(13)

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

OA 15/91

Ori. in Pr. 139/87

ORIGINAL APPLICATION NOS :

1. T.A. No. 139/87.
2. O.A. No. 555/88.
3. O.A. No. 440/89.
4. O.A. No. 666/89.
5. O.A. No. 778/89.
6. O.A. No. 785/89.
7. O.A. No. 909/89.
8. O.A. No. 341/90.
9. O.A. No. 15/91.
10. O.A. No. 817/91.
11. O.A. No. 411/93.
12. O.A. No. 1095/93.
13. O.A. No. 589/95.

Application for Review

DATED : This 5th day of MAY, 1998.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri P. P. Srivastava, Member (A).

T.A. NO.: 139/87

All India Scheduled Caste and Scheduled Tribe Railway Employees Association through Shri V. J. Kshirsagar. .. Applicants

(By Advocate Shri D.V. Gangal)

Versus

1. The Union Of India through The Ministry of Transport, Department of Finance, Railway Board, New Delhi - 110 001.

2. The Union Of India through The General Manager, Central Railway, Bombay V.T. - 400 001.

3. The Chief Engineer,
Central Railway,
Bombay V.T. - 400 001.

4. The Chief Personnel Officer,
Central Railway,
Bombay V.T. - 400 001. ... Respondents.

(By Advocate Shri M.I. Sethna
alongwith Shri V. D. Vadhavkar,
Shri V. G. Rege and Shri S.C. Dhavan).

O.A. NO.: 555/88

1. Sakharam J. Phale,
Chawl No. 13/18,
St. Mary Road,
Mazgaon,
Bombay - 400 010.

2. Shri R. B. Rathod,
306-A, Ramesh Bhuwan,
Nana Chowk, 3rd Floor, ... Applicant
Grant Road,
Bombay - 400 007.

(By Advocate Shri D. V. Gangal)

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Bombay V.T.

2. The Controller of Stores, ... Respondents.
Central Railway,
Bombay V.T.

(By Advocate Shri M.I. Sethna
alongwith Shri V. D. Vadhavkar).

...3

O.A. NO.: 440/88.

Lahanu Tukaram Bharit,
Agricultural Bank Road,
Near Urdu School,
R. No. 4/59,
Post : Igatpuri,
Dist. Nasik. ... Applicant

(By Advocate Shri D.V. Gangal)

Versus

1. Union Of India through
The General Manager,
Central Railway,
Bombay V.T. - 400 001.

2. The Divisional Rly. Manager,
Central Railway,
Bombay V.T. - 400 001. ... Respondents.

(By Advocate Shri M.I. Sethna
alongwith Shri V. D. Vadhavkar)

O.A. NO.: 666/89.

1. Shri Premsingh L. Verma.
2. Shri D. S. Randive.
3. Shri V. S. Deshpande.
4. Shri M. N. Singh.
5. Shri S. A. Ahmad

(All working as Chief Ticket
Inspectors in the Bombay Division
in the office of the D.C.T.I.,
Bombay V.T.)

6. K. P. Risbood.
(Working as Asstt. Chief Ticket
Inspector in the office of
D.C.T.I., Bombay V.T.) ... Applicants

(By Advocate Shri G. K. Masand)

VERSUS

1. Union Of India through the
General Manager,
Central Railway,
Bombay - 400 001.

2. The Divisional Railway Manager
(P), Central Railway,
Bombay V.T.

3. Sr. Divisional Personnel Officer,
Central Railway, Bombay V.T. ... Respondents.

(By Advocate Shri M.I. Sethna alongwith
Shri V. D. Vadhavkar).

(16)

O.A. NO.: 778/89.

1. All India SC/ST Railway Employees' Association, Engineering Branch, Bhusaval through its president - P.S. Jadhav, having its Office at RBI 877, Upali Nagar, Haddiwali Chawl, Bhusaval.

2. Shri R. D. Shele, Chief Re-Packing Supervisor, Central Railway, Bhusaval. Residing at - Railway Qtr. G-105, Guard Lines, Bhusaval. ... Applicants

(By Advocate Shri D. V. Gangal)

Versus

1. Union Of India through The General Manager, Central Railway, Bombay V.T.

2. The Chief Personnel Officer, Central Railway, Bombay V.T. ... Respondents.

(By Advocate Shri S. C. Dhavan).

