. The observations of the Hon'ble Supreme Court read as under:

"The equality principle requires exclusion of the factor of extra weightage of earlier

promotion, to a reserved category candidate because of reservation alone, when he competes for further promotion to a general category with a general category candidate, senior to him in the panel. Any other view would amount to reverse discrimination and violative of the guarantee of equality in Articles 14 to 16."

24. In view of the above observations it is quite clear that the reading of circular dated 16.6.92 by the respondent administration as has been brought out in the interim order of this Tribunal which has been reproduced in para 5 cannot be sustained. Part of the Circular dated 16.6.92 so far as it gives accelerated seniority on the basis of accelerated promotion to the reserved community candidates for promotion against unreserved general category posts is therefore liable to be quashed and is accordingly quashed.

25. The 19.1.72 circular of the Railway Board quoted in their supplementary affidavit filed by the respondent administration on 3.12.96 in OA No.484/93 providing seniority to SC/ST according to panel position irrespective of their date of promotion will also be hit by the observation of the Hon'ble Supreme Court in JANUJA's case in para 15 which reads as under:

"... Seniority in service is one of the important factors in making promotion. Even where process of promotion by selection is adopted, seniority has an importance in case of equal merit. The principal object of a promotion system is to secure the best possible incumbents for the higher position while maintaining the morale of the whole organisation. The best public interest is served when equal

opportunities for promotion exist for all qualified employees. Civil servants are able to move up "the promotion ladder" as the merit deserves and the vacancies occur. Right to equality enshrined in the Constitution is to be preserved by preventing reverse discrimination as well. The guarantee of equality requires maintenance of original or panel inter se seniority between the general category candidate and the earlier promoted reserved category candidate under the reservation policy, for promotion to the higher general vacancy. The equality principle requires exclusion of the factor of extra weightage of earlier promotion to a reserved category candidate because of reservation alone, when he competes for further promotion to a general category with a general category candidate, senior to him in the panel. Any other view would amount to reverse discrimination and violative of the guarantee of equality in Articles 14 to 16."

It may so happen that a reserved community candidate is called for selection because of the reservation point while some senior unreserved candidate (general category candidate) might not be called for the selection. The senior general candidates may perhaps find place in the next panel for promotion. Thus by virtue of the rule that seniority of SC/ST would be determined by panel position and also candidates on previous panel would be senior to the candidates on later panel, the reserved community candidate although junior to the general candidates (who were not called in the first selection) would become senior by virtue of the provision of this rule. This will happen inspite of the fact that the reserved community candidate got his position in the panel by virtue of rule of reservation.

26. Thus if he (the reserved community candidate) is considered senior to the general candidates who were not

called for the first panel, this will go against the observation of the Hon'ble Supreme Court in JANUJA's case referred to above that 'equality principle requires exclusion of the factor of extra weightage of earlier promotion to a reserved category candidate because of reservation alone, when he competes for further promotion to a general category with a general category candidate, senior to him in the panel.'

27. If employees from earlier panel are, as a rule, treated senior to those on later panels, eventhough they might have obtained their position in earlier panel by reservation, situation developing can best be explained through an example.

EXAMPLE:

ASSESSED VACANCIES - GENERAL (GL) 5; S.C. 2; S.T. 1.

ASSUME THREE TIMES THE CANDIDATES ARE CALLED.

NAMES	COMMUNITY	Sl.No.IN	RESULT	PANEL POSITION
SENIORITY				
A	GENERAL	1	SUITABLE	1
B	GENERAL	2	SUITABLE	2
C	GENERAL	3	SUITABLE	3
D	GENERAL	4	SUITABLE	4
E	GENERAL	5	SUITABLE	5
F	GENERAL	6	SUITABLE	
G	GENERAL	7	SUITABLE	
H	GENERAL	8	SUITABLE	
I	GENERAL	9	SUITABLE	

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J	GENERAL	10	SUITABLE	
K	GENERAL	11	SUITABLE	
L	GENERAL	12	SUITABLE	
M	GENERAL	13	SUITABLE	
N	GENERAL	14	SUITABLE	
O	GENERAL	15	SUITABLE	
P	S.C.	16	SUITABLE	6
Q	S.C.	17	SUITABLE	7
R	S.C.	18	UNSUITABLE	
S	S.C.	19		
T	S.C.	20	SUITABLE	8
U	S.T.	21	SUITABLE	

We can assume that none of the suitable candidates are outstanding

The panel will read as under:

Date of panel declared is assumed as 1.1.1990.

1	A	GL
2	B	GL
3	C	GL
4	D	GL
5	E	GL
6	P	SC
7	Q	SC
8	T	ST

Suppose another panel is formed after one year and let us assume panel is declared on 1.1.1991:

Vacancy for this panel - 2 GL; 1 S.C.

The results may be assumed as under :

NAME	COMMUNITY	SL.NO. IN SENIORITY	RESULT	PANEL POSITION
F	GENERAL	6	SUITABLE	1
G	GENERAL	7	SUITABLE	2
H	GENERAL	8	SUITABLE	
I	GENERAL	9	SUITABLE	
J	GENERAL	10	SUITABLE	
K	GENERAL	11	SUITABLE	
R	S.C.	18	UNSUITABLE	
S	S.C.	19	SUITABLE	3

Again assume that none is 'Outstanding', the panel will be:

1	F	GL	1
2	G	GL	2
3	S	SC	3

28. Going by the rule that seniority be governed by panel position, employees P & Q will gain seniority over employees F & G. According to ratio in JANUJA's case, P & Q will not rank senior to F & G or else it would amount to grant of consequential accelerated seniority. If seniority is granted to P & Q above F & G for future promotions against general posts, then it will violate the principle of seniority laid down in JANUJA's case in para 15 at the end that 'equality principle requires exclusion of the factor of extra weightage of earlier promotion to a reserved category candidate because of reservation alone, when he competes for further promotion to a general category with a general category candidate, senior to him in the panel.'

29. Therefore, even the 1972 circular giving seniority to reserved community candidates would give results which may go against the ratio of JANUJA's case. Since the validity of this circular (1972) is not in question before us, we are not required to decide the validity of this circular. However, in our opinion it would be necessary for the respondent administration to frame rules for determining the seniority to correctly reflect the observation of the Hon'ble Supreme Court in JANUJA's case. Thus the rules have to be framed which would give seniority to F & G above P & Q even though they (F & G) have been selected in later panel.

30. In O.A.No. 680/93 and in some other cases before us a question has been raised concerning giving promotion

and seniority to those who are promoted on the principle of 'Best amongst the failure or with relaxed standard of qualifying marks or grading'. According to this principle if the reservation quota is not filled due to reserved community candidate failing in the examination, then the 'best amongst the failed candidates' of the reserved community would be promoted to fill in the quota. It has been argued that these candidates cannot have any claim of promotion against the general post as they would not have any seniority as general candidate.

31. This issue has been decided by the Tribunal in OA No.310/89 decided on 6.9.96, TETE Vs. UNION OF INDIA, wherein it has been held that these candidates cannot have any claim of promotion against general posts. Similarly those candidates who have been promoted by relaxing the qualifying marks or grading will have no claim for consideration of promotion against general post as without relaxation of marks or grading, they would not find place in the panel. It is, however, clarified that such candidates would continue to be considered for further promotion against reserved vacancies.

32. While on the subject of granting promotion to the reserved community candidates on the basis of 'best amongst the failure' or with relaxed standard of qualifying marks or grade, a recent judgment of the Hon'ble Supreme Court in the case of S. VINOD KUMAR & ANOR v. UNION OF INDIA & ORS., JT 1996(8) S.C.643 was

brought to our notice. We are commenting on this judgment because the judgment has far reaching implications and mind boggling consequences on the process of selections where relaxed standard for qualifying marks or grade have been prescribed by the rules, for promoting reserved community employees. The judgment lays down that the observations in para 831 of INDIRA SAHANI case (reproduced herein) are not protected by the declaration in para 829 for a period of 5 years from the date of pronouncement of INDIRA SAHANI judgment. Para 831 of INDIRA SAHANI judgment as quoted in S.VINODKUMAR reads as under:

"We must also make it clear that it would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration. The relaxation concerned in State of Kerala V. N M Thomas (1976)2 SCC 310, and the concessions namely carrying forward of vacancies and provisions for in-service coaching/training in Akhil Bharatiya Soshit Karmachari Sangh V. Union of India (1981) 1 SCC 246, are instances of such concessions and relaxations. However, it would not be permissible to prescribe lower qualifying marks or a lesser level of evaluation for the members of reserved categories since that would compromise the efficiency of administration. We reiterate that while it may be permissible to prescribe a reasonable lesser qualifying marks or evaluation for the OBCS SCs and STs, consistent with the efficiency of administration and the nature of duties attaching to the office concerned - in the matter of direct recruitment, such a course would not be permissible in the matter of promotions for the reasons recorded hereinabove."

In para 9 of the VINODKUMAR judgment, the Hon'ble Supreme Court has held as under:

"We are, therefore, of the opinion that so far as the provision for lower qualifying marks or lesser level of evaluation in the matter of promotion is concerned, it is not permissible under Article 16(4) in view of the command contained in Article 335 of the Constitution. In other words, even if it is assumed for the sake of argument that reservation is permitted by Article 16(4) in the matter of promotions, a provision for lower qualifying marks or lesser level of evaluation is not permissible in the matter of promotions by virtue of Article 335. If so, there can be no question of such a provision or "concession" as it is called by the Tribunal, being saved by the declaration in Para 829 of the said judgment."

33. The effect of this judgment is that all the circulars and rules, wherein the lesser level of qualifying marks or standard of grading have been prescribed for reserved community candidates, are liable to be held against the observation of the Hon'ble Supreme Court in para 831 of INDIRA SAHANI judgment. In our opinion, therefore, the provision of lesser qualifying marks or standard of grading for reserved community candidates for promotion cannot be sustained. On the same lines, the concept of promoting 'best amongst the failures' when no qualified reserved community candidate even with relaxed standards are available, cannot survive.

34. As none of the TAs/OAs have challenged and sought relief that the promotion of those reserved community candidates who have been promoted on the basis of less qualifying marks or on the basis of 'best amongst failures' may be held illegal, we are not required to make any direction on their legality.

35. What has been challenged in some of the TAs/OAs is that reserved community candidates who have been promoted on the basis of less qualifying marks or on the basis of 'best amongst the failures' cannot lay claim to unreserved posts (general posts) as they cannot be granted any seniority as general candidates.

We have already observed on this issue in para 31 above wherein we have held that those candidates who have been promoted by relaxing the qualifying marks or lesser level of evaluation or grading, will not have any right to be considered for promotion against general posts while competing with general candidates. Those reserved community candidates, who have passed the selection without any relaxation, but have been promoted by virtue of reservation point on the roster, would have a right to be considered for general posts. For this consideration, their seniority would have to be determined by finding out as to what would have been their seniority had they not availed any benefit of reservation. In otherwords their seniority would have to be determined by exclusion of the factor of 'extra weightage of earlier promotion because of reservation alone' to use the words of Hon'ble Supreme Court in JANUJA's case quoted in para 21.

36. We are therefore of the opinion that it would be necessary to determine seniority of all reserved community candidates by above process (i.e., by exclusion of the factor of extra weightage of earlier promotion to

a reserved category candidate because of reservation alone, when he competes for future promotion to a general category post with a general category candidate, senior to him in the panel) then place them at proper seniority position for consideration against general post. This exercise would have to be carried out from the recruitment grade onwards as and when selection is held for promotion. Needless to say, that they (reserved community candidates) would continue to enjoy the benefit of their accelerated promotion for the purpose of their further promotion against a reserved post.

37. The third question raised before us is concerning reservation while filling the posts upgraded due to restructuring which do not involve expansion of the cadre.

38. The Tribunal had passed an interim order on this issue which has been reproduced at para 6 of this judgment. The operative portion of interim order prohibits reservation while filling up vacancies due to restructuring which does not involve expansion of cadre.

39. The counsel for the applicant has argued that reservation cannot be provided in upgraded posts as there is no element of promotion involved while filling in the upgraded posts as no new posts are created. The learned counsel has relied upon the judgment of Allahabad Bench of the Tribunal in OA No. 414/87 N.K. SAINI v. DIRECTOR GENERAL, RASO, decided on 31.5.1988.

40. Learned counsel for the respondents Mr. Sethna, on the other hand has argued that the reservation is now being provided against the cadre in one seniority unit and not against the vacancies occurring in this unit in terms of the stay orders granted by Hon'ble Supreme Court in J.C. MALIK's case as well as the direction of the Tribunal on the basis of the above Supreme Court orders.

41. Learned counsel has submitted that J C MALIK's case has since been decided by Hon'ble Supreme Court and the reservation is required to be continued on the basis of cadre strength and not on the basis of occurrence of vacancy. Thus the question of reservation would have to be decided on the basis of the law as it now stands after J C MALIK's decision. The learned counsel has also drawn our attention to the constitutional bench decision in SABHARWAL's case, on the basis of which J.C. MALIK's case was decided.

42. We are of the view that the position of law as laid down by SABHARWAL's case would decide this issue. Our view is that the question as raised in the OA 727/93 does not survive because now the reservation is required to be provided on the basis of cadre and not on the basis of vacancies.

43. In restructuring, the posts in higher grade generally are increased, while posts in the lower grade

are reduced but total cadre remains unchanged. Thus in higher grade cadre the roster which would have stopped operating once all the posts have been filled in by operation of roster, would have to be revived and would have to be operated further till the newly upgraded posts are filled in. Similarly, in the lower grade, where the number of posts have been reduced, the roster would have to be reopened and the last points equal to the number of reduction in the posts would have to be deleted.

Afterwards the operation of roster would be stopped. Any further vacancies would be filled in as provided in SABHARWAL's case in para 5 which has been reproduced at para 14 of this judgment.

44. The Hon'ble Supreme Court in SABHARWAL's case has specifically observed that by following the procedure as laid down by them in para 5 there shall neither be shortfall nor excess in the percentage of reservation.

45. Thus our finding on this point is that if the reservation is being worked out on the basis of cadre in a seniority group and not on the vacancies occurring therein, then the method of filling the vacancies as envisaged in SABHARWAL's case para 5 would take care of the question of reservation in restructuring of posts.

46. Our attention has been drawn to the circular dated 27.1.93 issued by respondent which is under challenge in

OA No.727/93 placed at Exhibit "A". The circular provides for reservation in para 10 which reads as under:

"10. The existing instructions with regard to reservation of SC/ST will continue to apply while filling additional vacancies in the higher grades arising as a result of restructuring".

This circular mentions reservation according to existing instructions which envisage reservation on vacancy while filling additional vacancies. This provision cannot survive as it is against the provisions of SABHARWAL's case and is liable to be quashed and is accordingly quashed.

47. The respondents would be at liberty to provide for rules concerning reservation in restructuring posts in terms of the direction of Hon'ble Supreme Court in SABHARWAL's case and our observation in this order. It would also be necessary to provide rules for determining the seniority of reserved community candidates in terms of direction of Hon'ble Supreme Court in JANUJA's case and our observations in this order before reserved posts are filled in arising out of restructuring. Subject to the above, the stay order prohibiting the reservation in restructuring where cadre does not change, is vacated. We further direct that as a result of this order, no employee already promoted on regular or ad hoc basis shall be reverted and they should be adjusted against future vacancies. However, the administration would be free to assign them seniority according to their adjustment in future vacancies.

48. The counsel for the respondents as well as counsel for interveners have brought to our notice the judgement of Hon'ble Supreme court in the case of AKHIL BHARTIYA SOSHIT KARMACHARI SANGH, THROUGH ITS SECRETARY & ANR. v UNION OF INDIA & ORS. JT 1996 (8) S.C.274.

49. It is seen that in this case the issue involved was about promotion of Respondent No. 6 to the post of D.S.K.-1. The proposition has been summarised by the Hon'ble Supreme Court in Para 11 of the judgement which reads as under :-

"11. Thus by the time a senior person belonging to the general category gets promoted to the higher grade if the junior person belonging to a reserved category who had been promoted to the said higher grade earlier has been promoted to still higher grade, question of granting seniority to the general category candidate in the promoted category could not arise. This being the position, and the promotion of respondent no.6 to D.S.K.-1 having been made as early as in February, 1991 much prior to the judgement of this Court in SABHARWAL's case as well as Virpal Singh CHAUHAN's case, the Tribunal was wholly justified in rejecting the O.A. filed before it. That apart in a particular cadre after following the roster meant for reserved category candidate, there is absolutely no bar for filling up the vacancies in the general category even in favour of candidate belonging to the reserved category if the said reserved category candidate is entitled to the same on the basis of his general seniority. No materials have been placed before us to hold that the promotion of respondent no.6 was not on the basis of his general seniority in D.S.K.-II. In the aforesaid premises, we find no substance in the contention of Dr.Rajiv Dhawan and the special leave petition must fail."

50. The Hon'ble Supreme Court decided this on the basis of SABHARWAL's case as well as Virpal Singh CHAUHAN's

case and on the basis of facts of the case has held that the respondent no.6 has already been promoted to higher grade to D.S.K.-I in February, 1991 much prior to the judgement in SABHARWAL's case as well as in Virpal's case, the Tribunal was wholly justified in rejecting the OA. The Hon'ble Supreme Court has also observed that no materials have been placed before them to hold that the promotion of respondent no. 6 was not on the basis of his general seniority in D.S.K.-II and has dismissed the special leave petition against the decision of the Tribunal. This case has been decided by the Hon'ble Supreme Court on the basis of ratio in SABBARWAL's & VEERPAL SINGH cases and the facts and circumstances of the case. We have also taken the same position as our judgment is also based on the ratio laid down in SABBARWAL's JANUJA and VEERPAL SINGH cases.

51. The counsel for the respondents has also brought to our notice the decision of Hon'ble Supreme Court in P.S.Ghalaut vs.State ofr Haryana & Ors.(1995) 5 SCC 625. Since decision has been referred to, in AJIT SINGH JANUNA's case in Para 21 above, and has been considered by the Hon'ble Supreme Court in that judgement, no discussion and comments on this judgement are considered necessary.

52. We think we can use the concept of shift in PARADIGM as defined by THOMAS KUHN in his book 'Structure of Scientific Revolution' to fully appreciate the effect of

recent pronouncement of Hon'ble Supreme Court judgment starting with J C MALIK and including those of INDIRA SAHANI, SABHARWAL, JANUJA AND S. VINODKUMAR etc. KUHN has defined PARADIGM in the context of scientific revolution as 'uniformly recognised scientific achievement that for a time provide model problems and solutions to a community of practitioners'.

53. The Government's policy as enunciated in MHA resolution reproduced in para 16 of this judgment envisaged reservation on vacancies, to be filled according to roster to be operated as running account and grant of seniority to reserved community employees according to special rules which gave accelerated seniority along with accelerated promotion. Numerous rules have been framed on the basis of these basic principles which have been published in the form of Brochure titled as "BROCHURE ON RESERVATION FOR SCHEDULED CASTES AND SCHEDULED TRIBES IN SERVICES". These collectively can be described as the PARADIGM before the various Hon'ble Supreme Court Judgements mentioned above.

54. Application of above rules started giving some unacceptable results in some cases such as the percentage of reservation in some cadre. Therefore a challenge to these rules were made, which for the first time succeeded in J C MALIK's case in 1972 in High Court of Allahabad. After a large number of cases being contested for the last about 20 years, the Hon'ble Supreme Court made the

authoritative pronouncement concerning reservation though the Constitutional Bench judgment in SABHARWAL's case in 1995. Simultaneously within a span of a few years a series of judgments like JANUJA, VIRPAL SINGH CHAUHAN etc., were pronounced which basically derived their strength from the pronouncement of the Hon'ble Supreme Court in SABHARWAL's case. With these judgments the basis/premises concerning reservation, roster, seniority etc., got drastically redefined. These new pronouncement such as reservation being on the cadre rather than posts, the working of roster and the seniority etc., have radically altered the definition of right and wrong in the matter of reservation. These new pronouncements concerning reservation are the NEW PARADIGM. Thus the pronouncement of Hon'ble Supreme Court starting with SABBARWAL's decision can be described as NEW PARADIGM.

55. This shift in PARADIGM requires drastic changes in the rules concerning the reservation in promotion etc. Therefore, unless the respondent Administration forms new rules in conformity with the Hon'ble Supreme Court judgments mentioned above i.e., according to NEW PARADIGM, the employees of Union of India would end up in litigation which will exhaust their energy and divert them from the tasks of administration. Another aspect of this issue is that the field administrator has to take decision on the basis of Rules. In the present context, the selection would have to be held on the basis of relaxed standard for reserved community employees because

the rules so provide. In fact on pointed enquiry we were so informed. However, as we have pointed out that a selection held on the basis of relaxed standard is against the judgment of Hon'ble Supreme Court in INDIRA SAHANI case as confirmed in S. VINOD KUMAR case. The result would be a situation with chances of potential litigation. Therfore, some swift action is indicated.

56. Our hope is that Government of India would remedy the situation by timely action by framing suitable rules conforming to the NEW PARADIGM. In this hope, we are directing that a copy of this judgment be sent to the Secretary, Department of Personnel for action as deemed fit.

57. We have considred the three questions raised in these TAs/OAs as brought out in para 8 above and have replied the same in the preceeding paragraphs on the basis of various judgments of the Hon'ble Supreme Court and have given our findings and general directions on all the three questions. As is well known that 'general directions do not resolve concrete cases' (Justice Holmes quoted in Dias's Jurisprudence, p.194 para 1), we now proceed to apply these findings in the facts and circumstances of each case. Deciding disputes involves knowing the facts, knowing the law applicable to those facts and knowing the just way of applying the law to them. In the present cases, there is not much dispute about facts. The law has since been laid by the Hon'ble

Supreme Court as we have brought out in the previous paras, wherein we have laid down as to what in our opinion is the ratio decidendi of these various judgements. Now therefore, we proceed to apply the law to the facts of each case separately.

Tr.A. No. 160/86

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58. The applicant in this TA. has challenged his reversion in the Bombay High Court in Writ Petition No. 2315/85. The applicant was promoted to the grade of Chief Booking Supervisor in the scale of Rs.700-900 vide Administration's order dated 25.9.1985 placed at Exhibit-'C'. The applicant was sought to be reverted by treating the orders dated 25.9.1985 as cancelled. These orders were issued by the Administration vide their orders dated 24.10.1985 which are placed at Exhibit'D'. The applicant's name appears at Sr.No.1 and he was sought to be posted to the grade of Rs.500-750 by this order. The High Court issued ad-interim order dated 28.11.1985 in terms of prayer 'C' in the writ petition which reads as under :-

"(c) pending the hearing and final disposal of the Petition, the respondent be restrained by an order of injunction not to give effect or implement the said order of Reversion dated 24.10.1985."

77.

The High Court further confirmed, these orders on 9.12.1985. The writ petition was later on transferred to this Tribunal and was numbered as TA.No.160/86. This TA, along with the others came for consideration before the Tribunal and the Tribunal passed an interim order on 24.4.1987. The orders of the Tribunal in the present TA. read as under :-

"The applicant, Samuel Paul Raj, belonging to the reserved category has challenged his reversion from the post of Chief Booking Supervisor to the post of Chief Booking Clerk. The High Court by its order dtd.28.11.1985 has issued ad-interim order in terms of prayer 'C' in so far as the petitioner is concerned. Thus the respondents are restrained from giving effect or implementing the order of reversion dtd.24.10.1985 so far as the petitioner is concerned. The order is subsequently confirmed by the High Court on 9.12.1985. This order needs no change till the hearing of the application."

59. The respondents have brought out in the written statement that the reversion orders were issued in terms of the interim order of the Hon'ble Supreme Court in J.C.MALIK's case wherein it was held that :-

"The promotions which may be made hereafter will be strictly in accordance with the judgement of the Allahabad High Court in Civil Writ Petition No. 1809 of 1972 and if any such promotions have been made otherwise than in accordance with the said judgement of the Allahabad High Court, such promotions shall be adjusted against the future vacancies."

60. Respondents have brought out that the promotions of the applicants were not in conformity with the above interim order of the Hon'ble Supreme Court which has been brought out in Annexure-'R-3' wherein it is shown that 2 SC candidates and 3 S.T. candidates have been promoted

after the date prescribed in the order of Hon'ble Supreme Court and, therefore, were required to be reverted.

61. The facts in the case are not disputed by the respondents. It is a fact that the applicant was promoted by applying roster on vacancies. It is, therefore, clear that in view of the final decision of the Hon'ble Supreme Court in J.C.MALIK's on 26.7.1995 which has been quoted in Para 9 of this judgement, the promotion of the applicant to the grade of Rs.700-900 made by applying roster is against the decision of the Hon'ble Supreme Court in J.C.MALIK's case. However, in view of the fact that the Hon'ble Supreme Court had ordered in the interim order that :-

"If any promotions have been made after February 24, 1984 otherwise than in accordance with the judgement of the High Court, such promotions shall be adjusted against the future vacancies"

We are of the view that the applicant need not be reverted in terms of the respondents' orders dated 24.10.1985 placed at Exhibit 'D' and he should be adjusted against the future vacancy for the reserved community to which he belongs which in this case happens to be Scheduled Caste. We make it clear that the respondent administration's order dated 24.10.1985 promoting the applicant against the reserved quota by applying the roster on vacancy is illegal but instead of holding the cancellation of promotion order dated 24.10.1985 as valid, we are directing that the applicant

should be adjusted against the future vacancy in the interest of justice. The seniority of the applicant, however, after adjustment would be governed by the position which he would take after adjustment and in terms of the various observations made by us in this judgement.

62. The T.A. is disposed of with these directions.

Tr.A. No. 236/86

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63. The Petitioner approached the Hon'ble High Court of Judicature at Bombay by filing Writ Petition No. 1297/85 for issuance of a Writ Mandamus directing the Respondents not to make appointments/promotions of S.C/S.T. employees in the categories of Ticket Inspector etc., by way of reservation in excess of 22-1/2% by applying roster or any other method. No stay order was granted by the Hon'ble High Court. The Writ Petition came to be transferred to this Tribunal and the same has been renumbered as Transferred Application No. 236 of 1986. The Tribunal passed interim orders in a group of TA/OAs dated 24.4.87 which are reproduced in para 2 of this judgment. The Tribunal also passed specific order in this T.A. which reads as under:

"The applicants belong to the "general category". In this case no interim order is passed either by the High Court or by this Tribunal, though it is

prayed for. Our interim order in this case will be in terms of the interim order mentioned in para 21 of this order."