O.A. NO.: 785/89.

1. Shanti Kumar Mukherjee.
2. Munnalal Sharma.
3. Niranjan Singh Jhulka.
4. Meghraj Mulkraj.
5. Sham Sunderlal Yadav.
6. Suraj Babu Saxena.
7. Kishanlal Chopra. ... Applicants.

(All working as Travelling Ticket Inspectors, under Respondent No. 2 at Bombay Central, Bombay - 400 008).

(By Advocate Shri G. K. Masand)

Versus

1. Union Of India through The General Manager, Western Railway, Churchgate, Bombay - 400 020.

Versus

1. The General Manager,
   Central Railway,
   Bombay V.T.

2. The Deputy Chief Electric
   Engineer, Electric Locomotive
   Workshop (P O H),
   Central Railway, Bhusaval. ... Respondents.

(By Advocate Shri M.I. Sethna
and Shri S. C. Dhavan).

O.A. NO.: 341/90.

Shri Babulal Narsingh Swamy,
R/o. Bhusaval, Rly. Qtr. No.
RB-II/32-D, 15 Blocks Area,
Bhusaval, Dist. Jalgaon
(Maharashtra). ... Petitioner

(By Advocate B. Ranganathan)

Versus

1. The Union of India through
   The General Manager,
   Central Railway, Bombay V.T.

2. The Divnl. Rly. Manager,
   Central Railway, Bhusaval,
   Dist. Jalgaon.

3. Shri A.G. Deshmukh,
   Chief Head Typist, Dy. CEE(ELW)'s
   Office, C. Rly., Bhusaval,
   Dist. Jalgaon.

4. Shri O.M. Patil,
   Chief Head Typist,
   DRM's Office, Central Rly.,
   Bhusaval, Dist. Jalgaon.

5. U. N. Patil, Chief Head Typist,
   DRM's Office, Central Railway,
   Bhusaval, Dist. Jalgaon.

6. Shri D.V. Sahare,
   Chief Head Typist, Chief Project
   Manager (Rly. Electrification)'s
   Office, Nagpur.

7. Shri W.B. Dhande, Chief Head
   Typist, D.R.M.'s Office,
   Central Railway, Bhusaval,
   Dist. Jalgaon.

2. Sr. Divisional Commercial Superintendent, Western Railway, Bombay Central, Bombay - 400 008.

3. Sr. Divisional Personnel Officer, Western Railway, Bombay Central, Bombay - 400 008.

4. Ramanlal S. Patel.

5. R. T. Barve.

6. M. M. Shejwal.

7. Ramanbhai J. Patel.

8. Baburao A. Barud.

9. Govindbhai B. Patel.

10. M. M. Rathod.

11. R. B. Damodhar. ... Respondents.

(All working as Travelling Ticket Inspectors in the Office of Respondent No. 2 but having been promoted to the post of Chief Ticket Inspector in the scale of Rs. 2000-3200 by the impugned order dated 27.07.1989).

(By Advocate Shri M.I. Sethna alongwith Shri V. D. Vadhavkar).

O.A. NO.: 909/89.

All India SC/ST Railway Employees' Association, Electric Locomotive Workshop (P O H) Branch, Central Railway, Bhusaval - Through its president Shri B.K. Mehra, having their office at RB-II, 996/B, 'C' Road, 40 Blocks, Bhusaval.

2. Shri P. B. Tayde, Chargeman 'B' working in the O/o Deputy Chief Electrical Engineer, Electric Locomotive Workshop, P O H Branch, Central Railway, Bhusaval. Residing at - Qtr. No. RB-II/ 11I5/A, Block 40, Limpus Club, Bhusaval. ... Applicants

(By Advocate Shri D. V. Gangal).

8. V. S. Pawanaskar,
Head Typist, D.R.M.'s Office,
Central Railway, Bhusaval,
Dist. Jalgaon.

9. Shri A. K. Oak, Head Typist,
D.R.M.'s Office, Bhusaval,
Dist. Jalgaon. ... Respondents.

(By Advocate Shri M.I. Sethna
alongwith Shri V.D. Vadhavkar,
Shri V.S. Masurkar and Shri V.G.
Rege).