Para 21 of the orders are the same as are brought out in para 2 of this judgment.

64. The Learned Counsel for the applicant as well as the respondents have submitted that the issue concerning reservation has been finally decided by the Hon'ble Supreme Court through final order in J C MALIK's case and nothing survives in this T.A. Counsel for the Respondents Administration has also submitted that the Administration is now making reservation according to the decision in J.C. MALIK's case and therefore no orders are required to be passed in this T.A. Since no specific order of the respondent administration has been challenged in this T.A., this T.A. would be governed by the observations made by us in this judgement and no specific orders are required to be passed in this T.A. The T.A. is therefore disposed of with the direction that the respondent administration to follow directions made by us in this judgment.

Tr.A. No. 275/86

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65. The Petitioner approached the Hon'ble High Court of Judicature at Bombay by filing Writ Petition No. 915/85 for issuance of a Writ Mandamus directing the Respondents not to make appointments/promotions of S.C/S.T. employees in the categories of ticket checking branch of

Commercial Department of the Bombay Division of Western Railway, by way of reservation in excess of 22-1/2%, by applying roster or any other method. No stay order was granted by the Hon'ble High Court. The Writ Petition came to be transferred to this Tribunal and the same has been renumbered as Transferred Application No. 275/86. The Tribunal passed interim orders in a group of TA/OAs dated 24.4.87 which are reproduced in para 2 of this judgment. The Tribunal also passed specific order in this T.A. which reads as under:

The applicants belong to the "general category".

On 8.5.1985 the High Court has passed an interim order consistent with the interim order passed by the Supreme Court. The order is confined to the promotion of Ticket Checking Branch of Commercial Department of the Bombay Division of Western Railway. The employees of Scheduled Caste/Scheduled Tribe are not parties. As they are likely to suffer our interim order in this case will be in terms of the interim order mentioned in para 21 of this order. It will remain in force till the decision of the application.

(Para 21 of the orders are the same as are brought out in para 2 of this judgment.)

66. The Learned Counsel for the applicant as well as the respondents have submitted that the issue concerning reservation has been finally decided by the Hon'ble Supreme Court through final order in J C MALIK's case and nothing survives in this T.A. Counsel for the Respondents Administration has also submitted that the Administration is now making reservation according to the decision in J.C. MALIK's case and therefore no orders are required to be passed in this T.A. Since no specific

order of the respondent administration has been challenged in this T.A. this T.A. would be governed by the observations made by us in this judgement and no specific orders are required to be passed in this T.A. The T.A. is therefore disposed of with the direction that the respondent administration to follow directions made by us in this judgment.

Tr.A. No. 280/86

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67. The Petitioner approached the Hon'ble High Court of Judicature at Bombay by filing Writ Petition No. 1716/85 for issuance of a Writ Mandamus directing the Respondents not to make appointments/promotions of S.C/S.T. employees in the office of Director of Supplies (Textiles), Bombay, by way of reservation in excess of 22-1/2% by applying roster or any other method. No stay order was granted by the Hon'ble High Court. The Writ Petition came to be transferred to this Tribunal and the same has been renumbered as Transferred Application No. 280/86. The Tribunal passed interim orders in a group of TA/OAs dated 24.4.87 which are reproduced in para 2 of this judgment. The Tribunal also passed specific order in this T.A. which reads as under:

The applicants belong to the "general category".

On 10.9.1985 the High Court has passed interim orders consistent with the interim orders passed by the Supreme Court. The order is confined to the staff working in the Office of Director of Supplied (Textiles), Bombay. Mr. Gangal has

appeared on behalf of the intervenors i.e., the employees of Scheduled Caste/Scheduled Tribe and he has prayed for the modification of the order. Our interim order in this case will be in terms of the interim order mentioned in para 21 of this application. It will remain in force till the decision of this application.

68. The Learned Counsel for the applicant as well as the respondents have submitted that the issue concerning reservation has been finally decided by the Hon'ble Supreme Court through final order in J C MALIK's case and nothing survives in this T.A. Counsel for the Respondents Administration has also submitted that the Administration is now making reservation according to the decision in J.C. MALIK's case and therefore no orders are required to be passed in this T.A. Since no specific order of the respondent administration has been challenged in this T.A. this T.A. would be governed by the observations made by us in this judgement and no specific orders are required to be passed in this T.A. The T.A. is therefore disposed of with the direction that the respondent administration to follow directions made by us in this judgment.

Tr.A. No. 281/86

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69. The Petitioner approached the Hon'ble High Court of Judicature at Bombay by filing Writ Petition No.1922/85 for issuance of a Writ Mandamus directing the Respondents not to make appointments/promotions of S.C/S.T.

employees in the categories of Ministerial staff (Clerical cadre) in the office of Collector of Customs at Bombay by way of reservation in excess of 22-1/2% by applying roster or any other method. No stay order was granted by the Hon'ble High Court. The Writ Petition came to be transferred to this Tribunal and the same has been renumbered as Transferred Application No. 281/86. The Tribunal passed interim orders in a group of TA/OAs dated 24.4.87 which are reproduced in para 2 of this judgment. The Tribunal also passed specific order in this T.A. which reads as under:

The applicants belong to the general category. Respondents include the Union of India, Collector of Customs, the Welfare Association of Scheduled Caste/Scheduled Tribe/Backward Class employees and one individual.

In this case ad-interim order was passed in terms of prayer (c) of the application but subsequently by an order dated 4.10.1985 that interim order was vacated. It is, however, directed by the same order that promotions made during the pendency of the petition will be subject to the outcome of the petition. Subsequently by order of the High Court dated 13.3.1986 some amendments were made in the application and the Welfare Association of SC/ST/BC employees in the Customs, Central Excise and Income Tax Departments and one more person were added as Respondent nos. 3 and 4. Though Mr. Sethna on behalf of the Respondent Nos. 1 and 2 submitted that no fresh interim order is necessary in this case, in order to safeguard the interest of the Scheduled Caste/Scheduled Tribe employees our interim order in this case will be terms of the interim order mentioned in para 21 of this application. It will remain in force till the decision of the application.

(Para 21 of the orders are the same as are brought out in para 2 of this judgment)

70. The Learned Counsel for the applicant as well as the respondents have submitted that the issue concerning

reservation has been finally decided by the Hon'ble Supreme Court through final order in J C MALIK's case and nothing survives in this T.A. Counsel for the Respondents Administration has also submitted that the Administration is now making reservation according to the decision in J.C. MALIK's case and therefore no orders are required to be passed in this T.A. Since no specific order of the respondent administration has been challenged in this T.A. this T.A. would be governed by the observations made by us in this judgement and no specific orders are required to be passed in this T.A. The T.A. is therefore disposed of with the direction that the respondent administration to follow directions made by us in this judgment.

Tr.A. No. 420/86

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71. The Petitioner approached the Hon'ble High Court of Judicature at Bombay by filing Writ Petition No.231/85 for issuance of a Writ Mandamus directing the Respondents not to make appointments/promotions of S.C/S.T. employees in the categories of Ministerial cadre at Head Quarters of the Western Railway by way of reservation in excess of 22-1/2% by applying roster or any other method. No stay order was granted by the Hon'ble High Court. The Writ Petition came to be transferred to this Tribunal and the same has been renumbered as Transferred Application

No. 420/86 The Tribunal passed interim orders in a group of TA/OAs dated 24.4.87 which are reproduced in para 2 of this judgment. The Tribunal also passed specific order in this T.A. which reads as under:

The applicants belong to the "general category".

On 8.3.1985 after hearing the petitioner's advocate and Respondents No.1 and 2's advocate the High Court has passed an interim order consistent with the interim order passed by the Supreme Court. The order is confined to ministerial cadre at Head Quarters of the Western Railway only. It appears that All India Scheduled Caste/Scheduled Tribe Employees Association was added subsequently as Respondent No.3 and it had preferred an appeal against that order. The appeal was dismissed on 10.4.85 with a direction that the interim order passed on 8.3.85 should continue. In this case our interim order will be in terms of interim order mentioned in para 21 of this order. It will remain in force till the decision of this appeal.

{Para 21 of the orders are the same as are brought out in para 2 of this judgment).

72. The Learned Counsel for the applicant as well as the respondents have submitted that the issue concerning reservation has been finally decided by the Hon'ble Supreme Court through final order in J C MALIK's case and nothing survives in this T.A. Counsel for the Respondents Administration has also submitted that the Administration is now making reservation according to the decision in J.C. MALIK's case and therefore no orders are required to be passed in this T.A. Since no specific order of the respondent administration has been challenged in this T.A. this T.A. would be governed by the observations made by us in this judgement and no

specific orders are required to be passed in this T.A. The T.A. is therefore disposed of with the direction that the respondent administration to follow directions made by us in this judgment.

Tr.A. No. 488/86

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73. The Petitioner approached the Hon'ble High Court of Judicature at Bombay by filing Writ Petition No. 1641/85 for issuance of a Writ Mandamus directing the Respondents not to make appointments/promotions of S.C/S.T. employees in the categories of Station Master, Bombay Division, Western Railway by way of reservation in excess of 22-1/2% by applying roster or any other method. No stay order was granted by the Hon'ble High Court. The Writ Petition came to be transferred to this Tribunal and the same has been renumbered as Transferred Application No. 488/86 The Tribunal passed interim orders in a group of TA/OAs dated 24.4.87 which are reproduced in para 2 of this judgment. The Tribunal also passed specific order in this T.A. which reads as under:

The applicants belong to the "general category".

On 2.9.1985 the High Court has passed an interim order. The order is confined to the promotions of Station Masters in Bombay Division of the Western Railway. Employees of Scheduled Caste/Scheduled Tribe are not parties to this application. In order that they should not suffer our interim order in this case will be in terms of the interim order mentioned in para 21 of this application. It will remain in force till the decision of the case.

(Para 21 of the orders are the same as are brought out in para 2 of this judgment.)

74. The Learned Counsel for the applicant as well as the respondents have submitted that the issue concerning reservation has been finally decided by the Hon'ble Supreme Court through final order in J C MALIK's case and nothing survives in this T.A. Counsel for the Respondents Administration has also submitted that the Administration is now making reservation according to the decision in J.C. MALIK's case and therefore no orders are required to be passed in this T.A. Since no specific order of the respondent administration has been challenged in this T.A. this T.A. would be governed by the observations made by us in this judgement and no specific orders are required to be passed in this T.A. The T.A. is therefore disposed of with the direction that the respondent administration to follow directions made by us in this judgment.

O.A.No.209/86

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75. The applicants in this O.A. are working as Office Superintendent and Head Clerks in the office of Chief Commercial Superintendent, Central Railway, Bombay. The applicants belong to reserved community candidates. In this O.A. interim order was passed vide Tribunal's order dated 24.4.1987. In Para 21 of the Tribunal's order the Tribunal issued general directions which are reproduced in Para 2 of this judgement. The Tribunal also passed

specific interim order in this O.A. which reads as under:

"The 21 applicants in this case are employees belonging to the Scheduled Caste/Scheduled Tribe. They filed this application for granting them promotions to the post of Office Superintendent Gr.I and Gr.II on the basis of their selection and their seniority and in accordance with the Railway Board's order dtd. 26.2.1985 and 11.9.1985. No interim order is passed in this case. However, our interim order in this case is in terms of para 21 of this order. The respondents may promote the applicants only if their promotions are in accordance with the said interim order and not otherwise."

76. The claim of the applicants is based on the premises that they are senior to the many general candidates who have been promoted. The claim of the applicant is based on the premises that they should be given seniority from the date of promotion in the lower grade irrespective of the fact whether they were promoted on the basis of reservation. The respondents have submitted an affidavit dated 3.12.1996 wherein they have brought out that although the date of promotion of the applicants is earlier but they will not get seniority from that date as the promotion was given against the reserved vacancies.

77. The respondents have submitted that the seniority of the applicants have been worked out on the basis of their seniority in the initial grade for the purpose of their promotion as general candidates. The respondents have further brought out that the persons belonging to reserved community candidates are already working against the posts according to roster and the applicants cannot

be given seniority for their accelerated promotion against the reserved posts for the purpose of promotion to the general post. The learned Counsel for the respondents Mr. Rege has argued that the action of the respondent administration is in conformity with the Hon'ble Supreme Court decision in JANUJA's case and the action of the administration therefore cannot be assailed on the ground that in some similar cases the Bombay High Court had granted relief to some other applicants.