O.A. NO.: 15/91.

Madhusudan Chandrabhan Lankeshwar,
Chargeman Grade 'B',
Carriage & Wagon Workshop,
Central Railway,
Kuruduwadi.

Residing at -
Railway Qtr. No. RB 1/543/9,
Khurduwadi. ... Applicant

(By Advocate Shri D. V. Gangal)

VERSUS

1. Union Of India through
The Workshop Manager,
Locomotive Workshop,
Central Railway, Parel,
Bombay - 400 012.

2. The Chief Personnel Officer,
Central Railway,
Bombay V.T.

3. The Works Manager,
Carriage & Wagon Workshop,
Central Railway,
Kurduwadi. ... Respondents.

(By Advocate Shri M.I. Sethna
alongwith Shri V. D. Vadhavkar).

O.A. NO.: 817/91.

1. All India Scheduled Caste &
Scheduled Tribe Railway
Employees' Association,
Bombay Office - 10/184,
Sahakar Nagar No. 5, Chembur,
Bombay - 400 077 through
Shri N. Bhalchander,
Sr. Telecom Inspector,
Bombay V.T.

2. Shri W.R. Hirole,
Chief Signal Inspector,
Central Railway,
Igatpuri, 'F' Type Quarters. ... Applicants

(By Advocate Shri D. V. Gangal).

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Bombay V.T.

2. The Chief Personnel Officer,
Central Railway,
Bombay V.T.

3. The Chief Signal & Telecommunication Engineer,
Central Railway,
Bombay V.T. ... Respondents.

(By Advocate Shri M.I. Sethna
alongwith Shri V. D. Vadhavkar).

O.A. NO.: 411/93.

B. N. Sonavaria,
Chief Luggage Clerk,
Bombay Central Station,
(W.Railway), Bombay.

Residing at - Shanti Nagar,
Sector-II, Flat No. 403,
Bldg. No. C-18, Mira Road (E),
Dist. Thane - 401 104. ... Applicant

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union Of India through
The General Manager,
Western Railway,
Bombay Central, Bombay.

2. The Divisional Rly. Manager,
Bombay Central, Bombay.

3. The Senior Divisional
Personnel Officer,
Western Railway. ... Respondents.

(By Advocate Shri A. L. Kasturey).

O.A. NO.: 1095/93.

1. Shri Kunwar Pal,
Personnel Inspector Gr.II,
O/o. Chief Personnel Officer,
Central Railway, Bombay V.T.

Residing at -
Shobha Apartment,
13/3, Opp. Nutan Hindi School,
Near Durga Mata Mandir,
Katemanevalli,
Kalyan (E), Dist. Thane,
Pin - 421 306.

2. Shri Girraj Prasad Nimesh,
Personnel Inspector Gr.II,
O/o. Chief Personnel Officer,
Central Railway, Bombay V.T.

Residing at -
House No. D/52, Ganesh Colony,
Gajanan Nagar,
Ulhasnagar - 4, Dist. Thane. ... Applicants.

(By Advocate Shri R. D. Deheria).

Versus

1. Union Of India through the
Secretary, Railway Board,
Rail Bhavan, New Delhi.

2. The General Manager,
Central Railway, Bombay V.T.

3. The Chief Personnel Officer,
Central Railway, Bombay V.T.

4. Shri Nitin S. Pradhan,
Personnel Inspector, Grade-I,
O/o. the Chief Personnel
Officer, Central Railway,
Bombay V.T.

5. Shri R.L. Khanchandani,
Personnel Inspector Gr. I,
O/o. the Chief Personnel
Officer, Central Railway,
Bombay V.T.

6. Shri J.D. Karandikar,
Personnel Inspector Gr.I,
O/o. the Chief Personnel
Officer, Central Railway,
Bombay V.T.

7. R. Nadarajan,
Personnel Inspector Gr.II,
O/o. the Chief Personnel
Officer, Central Railway,
Bombay V.T.

8. A. K. Gosavi,
Personnel Inspector Gr.II,
O/o. the Chief Personnel
Officer, Central Railway,
Bombay V.T. ... Respondents.

(By Advocate Shri V. G. Rege).

O.A. NO.: 589/95.

1. Association of General
Employees (Central Railway)
Through its General Secretary,
Shri Boni Bangera,
272, Lucky House, 5th Floor,
S.B.S. Road, Bombay - 400 001.

2. Mrs. Varsha D. Joshi,
O.S. (II), O/o. Divnl. Rly.
Manager, Bombay Division,
Bombay V.T.

3. Mrs. M.N. Shringarpure,
O.S. (II), O/o. the Divnl.
Railway Manager, Bombay Divn.,
Bombay V.T.

4. Mrs. Swapna S. Bosekar,
Head Clerk,
O/o. Divisional Rly. Manager,
Bombay Division, Bombay V.T.

5. Mrs. H.S. Khadlekar,
Head Clerk,
O/o. Divnl. Railway Manager,
Bombay Division, Bombay V.T.

6. Mrs. Uma P. Jadhav,
Head Clerk,
O/o. Divnl. Rly. Manager,
Bombay Division, Bombay V.T.

(By Advocate Shri G. K. Masand)

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Bombay Division, Bombay V.T.

2. Divisional Railway Manager,
Central Railway, Bombay Divn.,
Bombay V.T.

3. Dr. Pramod Bankar,
Sr. Divisional Personnel
Officer, Bombay Division,
Bombay V.T.

4. Shri K.R. Vasu,
O.S. (I), Central Railway,
Bombay Division, Bombay V.T.

5. Smt. V.B. Yesugude,
O.S. (II), Central Railway,
Bombay Division, Bombay V.T.

6. V.T. Tayade,
(O.S.)-II, Central Railway,
Bombay Division, Bombay V.T.

7. Shri S.R. Sonawane,
(O.S.)-II, Central Railway,
Bombay Division, Bombay V.T. ... Respondents.

(By Advocate Shri M.I. Sethna and
Shri S. C. Dhavan).

: ORDER :

{ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN }

These are 13 cases where common questions of law arise for consideration. Out of the 14 cases, 11 are filed by the SC/ST Officials or their association. Three cases are filed by the General candidates. We have heard the Learned Counsels appearing in all these cases.

Since common questions arise for consideration in these cases, in the first instance, we will refer only to the pleadings in the first case, namely - Transfer Application No. 139/87.

2. The Scheduled Caste and Scheduled Tribe Railway Employees' Association had filed writ petition No. 84 of 1987 in the High Court of Bombay against the respondents seeking certain directions regarding promotion to SC/ST candidates. After the formation of the Central Administrative Tribunal, the Writ Petition

came to be transferred to this Tribunal and renumbered as Transfer Application No. 139/87. This application is filed by the said association on behalf of 47 SC/ST employees, whose names are shown in Annexure-G to the petition. It is the case of the association that these 47 SC/ST employees are denied promotion ignoring their seniority and that the junior general candidates have been promoted. These 47 employees challenge promotion to different grades of Draughtsman in the Central Railway. In the Central Railway, the promotion hierarchy is shown from tracer to Chief Draughtsman. In between there are posts of Draughtsman Grade-III, then Draughtsman Grade-II, and then Draughtsman Grade-I. It is admitted that some of the SC/ST employees got accelerated promotion by virtue of reservation policy, as a result, in some cadre their percentage of post has exceeded the required reservation percentage to 22½% but it is stated that it is only a fortuitous circumstance, and it will come down in the course of time when the senior SC/ST employees retire. But that is no ground for the respondents to deny promotion to the SC/ST employees following the 40 point roster. As per the Railway Board circular, SC/ST employees are required to be promoted even if it amounts to exceeding the reserved quota of 22½% in their favour. It is stated that the vacancies which occur in a year should be filled up as per the reservation quota and not restricted to the reservation in the cadre. That the respondents have deliberately not promoted the

47 SC/ST employees which is contrary to the law and rules. Hence, the application is filed praying for a direction to the respondents to promote the 47 SC/ST candidates to different grades of Draughtsmanship as per their position in the seniority in terms of the circular issued by the Railway Board.