78. Mr. Gangal, learned counsel for the applicants has argued that the judgement of the Hon'ble Supreme Court in VIRPAL SINGH CHAUHAN's case is applicable from the date of the decision of the Constitutional Bench in SABHARWAL's case which is dated 10th February, 1995. The Counsel for the applicant has argued that since the case of the applicants is prior to this date the law then prevalent would govern the case of the applicants. The learned counsel for the applicant has further argued that before the judgement of the Hon'ble Supreme Court in VIRPAL SINGH CHAUHAN's case the law was that the reserved community candidate would be given seniority from the date of promotion even when they have secured the promotion against the reserved vacancies for the purpose of further promotion against the general posts. The learned counsel has further argued that since the law prevalent at the time of controversy gave the seniority to the applicants from the date of promotion and since Virpal Singh CHAUHAN's case's application is prospective

from 10 February, 1995, the stay order granted in this case should be vacated and the applicant should be promoted on the basis of their seniority according to the date of promotion.

79. After hearing learned counsel for both the parties, we are of the opinion that the submissions of Mr. Gangal do not carry any force. We have already held that seniority of the reserved community candidates for the purpose of competing with the general candidates for further promotion would have to be determined in terms of the JANUJA's case quoted in Para 21 of this judgement. It is incidentally pointed out that there is no prospective application envisaged by the Hon'ble Supreme Court in their judgement in JANUJA's case. Moreover, even if Virpal Singh CHAUHAN's case is operated prospectively, the action of the administration was according to the judgement in JANUJA's case. It cannot be set aside solely on the ground that the Hon'ble Supreme Court's judgement in VIRPAL SINGH has prospective application. Therefore, the action of the respondent administration in not promoting the applicants, which action is found to be according to the law as laid down by Hon'ble Supreme Court in JANUJA's case, cannot be quashed on this ground. We are of the view that the law as laid down by the Hon'ble Supreme Court in JANUJA's case will determine the outcome of this case and, therefore, we are of the opinion that even before 10th February, 1995 (the date from which VIRPAL SINGH

CHAUHAN's case is operative), the action of the respondents according to the Hon'ble Supreme Court judgement in JANUJA's case is required to be held valid and accordingly hold it valid. This O.A. is, therefore, dismissed as having no merit.

O.A.NO.29/87

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80. The applicant in this case is working as Office Superintendent in the Stores Department of the Central Railway. The applicant belongs to the non-reserved category and he has filed this O.A. claiming the main relief that the reservation in the cadre of Assistant Controller of Stores should be not exceeding 22 1/2% of posts in the cadre and therefore he has sought a direction that the selection for the post of Assistant Controller of Stores should be held on the basis of reservation not exceeding 22 1/2% in the post in the cadre. The O.A. came for consideration of interim relief on 24.4.1987 wherein interim order was passed by the Tribunal which reads as under :-

"The applicant belongs to the "general category". This application is filed for directing the respondents i.e. the Central Railway administration for not giving further promotions to the Scheduled Caste/Scheduled Tribe employees in excess of the reserved quota to the post of A.C.Os. in the Stores department. No interim relief is granted. Our order in this case will be as mentioned in para 21 of this order. It will remain in force till the decision of the application."

(Para 21 mentioned this interim relief is reproduced in para 2 of this judgement.)

81. Since the main prayer in the O.A. is same as was to the point of J.C.MALIK's case and since the Hon'ble Supreme Court has already decided the issue in J.C.MALIK's case and also in SABHARWAL's case that the reservation should be on the basis of posts in cadre and not on vacancies no further direction is required to be issued in this case except that the respondent administration would follow the decision of the Hon'ble Supreme Court in J.C.MALIK's case and SABHARWAL's case for the purpose of calculating the reservation. It has also been brought to our notice that the applicant has since retired from service on 31.3.1992. The O.A. is, therefore, disposed of with no specific direction except that our various observations and directions in this judgement be followed by the administration.

O.A.No.88/87:

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82. There are 4 applicants in this O.A! Applicant No.1 Giriraj Kishore and Applicant No. 4 Mohar Singh Prabhakar are in service. Applicant No. 2 and 3 Narayan Arjun Rao and Ramsingh expired on 31.3.1995 and 1.1.1994 respectively. The applicants are working as Driver 'A' and belong to the Scheduled Caste. In this O.A. the applicants have sought the relief that they may be declared to be eligible to be promoted to the post of Driver 'A' Special Grade Rs.1640-2900 w.e.f. 12.1.1987

and promotion of Respondents No. 6 to 13 be declared as illegal. The O.A. came for consideration before the Tribunal on 24.4.1987 and interim order was passed which reads as under:-

"The applicants in this case are Scheduled Caste employees. They filed this application for directing the respondents to promote them to the posts of Driver 'A' Special and for declaring the promotions of Respondents No. 6 to 13 who are employees belong to the "general category" as invalid. No interim relief is granted in this case. The applicants' prayer for declaring the promotion of Respondent Nos. 6 to 13 as invalid is rejected. However, future promotions will be in terms of the interim order mentioned in para 21 of this order. It will remain in force till the decision of this application."

(Para 21 mentioned in the interim order is the same which has been reproduced in para 2 of this judgement.)

83. The issue involved in this O.A. is that the applicants seek promotion on the basis of his accelerated promotion on the reservation point. The contention of the applicants is that the date of promotion whether on roster or otherwise should be treated as the date from which their seniority should be counted. The applicants have challenged the promotion order dated 12.1.1987 in respect of promotion of Respondents No. 6 to 13 to the post of Driver 'A' Special which is placed at Annexure-'C-1' of the O.A.

84. The respondent administration in their reply has brought out that respondent employees 6 to 13 are senior to the applicants in the lower grade of Motorman and

since the quota of reservation has already been filled in the higher grade, the applicants could not be promoted and respondents No. 6 to 13 had been promoted and these promotion orders have been made in terms of the stay by the Bombay High Court in Writ Petition No.325 of 1985 whereby the High Court had ordered that the reservation for SC/ST employees should be restricted to 15% and 7-1/2%. In Para 7 of the reply dated 23.2.1987 the respondent administration has brought out that the applicants got earlier promotions in comparison to Respondents No. 6 to 13 due to reservation.

85. In a further reply dated 2.12.1996 the respondent administration submitted in para 4 that from the Exhibit R-2 it will be evident that the private respondents 6 to 13 are senior to the applicants in the Motor Driver 'A' grade. The applicants belong to reserved community and they got accelerated promotion on account of reservation.

86. No material has been brought out on record to rebut the averments made by the respondent administration in the written reply. The basic issue in this O.A. that the accelerated promotion would not give accelerated seniority stands finally settled in terms of Hon'ble Supreme Court judgement in JANUJA's case and the applicant would not be entitled to accelerated seniority on the basis of accelerated promotion. We, therefore, do

not find any merit in the prayer of the applicant that the promotion of private respondents No. 6 to 13 by the order dated 12.1.1987 may be treated as illegal. The O.A. is, therefore, dismissed.

O.A. No.137/87:

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87. There are 7 applicants in this O.A. The applicants belong to Scheduled Caste. In this O.A. the applicants have prayed that they should be promoted to the post of Office Superintendent with effect from the date their juniors have been promoted.

88. It is brought on record that the Applicants No.1 to 4 have since retired and that the Applicants No. 5 to 7 have been promoted in O.S. grade Rs.700-900 in the year 1992.

89. The applicants are working in the Office of Controller of Stores as Office Superintendent Grade II in the Grade of Rs.500-750. The applicants have stated that they were promoted as Office Superintendent on 15.7.1985 and they were senior in the seniority list. However, the respondent administration has promoted general community candidate junior to them in the seniority list to the grade of Office Superintendent. The O.A. came for consideration before the Tribunal and an order dated 24.4.1987 was passed which reads as under:-

"The 7 applicants in this case are belonging to Scheduled Caste. Their prayer is for declaring them to be promoted as Office Supdt.Gr.I in the scale of Rs.700-900 with effect from the dates on which their juniors are promoted. They have also requested for consequential monetary and other benefits. They have also prayed for interim relief for promoting them to the post of Office Supdt. in the grade of Rs.700-900. No interim relief is granted to them by this Tribunal. Our interim order in this case will be in terms of interim order as mentioned in para 21 of this order. It will remain in force till the decision of the application."

(Para 21 mentioned in the interim order is the same which has been reproduced in para 2 of this judgement)

90. The general issue involved is whether the accelerated promotion would give accelerated seniority to the applicants. The respondent administration in their reply has brought out that the applicants have received accelerated promotion due to reservation and they cannot claim accelerated seniority for being promoted to the general posts in higher grade which in this case is Office Superintendent Grade I Rs. 700-900. The respondents have further brought out that in the cadre of Office Superintendent Grade I the reservation is in excess of 22-1/2% and therefore the applicants cannot be promoted against the reserved quota as the quota is already in excess. The respondent administration has brought out in para 15 that the issue stands decided after the decision of Hon'ble Supreme Court in JANUJA's case and therefore there is no merit in the O.A.

91. Nothing has been brought out on record by the applicants by way of rejoinder to rebut the assertions of

the respondent administration that the applicants were granted promotion on the basis of reservation and the seniority cannot be granted to them. As far as the main issue involved in this O.A. is concerned, we have already held that the accelerated seniority to accelerated promotion stands settled with the pronouncement of Hon'ble Supreme Court judgement in JANUJA's case. Therefore, the applicants would not be entitled to any relief in this O.A. The O.A. is dismissed.

O.A. No. 274/87

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92. The Applicants in this O.A. have challenged the non-inclusion of their names in the panel for the post of Fireman-B in the grade Rs.2000-3200. The applicants have submitted that a selection was called for 26 vacancies wherein 16 were to be filled in from amongst general candidates, 6 from S.C. and 4 from S.T. The written test was held on 17.8.86. Both the applicants were declared passed in the written test. The applicants were called for interview but in the final select list which was declared on 14.3.1987 their names did not appear. The applicants have also submitted that the administration later on, dereserved the SC vacancies, which should have gone to the applicants, and promoted general candidates by publishing an additional panel on 27.3.1987, which is placed at Annexure 'J'. Applicants

have also challenged the dereservation of the reserved vacancies in this O.A.

93. The main ground for challenging the selection is that the Selection Committee conducted viva-voce test in an arbitrary manner and with malafide intentions to fail the SC candidates. The applicants therefore submitted that the malafide intention of the respondent administration is evident because both the applicants have clear service record and eventhough they have passed in the written test they have been failed in the viva-voce test.

94. The Respondent administration have submitted that in the written test 17 reserved community candidates had been called and out of that 15 candidates had appeared in the test. Out of the 15 candidates 3 candidates were declared successful in all respects and have been placed on the panel. 10 candidates have failed to secure 60% marks in the written test and were not therefore eligible to participate in the viva-voce test. The two candidates who are the applicants in this O.A. had passed the written test and had participated in the viva-voce test, but they were declared unsuitable in the selection. Respondent administration have also denied the charges of malafide and have brought out in their reply in para 11 that the selection committee consisted of three officers, one of whom was a Senior Personnel Officer belonging to reserved community, who is in the selection committee to ensure that the reserved community candidates are not

discriminated against. The respondents have further submitted that the charges of malafide are vague and are not made against any person and according to the well established principles no cognizance can be taken of vague charges unless malafide is specifically proved against some person. The Respondent administration had therefore submitted that selection cannot be held illegal on the vague charges of malafide which have been made by the applicants.

95. As far as the question of dereservation is concerned, the respondent administration have submitted that the post to which the selection has been made is called 'safety category post', and in terms of Railway Board circular dated 17.1.78, Exhibit 'C', the General Manager is empowered to deserve the post of SC/ST. The circular also prescribes the method by which the dereservation can be made. Respondent administration had submitted that they have acted according to these instructions while dereserving the posts.

96. After perusing the record and hearing arguments of the counsel, we are of the view that the applicants have not been able to make any case for malafide against any member of the selection committee or any official of the respondent administration which would have influenced the selection process. We further notice that respondent administration have made safeguards against any prejudice against reserved community candidates by having one

Member in the Selection Committee from reserved community. We therefore see no reason to interfere with this selection. We are also of the view that in view of the instructions of the Railway Board on the question of dereservation and the respondents assertion that they have acted upon that circular, no exception can be taken to the process of dereservation as it has been undertaken according to the instructions of the Railway Board. We therefore see no illegality in the dereservation done by the respondents in terms of Railway Board circular.

97. The O.A. is without any merit and the same is dismissed with to order as to costs.

98. There is no major question of reservation policy in this O.A. The only question is about the process of dereservation of the reserved community posts. This we have dealt with in our order. Since this O.A. does not involve any question of application of roster or grant of seniority to the reserved community candidates in terms of the various Hon'ble Supreme Court decisions, it is not necessary for us to make any observations about the application of general observations made in this judgment.

O.A. No. 349/87:

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99. Applicants in this O.A. are the All India Scheduled Caste/Scheduled Tribe Railway Employees Association. The grievance is concerning the cadre of Guards. The Applicant's Association has submitted that in the various categories of Guards the percentage of SC/ST is not being maintained according to the roster on the vacancies. Their plea in this O.A. is that the reservation should be continued according to the roster which would be applied on the vacancies irrespective of the fact whether the reservation has been achieved to the extent of 15% for SC and 7-1/2% for the ST in the cadre. In short the question involved in this O.A. is whether the reservation is to be applied on the vacancies by following roster as a running account or it is to be applied to the cadre on the basis of the posts in the cadre. At the time of admission the interim order in this O.A. was made applicable which had been passed in a group of applications in O.A. 154/86 and others. The general order in this connection are reproduced in para 2 of this judgement. According to this interim order the promotions were to be governed in accordance with the judgment of the Allahabad High Court in J C MALIK's case subject to the final outcome in terms of the Hon'ble Supreme Court order which was passed in J C MALIK's case.