3. In the original reply filed by the respondents dated 17.11.1997, the respondents justified their stand in not promoting the 47 SC/ST employees. It was stated in that reply that the applicants are not entitled to promotion in the upgraded post as per the restructuring order dated 16.11.1984. That no junior SC/ST employee has been promoted. Some of the promotions of the general candidates were done as per order dated 15.05.1985 and those promotions cannot be now re-opened. Those persons who were promoted as per that order are not made parties to this application. No general candidate who is junior to the applicant has been promoted.

4. After the recent judgements of the Supreme Court, to which we will make reference at a later stage, we called upon the respondents - Railway Administration to make their stand known about reservation policy and promotion of SC/ST candidates. In response to our directions, the respondents have filed two additional replies in this case. This is taken as a common reply to all the fourteen cases which we are disposing of today. In the first additional

reply dated 09.03.1998, one Smt. Rita P. Hemrajani, has filed the affidavit. It is stated that the respondents are effecting promotion as per the two circulars of the Railway Board dated 19.01.1972 and 31.08.1982. Those circulars are attached to this additional reply. Then there is a reference to the Supreme Court judgements which are on this point. Then there is reference to a later judgement of the Supreme Court in the case of Jagdish Lal and it is stated that seniority of the SC/ST candidates will be determined from the date of his promotion to the higher cadre and not from the position he occupied in the lower cadre. Then they have pointed out three ways in which the seniority of SC/ST candidates has to be fixed in the light of the judgement of the Apex Court. Then they have suggested that the decision in Jagdishlal's case should be preferred. Then in the last para of the additional reply it is stated that the promotions done by the respondents as per the circular dated 31.08.1982 should be held as valid.

Then there is another additional reply filed by Mr. Ram Prakash, Executive Director Establishment (Reservation) in the Railway Board, who has also supported the affidavit of Smt. Rita P. Hemrajani. He also asserts that the policy laid down by the Railway Board under the two circulars dated 19.01.1972 and 31.08.1982 is the policy of the Railway Board and it is the most balancing policy which has to be upheld.

5. From the perusal of the pleadings we find that there is dispute between the parties on two points. The first point is that the reservation should apply to the vacancies which occur from time to time and not to the posts in a cadre. The other dispute is about the seniority position of SC/ST candidates who get accelerated promotion by virtue of reservation policy. According to the Learned Counsels who are appearing for the SC/ST candidates and the Learned Counsel who appeared for the Railway Administration, when the SC/ST candidates are promoted to a higher post, then their seniority should be determined with reference to the date of promotion into the higher cadre. But according to the Learned Counsels who appeared for the general candidates, the SC/ST candidates who get accelerated promotion will not get accelerated seniority but their position in the seniority will always be as their position in the lower cadre or feeder cadre.

Both the above points came to be argued at length and considered in a well reasoned and elaborate order dated 31.03.1997 by a Division Bench of this Tribunal of which one of us (Hon'ble Member (A) Shri P. P. Srivastava) was a Member, which is since reported in 1998 (3) SLJ 420 (Samuel Pal Raj & Others V/s. Union Of India & Others). The said Division Bench has held that reservation is not to the vacancies which occur from time to time but it applies to the post in a cadre following number of judgements of the Apex Court. Therefore, the point is squarely covered by the earlier judgement and we are in respectful agreement with that findings, which is followed placing reliance on a number

of decisions of the Apex Court. No argument was addressed before us to take a different view on that point.

6. Even the previous Division Bench in the said judgement has held that the SC/ST candidates who get accelerated promotion do not get accelerated seniority and their seniority position viz-a-viz the general candidates will be the same as in the case of the feeder cadre or lower cadre. But the Learned Counsel appearing for the SC/ST candidates and the Learned Counsel who appeared for the Railway Administration contended that the said finding by the Division Bench of this Tribunal requires reconsideration in view of the decision of the Apex Court in Jagdish Lal's case, which is a later judgement of the Apex Court, where a different view is taken on this question of seniority of promoted SC/ST employees. It was argued on behalf of the SC/ST employees that in view of the decision of the Apex Court in Jagdish Lal's case, the SC/ST employees who get accelerated promotion will get seniority from the date they are promoted to the higher cadre and they cease to be employees in the lower cadre and therefore, the position of seniority in the lower cadre is irrelevant. On the other hand, the Learned Counsels for the general candidates contended that in view of the decision of the Apex Court in Ajit Singh Januja's case and Virpal Singh Chauhan's case the accelerated promotion to SC/ST candidates will not give them accelerated seniority viz-a-viz the general candidates and their seniority viz-a-viz general

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candidates will be the same as in the lower/feeder cadre. This is the contraversy that we have to determine in the present applications.