100. The Respondent Administration has brought out in their written statement that in view of the stay order in J C MALIK's case the promotions have been made by calculating the percentage of reservation on the basis of cadre. The Respondents have also brought out that in terms of the Hon'ble Supreme Court interim order in J C MALIK's case the excess promotions are being adjusted against the future vacancies.

101. In view of the fact that J C MALIK's case happened to be in the category of Guards and in view of the final judgment of the Hon'ble Supreme Court in J C MALIK's case, which has been reproduced in this judgment in para 9, we see no merit in the plea of the applicants that the reservation should be continued on the basis of vacancies by applying 40 points roster.

102. The O.A. is dismissed.

Tr.A.No. 509/87:

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103. The Applicants in this petition, The All India SC/ST Railway Employees Association, had filed a Writ Petition No.277/86 in the High Court of Judicature at Bombay, Mumbai and the same has been transferred to this Tribunal under Administrative Tribunals Act, 1985 and has been renumbered as Transferred Application No.509/87.

The main prayer in this Petition is concerning employees Mrs. Manju Lindayat, Mr. K D Jadhav, and Mr. Gokul Prasad working in the office of the Controller of Stores, Central Railway, for being promoted to the grade of Office Superintendent Gr.I in the scale of Rs.700-900. The High Court had issued a direction which reads as under:

"The respondents are directed to promote (1) Mrs. Manju B. Lindayat, (2) Mr. K D Jadhav, (3) Mr. Gokul Prasad to the post of Office Superintendent in the pay of Rs.700-900 if they are otherwise not disqualified.

2) These promotions will be subject to the result of the petition."

104. The matter was kept in sine die list for final decision of the Hon'ble Supreme Court in J C MALIK's case. The issue to be decided in this T.A. concerns seniority to the reserved community employees on the basis of their accelerated promotion on account of roster point for the purpose of higher promotion to the general category post. The claim of the applicant is that the applicants are entitled to the seniority from the date of their promotion on the basis of roster for further promotion against general posts.

105. The respondents have brought out that the reserved community candidates were already working in the cadre of Office Superintendent Gr.I according to the roster and therefore the claim of the applicants is not maintainable against the reserved vacancies. The respondents have

also brought out in their reply at para 4 that although the three petitioners have been promoted as directed by the Hon'ble High Court in terms of interim order there are some senior S.C. employees viz., Appadurai Muthaya, P S Shinde who are senior to the three persons who have not been promoted.

106. The claim of the petitioners in this T.A. is based on the premise that the seniority should be granted according to the promotion on the basis of roster and this seniority should also count for further promotion against the general category posts. The prayer is without merit in view of the Hon'ble Supreme Court's judgment in JANUJA's case, the relevant portions of which are quoted in paragraphs 21 to 25, in this judgment. Since it has been held in JANUJA's judgment that accelerated promotion would not give accelerated seniority, therefore the petitioners have no claim to the promotion which they have sought in this T.A.

107. However, the respondent administration has brought on record in para 5 that persons junior to the petitioners even belonging to the S.C. community have been promoted. Therefore, there will be no question of reverting the petitioners at this stage. We are therefore, of the opinion that this petition is without any merit and is liable to be dismissed. However, in view of the fact that the persons junior to the applicants have already been promoted the applicants are

not required to be reverted. Although we are holding that this T.A. is without merit the applicants need not be reverted. The petitioner's seniority should be adjusted against future vacancies to which they would have been entitled to according to their seniority in the lower grade.

Tr.A. No. 510/87:

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108. The applicants in this T.A., the All India SC/ST Railway Employees Association, had filed a Writ Petition No.274/86 in the High Court of Judicature at Bombay, Mumbai and the same has been transferred to this Tribunal under Administrative Tribunals Act, 1985 and has been renumbered as Transferred Application No.510/87. The High Court had passed issued directions to promote two applicants to the Data Processing Superintendent and General Supervisor vide its order dated 12.3.1986. The order reads as under:

"The Respondents are directed to promote (1) Shri K.G.Tekam, (2) Shri L.D. Parmar to the post of Data Processing Superintendent scale Rs.700-900 and General Supervisor scale Rs.550-750 respectively, if they are otherwise not disqualified.

2) These promotions will be subject to the result of the petition."

109. The issue involved in this T.A. is grant of seniority on the basis of accelerated promotion according

to the roster and this seniority should also count for further promotion against the general category posts. Out of the two employees who were promoted on the basis of the direction of the Hon'ble High Court, one Mr. L D Parmar has since retired on 31.7.90 and another Mr. K G Tekam is due to retire in June 1997. As we have already held the issue of seniority on accelerated promotion on roster point for further promotion against the general post stands finally settled by the Hon'ble Supreme Court's judgment in JANUJA's case, (the relevant portions are quoted in various paragraphs in this judgment). Therefore on merit this T.A. does not survive. As far as Parmar is concerned no order need be passed as the directions of the High Court were applicable for him up to his retirement. As far as Tekam is concerned, since he is going to retire shortly he should be continued to be in his present post and the order of the Hon'ble High Court promoting him should be continued till his retirement and he should not be reverted as a result of the decision in this T.A. This promotion would not give him right to seniority which should be adjusted against future vacancy.

110. The T.A. is dismissed with above direction.

Tr.A. No. 511/87:

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111. The applicants in this T.A., the All India SC/ST Railway Employees Association, had filed a Writ Petition.

No.268/86 in the High Court of Judicature at Bombay, Mumbai and the same has been transferred to this Tribunal under Administrative Tribunals Act, 1985 and has been renumbered as Transferred Application No.511/87. The High Court had issued directions to promote some applicants vide its order dated 12.3.1986. The order reads as under:

"The Respondents are directed to promote S/Shri 1) U S Ahire, 2) M S Nikale 3) B B Patel 4) R B Patel, 5) N M Barot to the post of Office Superintendent Grade-I in the pay scale Rs.700-900 and also directed to promote S/Shri 1) G V Savant 2) Mrs. C D Balivant 3) Kishor Bick Kundwar, 4) D K Waike 5) K W Wagh, 6) K V Krishnan, 7) D G Kanwar to the post of Office Superintendent Gr.II scale Rs.550-750 if they are otherwise not disqualified and further if they are in turn for such promotion by selection or seniority.

2) The Respondents are directed to regularize the promotions of S/Shri 1) N G Dharade, 2) B G Gohel, 3) H S Ghikalkar, 4) V N Bhandare as Officer Superintendent Gr.I scale Rs.700-900 and also regularize the promotion of Shri H S More to the post of Office Superintendent Grade II scale Rs.550-750 if they are otherwise not disqualified.

3) These promotions and regularization of services will be subject to the result of the petition. The promotions orders are to be issued within two weeks."

112. Accordingly the respondent administration had complied with the direction of the High Court by promoting all the persons whose names were stated in this order.

113. The issue involved in this T.A. is grant of seniority on the basis of accelerated promotion according

to the roster and this seniority should also count for further promotion against the general category posts. The issue has finally been decided by the Hon'ble Supreme Court in JANUJA's case. Therefore the petition has no merit in terms of the verdict of the Hon'ble Supreme Court.

114. Out of the 16 employees who were ordered to be promoted by the High Court vide their interim order dated 12.3.96, eight have either retired or expired. Employees nos. 9 to 16 are still working. The Respondent administration have taken a position in the written statement that in view of the fact that the SC/ST employees have been regularized and promoted nothing further is required to be done and therefore the T.A. has become infructuous. We, therefore, dispose of this T.A. with the direction that the applicants who are still in service need not be reverted although there is no merit in the plea of the applicants in this T.A. As for as the question of their seniority is concerned the same may be decided in terms of the Hon'ble Supreme Court observations in JANUJA's case and our observations in this judgment, for the purpose of further promotion. With these directions the T.A. is disposed of.

Tr.A. No. 512/87:

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115. The applicants in this T.A., the All India SC/ST Railway Employees Association, had filed a Writ Petition

No.2038/86 in the High Court of Judicature at Bombay, Mumbai and the same has been transferred to this Tribunal under Administrative Tribunals Act, 1985 and has been renumbered as Transferred Application No.512/87. The High Court had issued directions to promote some applicants vide its order dated 27.8.1986. The order reads as under:

"The Respondents are directed to promote S/Shri 1) Manohar Bansi Kulsange, 2) Waman Ganpat Sabale and H R Khadtale to the post of Senior Commercial Inspector in the grade Rs.700-900 if they are otherwise not disqualified and on express condition that these promotions will be subject to the result of this Petition.

2) The Respondents are directed to promote S/Shri S V Bansode, (2) J S Saindane, (3) V C Thorat, (4) V D Vatkar, (5) T S Danane, (6) B D Patel, (7) L U Solanki, (8) E L Gaikwad, (9) R S Ugale, (10) Shrirank Vagai and (11) Vithal Bali Sonawane in the Grade of Rs.700-900 and S/Shri S N Padale, V V Salvi and U S Mesharan to the grade of Rs.550-750, if they are otherwise not disqualified and further if they are in turn for such promotion by selection on seniority. The said promotions are also expressly subject to the result of this Petition.

116. Accordingly the respondent administration had complied with the direction of the High Court by promoting all the persons whose names were stated in its order.

117. The issue involved in this T.A. is grant of seniority on the basis of accelerated promotion according to the roster and this seniority should also count for further promotion against the general category posts.

The issue has finally been decided by the Hon'ble Supreme Court in JANUJA's case. Therefore the petition has no merit in terms of the verdict of the Hon'ble Supreme Court.

118. The Respondent administration have taken a position in the written statement that in view of the fact that the SC/ST employees have been regularized and promoted nothing further is required to be done and therefore the T.A. has become infructuous. We, therefore, dispose of this T.A. with the direction that the applicants who are still in service need not be reverted although there is no merit in the plea of the applicants in this T.A. As for as the question of their seniority is concerned the same may be decided in terms of the Hon'ble Supreme Court observations in JANUJA's case and our observations in this judgment, for the purpose of further promotion. With these directions the T.A. is disposed of.

Tr.A. No. 513/87:

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119. The applicants in this T.A., the All India SC/ST Railway Employees Association, had filed a Writ Petition No. 275/86 in the High Court of Judicature at Bombay, Mumbai and the same has been transferred to this Tribunal under Administrative Tribunals Act, 1985 and has been

renumbered as Transferred Application No.513/87. The High Court had issued directions to promote some applicants vide its order dated 12.3.1986. The order reads as under:

"The Respondents are directed to promote 1) Shri G V Mahala, 2) Shri D B Sable, 3) Shri D V Deoghare to the posts of Office Superintendent Grade-I in the pay scale Rs.700-900 in the Personnel Branch forthwith, if they are otherwise not disqualified.

2) These promotions will be subject to the result of the petition."

120. Accordingly the respondent administration had complied with the direction of the High Court by promoting all the persons whose names were stated in its order.

121. The issue involved in this T.A. is grant of seniority on the basis of accelerated promotion according to the roster and this seniority should also count for further promotion against the general category posts. The issue has finally been decided by the Hon'ble Supreme Court in JANUJA's case. Therefore the petition has no merit in terms of the verdict of the Hon'ble Supreme Court.

122. The Respondent administration have taken a position in the written statement that in view of the fact that the SC/ST employees have been regularized and promoted nothing further is required to be done and therefore the

T.A. has become infructuous. We, therefore, dispose of this T.A. with the direction that the applicants who are still in service need not be reverted although there is no merit in the plea of the applicants in this T.A. As for as the question of their seniority is concerned the same may be decided in terms of the Hon'ble Supreme Court observations in JANUJA's case and our observations in this judgment, for the purpose of further promotion. With these directions the T.A. is disposed of.

T.A. No. 514/87:

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123. The applicants in this T.A., the All India SC/ST Railway Employees Association, had filed a Writ Petition No. 2037/86 in the High Court of Judicature at Bombay, Mumbai and the same has been transferred to this Tribunal under Administrative Tribunals Act, 1985 and has been renumbered as Transferred Application No.514/87. The High Court had issued directions to promote some applicants vide its order dated 27.8.1986. The order reads as under:

"The respondents are directed to promote S/Shri (1) V S Salve, (2) S W Unawane, (3) S S Sonavane, (4) S S Sable, (5) Mevalal Vinod, (6) D K Kotia, (7) D S Mailari and (8) A S Sonavane from the present post of Assistant Chief Ticket Inspectors grade Rs.550-750, to the post of Chief Ticket Inspectors, Grade rs.700-900 if they are otherwise not disqualified and on express condition that these promotions will be subject to the result of this petition."

124. Accordingly the respondent administration had complied with the direction of the High Court by promoting all the persons whose names were stated in its order.

125. The issue involved in this T.A. is grant of seniority on the basis of accelerated promotion according to the roster and this seniority should also count for further promotion against the general category posts. The issue has finally been decided by the Hon'ble Supreme Court in JANUJA's case. Therefore the petition has no merit in terms of the verdict of the Hon'ble Supreme Court.

126. Since all the applicants have retired the T.A. becomes infructuous and no orders are required to be passed in this T.A. and is disposed of as infructuous.

Tr.A. No. 515/87:

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127. The applicants in this T.A., the All India SC/ST Railway Employees Association, had filed a Writ Petition No. 276/86 in the High Court of Judicature at Bombay, Mumbai and the same has been transferred to this Tribunal under Administrative Tribunals Act, 1985 and has been renumbered as Transferred Application No.515/87. The High Court had passed issued directions to promote some applicants vide its order dated 11.3.1986. The order reads as under:

"Respondents are directed to promote the candidates mentioned at Serial No.8, 9 and 31 to 40 in exhibit E to the Petition in the post of Chief Ticket Inspector in the pay scale of Rs.700-900, if they are not otherwise disqualified. These promotions are subject to result of petition."

128. Accordingly the respondent administration had complied with the direction of the High Court by promoting all the persons whose names were stated in its order.

129. The issue involved in this T.A. is grant of seniority on the basis of accelerated promotion according to the roster and this seniority should also count for further promotion against the general category posts. The issue has finally been decided by the Hon'ble Supreme Court in JANUJA's case. Therefore the petition has no merit in terms of the verdict of the Hon'ble Supreme Court.

130. Since all the applicants have retired the T.A. becomes infructuous and no orders are required to be passed in this T.A. and is disposed of as infructuous.

Tr.A. No. 516/87:

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131. The applicants in this T.A., the All India SC/ST Railway Employees Association, had filed a Writ Petition

No. 481/86 in the High Court of Judicature at Bombay, Mumbai and the same has been transferred to this Tribunal under Administrative Tribunals Act, 1985 and has been renumbered as Transferred Application No.516/87. The High Court had refused interim orders before the matter was transferred to this Tribunal.

132. The issue involved in this T.A. is grant of seniority on the basis of accelerated promotion according to the roster and this seniority should also count for further promotion against the general category posts. The issue has finally been decided by the Hon'ble Supreme Court in JANUJA's case. Therefore the petition has no merit in terms of the verdict of the Hon'ble Supreme Court.

133. As far as the question of seniority is concerned the same may be decided in terms of the Hon'ble Supreme Court observations in JANUJA's case and our observations in this judgment, for the purpose of further promotion. The T.A. is dismissed.

Tr.A. No. 520/87:

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134. This is a Writ Petition No. 618/86 filed before the High Court of Judicature at Bombay and has been transferred to this Tribunal under the Administrative

Tribunals Act, 1985 and has been renumbered as Transferred Application No. 520/87. The High Court had passed the following interim relief on 4.4.1986:-

"The promotions which may be made hereafter will be strictly in accordance with the judgment of the Allahabad High Court in Civil Writ Petition No. 1809 of 1972 and if any such promotions have been made otherwise than in accordance with the said judgment of the Allahabad High Court, such promotions shall be adjusted against the future vacancies.

" The interim order is confined only to the promotions of staff working in the Electric Department of the Matunga Workshop of the Central Railway, Bombay 400019.

" Liberty to the parties to apply for variation of the above Interim Order if the Supreme Court varies its interim order."

135. This is a Writ petition filed by the general category employee. The issue involved in this T.A. concerns whether the reservation is to be based on the application of roster as a running account or is required to be based on the basis of cadre. This issue has been finally decided by the Constitutional Bench of the Hon'ble Supreme Court in SABHARWAL's case. Since the main prayer in this T.A. is that the respondent administration be directed to follow the Allehabad High Court decision in J C MALIK's case and since that decision has been finally upheld by the Hon'ble Supreme Court, the relevant portion of which is reproduced in para 9 of this judgment, no specific order is required to be passed except that the respondent administration is directed to follow the various observations made by us in this judgement.

is that the respondent administration must follow 40 point roster reserved for SC and ST candidates for promotion to the post of Examiner(O.G.) in the Customs Department of Bombay Customs, Collectorate. The applicants have brought out that the respondent administration is not following the roster in their department for the post of Examiner (O.G.). The applicants have made many representations but no reply has been received.

140. The respondent administration has brought out that there was no reservation for SC/ST in the cadre of Examiners for promotee quota prior to 1976 and hence there was no question of reservation for SC/ST for the DPC held in O 1975 and therefore, there was no question of carry forward of reserved -ancies of 1975. The respondents have further brought out the orders for reservation for SC/ST officials came into force in February, 1976. Further, the respondents have brought out that the DPC held in 1982 was for adhoc promotion and that there was no reservation for adhoc promotion during that period.

141. The reservation orders for adhoc promotion came into force only w.e.f. 30.4.1983 and therefore as the two DPCs held in July, 1982 and March, 1983 were for adhoc promotions, there was no reservation for adhoc promotion for the above referred two DPCs. The respondent administration has further brought out that

when the DPC met in 1986 for regularisation of these adhoc promottees on yearwise basis in terms of O.M. dated 24.12.1980, the SC/ST officials who were falling in the consideration zone, were duly considered for regular promotion in the cadre of Examiner and, accordingly, promotion orders were issued.

142. The applicants have not rebutted these averments of the respondent administration in the written statement. On the basis of record available and the arguments of the counsel, we are of the opinion that the applicants have not been able to bring out any case for intervention by the Tribunal in this OA. The OA. is, accordingly, dismissed. The respondent administration is directed to follow the direction made in this judgement for the purpose of reservation.

OA.NO.403/89:

143. The applicants in this OA. are the All India Scheduled Caste and Scheduled Tribe Association of Railway Employees. The applicants have sought the relief in this OA. that the Notification dated 27.2.1989 for the selection of Class-II posts of ACS and Notification dated 20.3.1989 for Class-II posts of APOs in the Western Railway should be quashed. The applicants have also prayed that the respondents should be directed to prepare

a seniority list on the basis of actual date of promotion in the scale of Rs.700-900 for all the persons whether belonging to general community or SC/ST and call them for the said selection strictly according to the seniority so prepared irrespective of the fact whether the present position is obtained by the person belonged to SC/ST either by way of reservation or otherwise. The applicants have also prayed that the respondents to allow the eligible persons belonged to SC/ST to compete for the general posts also for the said selection of Assistant Commerical Superintendent/Assistant Personnel Officer on the basis of the seniority so prepared. The applicants have also sought the interim order which has been denied by the Tribunal vide their order dated 15.6.1989 while admitting the OA. The main issue involved in this OA. has been brought out by the applicants in Para 4.7 of this OA. wherein at page 7 they have stated as under :-

"The applicants further state and submit that it is immaterial for the purpose of calling the employees belonging to Scheduled Caste and Scheduled Tribe for the said selection whether the present posts which they are occupying is by way of reservation, merit or otherwise, because date of promotion to the scale of Rs.700-900 is a criterian for fixing seniority on the basis of which an employee becomes entitled to be called for Class-II selection. Seniority in the lower grade has nothing to do with the eligibility of a candidate to be called for the selection of Assistant Commercial Superintendent/Assistant Personnel Officer."

144. The respondent administration in their reply has brought out that the respondent administration is

following the interim order in some other OAs, dated 24.4.1987 (which has been reproduced in Para 2 of this judgement). The respondent administration has also brought out the Tribunal's interim order dated 17.11.1987 which reads as under :-

"It appears that the interim order of this Tribunal passed on 24.4.1987 is to govern all the promotions and is not restricted to the applicants in the case in which that order has been passed. Hence, an ex-parte interim order is passed restraining the respondents from making promotion of Scheduled Caste and Scheduled Tribe candidates in excess of 15% and 7-1/2% posts respectively."

The respondents have also brought out further in Para 4 at page 3 of the written statement at bottom as under :-

"It is stated that almost all Scheduled Caste/Scheduled Tribe candidates presently working in Higher Grade categories eligible to be considered for selection to Group 'B'/Class II posts of Asstt.Commercial Supdt. and Asstt.Personnel Officer were promoted, out of turn, against reserved vacancies on the basis of Roster Points. The seniority obtained by them in the higher grades was not on basis of their over-all merits or on original seniority but was on the basis of reservation alone."

The respondent administration has also brought out at page 5 of the written statement that :-

"In regard to the selection to the post of Asstt.Personnel Officer, it is stated that all those candidates, who applied for the said selection and fulfilled the conditions of requiring 3 years non-contiguous services in scale Rs.1400-2300(RS) and above were called for the said selection, and not at 3 times the number of vacancies. However, for selection to the said post, viz. Asstt.Personnel Officer, vacancies for Scheduled Caste and Schedule Tribe were worked out at 15% and 7-1/2% of posts respectively in order to follow the direction

contained in item 1 of the interim order dated 24.4.1987 of this Hon'ble Tribunal reproduced above."

145. The respondent administration has also brought out that in terms of interim orders of this Tribunal dated 24.4.1987 and 17.11.1987 the question of violation of principles of Inter-se seniority does not arise, as the seniority gained by Schedule Caste/Schedule Tribe employees on jumping promotions against reserved post is not a seniority as such in its real sense.

146. After perusing the record and hearing the counsel it is seen that the issue involved in this OA. is whether the accelerated promotion on the reserved posts would give accelerated seniority to the reserved community candidates. This issue is finally settled by the Hon'ble Supreme Court in JANUJA's as held by us in paras. 18, 19 and 20 of this judgement. Since the finding is that the accelerated promotion does not give accelerated seniority, the OA. does not survive. The OA. is, therefore, dismissed.

OA.NO.425/89:

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147. This OA. has been filed by All India SC/ST Railway Employees Association on behalf of Signal and Telecommunication employees of Central Government. Shri K.M.Uke is the Secretary who is working as Assistant

Signal and Telecommunication Engineer Railway Electrification Project in Railways. In this OA, the applicants have challenged the selection initiated by the letter dated 19.5.1989 which is placed at Annexure 'A' and have prayed that the said letter be treated as illegal. The applicants have also prayed that it be declared that all the affected 23 SC/ST employees whose names are given in Annexure- 'C' are eligible to appear for the class II selection initiated by letter dated 19.5.1989.

148. The applicants were permitted to appear in the selection test by way of interim order of the Tribunal dated 13.6.1989. The interim orders passed read as under:-

"(i) Respondents shall allow the persons mentioned in Annexure-C at page 27 of the application to appear for the supplementary test which is to be held on 22nd and 23rd June, 1989.

(ii) The appearance of these persons for the supplementary test will be subject to the final outcome of this case. Respondents shall not declare the result of these 23 persons until further orders."

Later on the interim order was modified by the Tribunal's order dated 25.11.1990 and it was directed that the

respondents should hold the viva-voce test for those who were permitted to appear for written test vide the Tribunal's interim order dated 13.6.1989. However, it was further ordered that the results of the viva-voce test should not be declared. It is seen that out of 23 candidates who were permitted to appear in the written test, only 14 appeared for the written test. Out of 14 who undertook the written test, only 3 have passed the written test. The result of the 3 employees who have appeared for the viva voce test has not been declared as directed by the Tribunal in their interim order.

149. The issue involved in this OA. concerns the grant of seniority to the reserved community candidates on the basis of promotion according to the roster point for the purpose of further promotion against general posts. The applicants' claim is that the date of promotion according to the reservation would entail seniority from the date of promotion even for the purpose of promotion in further grade against general posts. The respondents have brought out in the written statement at page 62 of the OA. that the 23 SC/ST candidates shown in Annexure-'C' to the OA. were earlier promoted by virtue of reservation and not by merit and therefore the counsel for the respondents has argued that the applicants cannot be granted seniority on the basis of date of promotion on reservation point for further promotion against general posts in terms of the Hon'ble Supreme Court's decision in JANUJA's case.

150. The counsel for the applicant has raised the question of prospective applicability of SABHARWAL and VIRPAL SINGH CHAUHAN's judgement. The counsel for the applicant has argued that in view of the Hon'ble Supreme Court's directions that Virpal SINGH CHAUHAN's judgement would apply prospectively from the date of SABHARWAL's judgement, the action of the respondent administration before that date, i.e. 10.2.1995 is required to be governed by the rules then prevailing and therefore the respondent administration's action in this OA. of not granting seniority to the applicants on the basis of date of promotion against the reserved quota for the purpose of promotion to the higher grade against the general posts is required to be set aside. We have discussed this aspect in Para 13 of this judgement. We are of the opinion that the action of the respondent administration which is in conformity with the decision of Hon'ble Supreme Court in JANUJA's case cannot be questioned on the ground that Virpal SINGH CHAUHAN and SABHARWAL's judgement have prospective applicability and would not cover the action of the respondent administration which is before that date, i.e. 10.2.1995. We are of the opinion that the action of the respondent administration is according to the ratio of JANUJA'S judgement. The administration cannot be asked to review the judgement and act according to those rules which have been found against the provisions of JANUJA's judgement. The situation would be different if the action of respondent administration has already been taken in terms of the

rules then prevailing before 10.2.1995 and those actions are challenged on the ground that these are against the provisions of JANUJA's judgement. In such cases, perhaps the case would have made out that the action of respondent administration should not be quashed as it is before the date of SABHARWAL and VIRPAL SINGH CHAUHAN's case, i.e. February 10, 1995. It is also to be noted that there is no prospective applicability envisaged in JANUJA's case by the Hon'ble Supreme Court. Considering all these aspects, we have come to the conclusion that the action of the respondent administration which have been found to be in conformity with the ratio of JANUJA's judgement cannot be assailed on the ground that they were prior to 10.2.1995, the date of pronouncement of SABHARWAL's judgement.

151. We have already held in paras 18 to 24 that the question of grant of seniority to the reserved community candidates, who have been promoted on the basis of reservation, has to be worked out in terms of Hon'ble Supreme Court decision in JANUJA's case. In view of the position of law as brought out in JANUJA's case and our observation in para 18 to 24, we are of the opinion that this OA. has no merit and is therefore liable to be dismissed. Accordingly, we dismiss it. The interim order granted in this OA. would stand vacated.

O.A. No: 856/89:

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152. The applicants in this O.A. are All India SC/ST Railway Employees Association, Central Railway, Bhusawal, and G R Thakur, Chief Booking Supervisor, Central Railway, Jalgaon. The applicants have challenged in this O.A. that 25 SC/ST candidates have not been called for selection to the grade Rs.2000-3200 from the list published vide letter dated 13.1.89 in the grade of Rs.1600-2660. The respondents have brought out in their written reply that the selection was called vide notification dated 3.6.89 for 23 vacancies. The respondents have further brought out that in the cadre of Commercial Clerk/Inspector in the grade of Rs.2000-3200 there are 44 posts and out of this 12 employees belong to SC category and 6 persons belonging to SC category are already working in the grade. According to the reservation of 15% and 7-1/2% there should be 7 SC and 3 ST candidates. Thus the number of SC/ST candidates in the grade 2000-3200 were in excess of reservation provided according to the rules. As there was no further post to be filled in from amongst the SC/ST candidates and also as all the 25 applicants had secured accelerated promotions in the lower grade of Rs.1600-2660 on the basis of reservation they were not considered eligible for selection as notified on 3.6.1989. The respondent administration has further brought out that only one Shri S.P. Borsia who belongs to SC community had not secured

promotion in the lower grade on the basis of reservation and hence he was considered as eligible in terms of the Railway Board order dated 19.4.1988.

153. After hearing the learned counsel for both the parties and perusing the record we are of the opinion that the issue involved in this case is whether the promotion granted against reservation would also enable the SC/ST candidates to claim seniority from the date of their promotion for further promotions against the general candidates. This issue is no more res integra in view of the judgement of the Hon'ble Supreme Court in JANUJA's case. Nothing survives in this O.A. and hence the O.A. is without merit and is dismissed.

O.A. No. 973/89:

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154. The applicants in this O.A. have challenged the selection on the ground that the requisite number of SC/ST candidates have not been called. The respondent administration has brought out in their reply that the selection was called for 44 vacancies in Group B posts of which 37 were for general, 5 for SC and 2 for ST. The number of reserved posts has been determined by the administration in terms of Railway Board order dated 19.4.1988. The letter dated 19.4.1988 was issued by the Ministry of Railways, Railway Board giving clarification

in the face of the judgment given by the Central Administrative Tribunal, Bombay, for determining the quota as per 40 point roster in face of specific orders that the percentage of reservation for SC/STs should be applied to the number of posts in the cadre and not in vacancies. The Railway Board letter further mentions that in the light of the judgments of Allahabad High Court and CAT, Bombay certain clarifications are issued.

The relevant portion of clarification (a) state that Reservation for SC/STs should be provided to the extent there is a shortfall in the cadre for SC/STs subject to the condition that the reserved post should not exceed 50% of the posts being filling up by the selection.

155. There is no rebuttal to this averment of the Railways from the applicants by way of a rejoinder in this case. Therefore, the action of the respondent administration in following the reservation on the basis of the posts cannot be assailed. As has already been pointed out by us in this judgment, the issue has been finally settled by the Hon'ble Supreme Court by its decision in J C MALIK's case. In view of the final verdict of the Hon'ble Supreme Court in JANUJA's case which is based on SABHARWAL's judgment of the Hon'ble Supreme Court, we see no reason to interfere with the action of the railway administration in this case. The O.A. is therefore dismissed.

Tr.A. No. 22/91:

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156. The applicants in this T.A. are the All India SC/ST Railway Employees Association of the Central Railway. The issue involved in this T.A. is concerning the question whether reservation should be based on vacancy or cadre. The applicants prayed that the reservation should be applied on the 40 point roster on the vacancy. Since this issue has been finally settled by the Hon'ble Supreme Court in J C MALIK's case we are not going into details of this case and on this point there is no merit in this T.A. One another point raised in this T.A. is on the question of promotion of reserved community candidates against the general posts. Petitioners have submitted that employees of reserved community candidates who get promotion on the basis of reservation should be granted seniority from the date of promotion and should be promoted against general posts in higher grade on the basis of this seniority. As has been already pointed out in this judgment, this issue has also been settled by the decision of the Hon'ble Supreme Court in JANUJA's case wherein it has been held that the reserved community candidates would not get accelerated seniority as a result of accelerated promotion. No other point has been argued in this T.A. and therefore we do

not see any merit in this T.A. and accordingly it is dismissed.

T.A. No. 33/91:

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157. Petitioners in this case approached the High Court of Judicature at Bombay by filing writ petition No.360/85 which has been transferred to this Tribunal under the Administrative Tribunals Act, 1985 and has been renumbered as Transferred Application No.33/91. The High Court had passed an interim order which reads as under:

"The promotions which may be made hereafter will be strictly in accordance with the judgement of the Allahabad High Court in Civil Writ Petition No.1809 of 1972 and if any such promotions have been made otherwise than in accordance with the said judgment of the Allahabad High Court, such promotions shall be adjusted against the future vacancies."

158. This is a Writ petition filed by the general category employee of Government of India. The issue involved in this T.A. concerns whether the reservation is to be based on the application of roster as a running account or is required to be based on the basis of cadre. This issue has been finally decided by the Constitutional Bench of the Hon'ble Supreme Court in SABHARWAL's case. Since the main prayer in this T.A. is that the respondent administration be directed to follow the Allahabad High Court decision in J C MALIK's case and since that decision has been finally upheld by the

Hon'ble Supreme Court, the relevant portion of which is reproduced in para 9 of this judgment, no specific order is required to be passed except that the respondent administration is directed to follow the various observations made by us in this judgement. The O.A. is disposed of with these directions.

Tr.A. No. 34/91:

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159. Petitioners in this case approached the High Court of Judicature at Bombay by filing writ petition No.914/85 which has been transferred to this Tribunal under the Administrative Tribunals Act, 1985 and has been renumbered as Transferred Application No.34/91. The High Court had passed an interim order which reads as under:

"The promotions which may be made hereafter will be strictly in accordance with the judgement of the Allahabad High Court in Civil Writ Petition No.1809 of 1972 and if any such promotions have been made otherwise than in accordance with the said judgment of the Allahabad High Court, such promotions shall be adjusted against the future vacancies."

160. This is a Writ Petition filed by the general category employee of Government of India. The issue involved in this T.A. concerns whether the reservation is to be based on the application of roster as a running account or is required to be based on the basis of cadre. This issue has been finally decided by the Constitutional

Bench of the Hon'ble Supreme Court in SABHARWAL's case. Since the main prayer in this T.A. is that the respondent administration be directed to follow the Allahabad High Court decision in J C MALIK's case and since that decision has been finally upheld by the Hon'ble Supreme Court, the relevant portion of which is reproduced in para 9 of this judgment, no specific order is required to be passed except that the respondent administration is directed to follow the various observations made by us in this judgement.

OA.NO.484/93:

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161. The applicants in this OA. are working as Assistant Personnel Officers Group 'B' post of Western Railway. The applicants belong to the non-reserved (general) category. In this OA. the applicants have sought the following reliefs :-

"(a) This Hon'ble Tribunal will be pleased to order and direct the Respondents not to give promotion to the SC/ST employees to the post of Senior Scale Personnel Officers scale 3000-4000 (RPS), over and above 15% and 7-1/2% respectively fixed for them in accordance with the J.C.Malik's case. (b) The Respondents may be directed to consider and promote the applicants to the post of Senior Personnel Officers who are eligible for the said promotion with all consequential benefits."

162. The applicants have also sought an interim relief in this OA. The Tribunal passed an interim order dated

21.5.1993 wherein it was directed to see that the promotions, if any, of the SC/ST candidates to be made hereafter to the posts of Sr. Scale Personnel Officer shall be strictly in accordance with the judgement of the Allahabad High Court in J.C.Malik's case. It was further clarified that those SC/ST candidates who have been promoted on the basis of their overall merit and or seniority and not on the basis of reservation alone may be considered for promotion to the higher cadre if they are found otherwise suitable for promotion even if the reservation quota fixed for SC/ST candidates has already been achieved.

163. The interim order was further elaborated vide the Tribunal's order dated 5.10.1993, the relevant portion from which has been quoted in Para 5 of this judgement. The orders dated 5.10.1993 came for further consideration before the Tribunal through M.P./R.P. and various OAs. The Tribunal by their order dated 11.10.1994 dismissed all the M.Ps./R.Ps.

164. The issues involved in this OA. are concerning percentage of reservation. First issue in this OA. concerns percentage of reservation which stands finally settled in J.C.MALIK's case which is reproduced in Para 9 of this judgement. All the counsels for the applicants as well as for the respondents and interveners have submitted that there cannot be any controversy on the

question of percentage of reservation as the issue is finally decided by the Hon'ble Supreme Court in SABHARWAL's case and J.C.MALIK's case. The respondent administration has also confirmed that they are following the percentage in reservation on the basis of cadre and posts and not on vacancies in the cadre while filling in the posts. Therefore no further orders are required to be passed on this particular prayer of the O.A. except that our directions and observations in this judgment should be followed.

165. As far as the question of promotion to the post of Senior Personnel Officers in the case of applicants is concerned, the same involves the question of seniority. The question of seniority involved herein has been brought out in Para 5.3 & 5.4 of OA. Applicants have submitted that the reserved community candidates who are working in the feeder cadre to the senior scale have come to those posts by virtue of reservation and since the percentage of reservation in the promotional grade is already more than prescribed, these reserved community candidates cannot be considered eligible for further promotion. In short, the question involved herein is if the promotion availed by the reserved community candidates on the basis of reservation would entitle them for grant of seniority also for the purpose of further promotion when they compete for general posts. The respondent administration have brought out in their written statement filed by G.S.Tuteja, Dy.Chief Personnel

Officer (Gaz.) Western Railway dated 1.7.1993 wherein in Para 5 the respondent administration has submitted as under : -

"The promotions were made under the rules and promotions granted to the SC/ST are in accordance to the law of the land and it is pertinent to point out here that other employees belonging to SC/ST who would get the promotion are from the General seniority list on the basis of entry into the grade. Therefore the apprehension of the applicants that respondents are giving promotions to SC/ST employees in excess of the fixed quota is not justified and therefore denied."

166. Thus the stand of the respondent administration at the time when the written statement was filed has that the employees belonging to SC/ST would get the seniority on the basis of entry into the grade on the basis of promotion granted to the SC/ST in accordance with the law. This stand, however, has been changed by the respondent administration in their latest affidavit which has been filed by Smt. Sunita Vedantam on 3.12.1996 wherein the administration has submitted in Para 2 as under : -

" I further say that as regard the promotion of SC/ST candidates as per Roster Point. As far as assigning them seniority to such promotees, the Respondents are Governed by the Railway Board's letter No. E/SCT 68/CM15/10 Dt. 19.1.72 and the interpretation/directions given under the various judgements of the Hon'ble Supreme Court on this aspect. I may further state that so far as Western Railway is concerned, the seniority of SC/ST candidates promoted against reserved vacancies, has been/is being regulated as per panel position and not as per Roster Point. In this context I also crave leave to refer to and rely upon, inter alia, para 306 of the Indian Railway Establishment Manual (Annexure-F)."

Thus, the position which has been taken by the respondent administration in this affidavit is that the seniority to the reserved community candidates is according to the panel position in terms of letter dated 19.1.1972.

167. Although there is a difference between the two stands taken by the respondent administration, Mr. Sethna, Counsel for the respondent administration submits that the correct position is reflected in the affidavit which is now filed. The counsel has tried to explain the difference by stating that due to effect of various judgements of the Tribunal and the Courts the position seems to have changed. In any case, we are not making an issue out of the difference in two affidavits, and accept the version of the counsel for respondents that the seniority in the Western Railway is being given according to the panel position and not as per date of promotion.

168. The issue of grant of seniority to reserved community employees for further promotion when they compete for general posts has been finally settled by the Hon'ble Supreme Court in JANUJA's case which has been quota in this judgement. In Para 15 to 29 of this judgement we have come to the conclusion that Railway Board's letter dated 19.1.1972 does not correctly reflects the ratio laid down by the Hon'ble Supreme Court in JANUJA's case. Incidentally, it was pointed out by Shri Walia, counsel for the applicant that the Railway Board's letter stands cancelled by the Railway Board by

their further communication. However, we are not dealing with the validity of the letter dated 19.1.1972 in this OA, but the essential aspect of the letter which is independently brought out by the respondents. In Western Railway seniority of SC/ST employees promoted against reserved category is being granted as per panel position and not as per date of promotion on roster point. This position, as we have pointed out, is not in conformity with the judgement of the Hon'ble Supreme Court in JANUJA's case.

169. The respondent administration is, therefore, directed to follow the directions which we have already made in Para 21 to 36 in this judgement whereby respondent administration is required to work out the seniority of reserved category candidates for promotion to general posts in higher grade, excluding the factor of extra weightage of earlier promotion to a reserved community candidate because of reservation alone.

170. The seniority of the applicants should be worked out vis-a-vis reserved community candidates on the basis of our directions and the promotion of the applicants should be made on the basis of this seniority. In this connection, the respondent administration has already brought out that the Applicants No. 1,2 and 3 have already been promoted. Applicant No. 4 has also been promoted but he has refused promotion. Applicant No. 7 has also been promoted. Applicant No. 5 has since

retired from service. The question, therefore, remains to be decided in the case of Applicant No. 6. His case for promotion should be considered against the next vacancy in terms of our directions. It is further observed that the reserved community candidates who have been promoted on the basis of seniority which was being granted previously shall not be reverted. However, their seniority shall be adjusted according to the directions which we have made in this judgement for the purpose of further promotions. The OA. is disposed of with the above directions.

OA.NO.485/93:

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171. The applicants in this OA. are working in the commercial department of Bombay Division. They belong to the non-reserved community. The issue raised in this OA. is similar to the issue raised in OA.No.484/93 and the directions given there would squarely govern this OA. The present position has been brought out by the respondents in their affidavit dated 3.12.1996 submitted by M.A.Bohra, Divisional Personnel Officer, Western Railway, Mumbai Central. According to this affidavit, all the applicants have since been promoted. As far as the question of seniority is concerned, the seniority would be determined in terms of our directions concerning seniority in this judgement and specific directions

issued in OA.NO. 484/93. The OA. is disposed of with these directions.

OA.NO. 487/93:

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172. The applicants are Station Superintendents working in the Western Railway. They belong to the non-reserved community. In this OA. they have sought the relief which reads as under :-

"(a) This Hon'ble Tribunal will be pleased to order and direct the Respondents not to give promotion to the SC/ST employees to the post of Station Superintendent Pay Scale Rs.2375-3500 (RPS), over and above 15% and 7-1/2% respectively fixed for them in accordance with the J.C.MALIK's case.

(b) The Respondents may be directed to consider and promote the applicants to the post of Station Superintendent Pay Scale Rs.2375-3500 (RPS), who are eligible for the said promotion with all consequential benefits."

173. The respondent administration has brought out that both the applicants in this case have been promoted to the grade of Rs.2375-3500 as prayed by the applicants. Applicant No. 1 H.B.Samant has been promoted in that grade from 1.3.1993 and has since retired w.e.f. 31.3.1994 on superannuation. Applicant No. 2 J.R.Singh has been promoted to the grade of Rs.2000-3200 w.e.f. 1.3.1993.

174. Since the relief is not claimed against any specific order of the respondents, this OA. is disposed of in terms of our various observations and directions in this judgement and the directions issued in OA.NO.484/93.

OA.NO. 571/93:

175. The applicants in this OA. are the Ministerial staff in the Stores Department, Western Railway and they belong to the unreserved community. In this OA. the applicants have prayed the following reliefs :-

"(a) This Hon'ble Tribunal will be pleased to order and direct the respondents not to give promotion to the SC/ST employees to the post of Ministerial Staff over and above 15% and 7-1/2% respectively fixed for them in accordance with the J.C.MALIK's case.

(b) The respondents may be directed to consider and promote the applicants to the posts of Chief Clerks/O.S. II, Scale Rs.1600-2600 (RPS), who are eligible for the said promotion with all consequential benefits.

(c) The impugned order may be quashed and set aside in so far as the promotion of SC/ST employees from Sr.No.6,7,8,9 and 10 i.e. R-4 to R-9 are concerned."

176. As far as reliefs (a) and (b) are concerned, since these are the same reliefs as has been claimed by the applicants in OA.NO.484/93 and are of general nature, our directions and observations in OA.No.484/93 and other directions in this judgement would govern the outcome of

this OA. As far as relief (c) is concerned, the applicants have claimed for quashing the promotion order of Respondents R-4 to R-9 as these respondents have been promoted on the basis of reservation and have been granted seniority on the basis of reservation. Since the promotion of respondents R-4 to R-9 have been made on the basis of the seniority which they have achieved as a result of promotion against the roster point, the promotion is not according to the law as laid down by Hon'ble Supreme Court in SABHARWAL and JANUJA's case. However, it has been specifically directed by the Hon'ble Supreme Court in the interim orders in J.C.MALIK's case that if any promotions are made which are not in accordance with the directions of the Hon'ble Supreme Court, same should be adjusted in future vacancies. It is also seen that SABHARWAL's judgement is applicable prospectively and in view of this, we are of the opinion that the prayer of the applicants seeking reversion of respondents R-4 to R-9 cannot be granted and is, therefore, rejected.

177. As far as the question of seniority is concerned, the same will be governed in terms of the judgement of Hon'ble Supreme Court in JANUJA's case and various observations and directions made by us in this judgement.

OA No. 596/93:

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178. There are five applicants in this case, who are working in the Commercial Department of the Western Railway as Chief Booking Supervisor, Chief Booking Clerk, Chief Reservation Inspector, Chief Luggage Supervisor and Chief Parcel Supervisor. The reliefs claimed in this OA are concerning the Railway Board letter dated 16.6.92 by which the administration has granted seniority to the reserved community candidates on the basis of date of their promotion against the reserved quota. The applicant's main prayer is that the instructions/orders of the Railway Board dated 16.6.1992 together with the orders/instructions set out in Annexure-I thereto, be declared unconstitutional, bad in law and contrary to the orders so far passed by the honourable Supreme Court in J.C. Malik's case, the interim orders passed by this Bench and the orders passed by the full Bench of the CAT (Hyderabad) and therefore the said instructions/orders cannot be acted upon for the purpose of granting promotions to SC/ST employees. The other reliefs are consequential to the above relief.

179. The issue came up for consideration before the Tribunal and an interim order was passed by the Tribunal on 5.10.93 by which the letter dated 16.6.92 which is under challenge in this O.A. was stayed. The relevant

portion of the stay order granted by this Tribunal on 5.10.93 in paras 5 and 6 of this judgement. This issue has already been discussed in paras 22 to 24 of this judgement wherein it has been held that the part of circular dated 16.6.92 in so far as it gives accelerated seniority on the basis of accelerated promotion to the reserved community candidates for promotion against unreserved general category post is liable to be quashed and is accordingly quashed.

180. In view of our finding on this issue we dispose of this O.A. with the direction as contained in para 24 of this judgement. It is however, made clear that if any promotions have already been made as a result of the

application of circular dated 16.6.92 the same will be protected and the employees who are thus promoted should be adjusted against future vacancies to which they would be entitled in terms of JANUJA's judgment of the Hon'ble Supreme Court. In this connection our observations in para 35 of this judgement are relevant wherein we have laid down guideline for determination of the seniority. The O.A. is disposed of with the above direction.

OA.NO.622/93

181. The applicants in this OA. are Ministerial staff in the Western Railway. They belong to the unreserved

community. In this OA, they have sought the following reliefs :-

"(a) This Hon'ble Tribunal will be pleased to order and direct the respondents not to give promotion to the SC/ST employees to the post of Ministerial Staff over and above 15% and 7-1/2% respectively fixed for them in accordance with the J.C.MALIK's case.

(b) The Respondents may be directed to consider and promote the applicants to the post of Ministerial Staff in the office who are eligible for the said promotion with all consequential benefits."

182. Since these reliefs are similar to the reliefs prayed by the applicants in OA.NO.484/93, our directions in OA.NO. 484/93 and various directions and observations made by us in the judgement would govern this OA. The OA. is disposed of with these directions.

O.A.No. 680/93:

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183. The applicants in this O.A. are working as Ministerial staff in Bombay Division of Western Railway and the main reliefs sought in this O.A. are as under:-

"(b) This Hon'ble Tribunal will be pleased to hold and declare that employees belonging to SC/ST categories who have attained the position presently held by them by availing of the quota of 15% and 7-1/2% respectively in their favour and on the basis of relaxed standard of passing selection are not entitled to compete with General community employees for further promotion.

"(c) That this Tribunal will be pleased to hold and declare that members of SC/ST category of

employees who have attained the position presently held by them on the basis of reservation policy of the Government of India and on the basis of 15% and 7-1/2% reservation in their favour and by application of relaxed standard of selection are eligible to seek further advancement only against the posts reserved for them as and when occurring in that category and not otherwise.

"(d) That this Tribunal will be pleased to permanently restrain the Respondents from giving promotion to SC/ST employees in the higher posts, more particularly prescribed in Schedule Exhibit A-1 hereto in excess of 15% and 7-1/2% of the quota fixed for them and as held by the Allahabad High Court in the case of J.C. Malik and others Vs. Union of India,

"(e) That Respondents be directed to fill the promotional posts occurring as a result of re-structuring of cadre strictly in accordance with the judgement in the case of J.C. Malik and others by considering only the members of general community whenever the quota in favour of reserved community candidates has already been reached and/or exceeded."

184. As far as reliefs (d) and (e) are concerned since the issue concerning reservation is confined to 15% and 7-1/2% of cadre has been finally settled in terms of J C MALIK's decision of the Hon'ble Supreme Court, no specific directions are required to be given by us. In this connection the respondents have argued that reservation is being followed in terms of the decision of the Hon'ble Supreme Court in J C MALIK's case. Our observations and directions on these issues are given in paras 10 to 13 of this judgment.

185. The other issue concerns promotion of reserved community candidates who have passed the selection on the basis of relaxed standard of qualifying marks. This issue has been considered in paras 30 to 35 above wherin we have held that the reserved community candidates who

have been promoted on the basis of relaxed standard of marks and best amongst the failures cannot claim seniority to general posts as they cannot be granted any seniority as general candidates. We have also held that those candidates who have been promoted by relaxing the qualifying marks or lesser level of grading would have no right to be considered for promotion while competing with the general candidates.

186. It is however, clarified that such candidates who have been promoted by relaxing the qualifying marks and grading or on the basis of best amongst the failures would continue to be considered for further promotion against the reserved vacancies. Since in this OA no specific selection or order of the administration has been challenged no further directions are required to be issued. This O.A. is disposed of in terms of these directions.

OA.NO.703/93

187. The applicants in this OA. are working in Traffic Department in Bombay Division of the Western Railway as Station Masters and Assistant Station Masters. In this OA. the applicants have sought the following reliefs :-

" (a) This Hon'ble Tribunal will be pleased to order and direct the respondents not to give promotion to the SC/ST employees to the post of

Dy.S.S. and S.M. in the pay scale of Rs.1600-2660 (RPS) and Rs.1400-2300(RPS), respectively, over and above 15% and 7-1/2% respectively fixed for them in accordance with the J.C.MALIK's case.

(b) The respondents may be directed to consider and promote the applicants to the General Community Staff in the said categories of 3 and 4, who are eligible for the said promotion with all consequential benefits."

188. Since these issues are of general nature which have already been dealt with by us in OA.NO.484/93, our directions therein would govern this OA. Since no specific order has been challenged by the applicants in this OA., no further orders are required to be passed except that the various direction and observation made by us in the judgement would govern this OA. The O.A. is disposed of with the above directions.

O.A. No. 727/93:

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189. The applicants in this O.A. are working as Guards in the Western Railway and the main reliefs sought are at para 8 of the O.A. The first relief concerns the instructions issued by the Railway Board letter dated 16.6.92 concerning grant of seniority from the date of entry into the grade on the basis of promotion against a reserved vacancy for further promotion to the general post. The applicant's main prayer is that the instructions/orders of the Railway Board dated 16.6.1992 together with the orders/instructions set out in Annexure-I thereto, be declared unconstitutional, bad in

law and contrary to the orders so far passed by the honourable Supreme Court in J.C. Malik's case, the interim orders passed by this Bench and the orders passed by the full Bench of the CAT (Hyderabad) and therefore the said instructions/orders cannot be acted upon for the purpose of granting promotions to SC/ST employees.

190. The applicants have also sought relief in para 8(e) that the respondents be directed to promote employees against additional vacancies/posts arising on account of implementation of restructuring orders, without adopting any reservation in favour of SC/ST employees.

191. The issue came up for consideration before the Tribunal and an interim order was passed by the Tribunal on 5.10.93 by which the letter dated 16.6.92 which is under challenge in this O.A. was stayed. The relevant portion of the stay order granted by this Tribunal on 5.10.93 in paras 5 and 6 of this judgement. This issue has already been discussed in paras 22 to 24 of this judgment wherein it has been held that the part of circular dated 16.6.92 in so far as it gives accelerated seniority on the basis of accelerated promotion to the reserved community candidates for promotion against unreserved general category post is liable to be quashed and accordingly quashed.

192. It is however, made clear that if any promotions have already been made as a result of the application of