7. Under article 16 (1) and (2) of the Constitution of India there should be equality of opportunity for all citizens in matters relating to employment and there shall be no discrimination on the ground of religion, race, caste, sex, etc. But then we have article 16(4) of the Constitution which provides that the State can make any provision for reservation of appointment in favour of backward class of citizens under certain circumstances.

On the one hand under article 16(1) and (2) there should be no discrimination and merit should be the sole criterion for appointment under the State. On the other hand, reservation is provided to backward classes of people under article 16(4) of the Constitution. In other words, Article 16(4) is in the form of an exception to Article 16(1) and (2) of the Constitution of India.

There is no gain saying that the SC/ST people, due to historical reasons, could not get representation or adequate representation in services under the State. Therefore, the Constitutional mandate is that social justice must be done to them by giving reservation upto a certain percentage. That means, the Constitution has tried to strike a balance between merit and social justice. Therefore, we must try to analyse the rules relating to appointment

of general candidates or SC/ST candidates in the light of the merit on the one side and social justice on the other. As already stated, the dispute which we have to now resolve in these cases has narrowed down very much. Now the dispute lies in a narrow campus. According to the SC/ST candidates, when they are promoted by reservation policy to higher cadre, they get seniority from the date of promotion and entitled to further promotion on the basis of that seniority to general posts. Whereas, according to the general candidates, accelerated promotion to the SC/ST candidates will not give them accelerated seniority viz-a-viz the general candidates for next promotion to general posts.

8. We need not consider the question on first principles. The counsels appearing on both sides have relied on decisions of the Apex Court which have a direct bearing on the point under consideration.

The first of these cases is Union Of India & Others V/s. Virpal Singh Chauhan reported in JT 1995 (7) S.C. 231. It is a judgement rendered by two Hon'ble Judges of the Supreme Court. An identical question with which we are now concerned, namely about the interpretation of the Railway Board circulars arose for consideration before the Supreme Court. There also the dispute was between the seniority between the general candidates on the one hand and the promoted SC/ST candidates on the other hand. There also the Railway Administration took the stand that seniority

should be counted from the date of promotion of the SC/ST candidates. In those cases, the Railway Administration and the SC/ST candidate employees relied on paras 306 and 309 of the Indian Railway Establishment Manual to show that seniority is determined from the date of appointment or promotion. The Supreme Court has considered the two Railway Board circulars dated 19.01.1972 and 31.08.1982 which throw light on the question of seniority position of SC/ST candidates who were promoted on the basis of reservation policy. Even in the latest affidavits filed by the railway administration, reliance is placed on these two circulars and these circulars are produced alongwith the additional reply. In both the circulars, one pertains to selection post and one pertains to non-selection post, it is mentioned that the seniority will continue to be governed by the panel position of the employees. The Supreme Court has interpreted and held that the "panel" position means that panel position in the lower cadre/feeder cadre and not in the promotional cadre. That means, even if the SC/ST employees get accelerated promotion to a higher grade, his seniority viz-a-viz general candidate should be determined on the basis of "panel" position in the feeder cadre. The argument on behalf of the Railway administration that seniority should be determined from the date of promotion of SC/ST candidates to the concerned grade was rejected by the Apex Court. It is observed that the circulars issued by the Railway Board under Rule 123 of the Constitutional Rules have statutory force. At page

247 of the reported judgement, in para 25, it is observed by the Supreme Court as follows :

> "If so, the question arises, what did the circular/letter dated August 31, 1982 mean when it spoke of seniority being governed by the panel position ? In our opinion, it should mean the panel prepared by the selecting authority at the time of selection for Grade 'C'. It is the seniority in this panel which must be reflected in each of the higher grades. This means that while the rule of reservation gives accelerated promotion, it does not give the accelerated or what may be called, the consequential - seniority."

In para 26, the Apex Court has observed that though the SC/ST candidates would be promoted first on the basis of reservation policy and if subsequently a general candidate is promoted, then the general candidate becomes senior to the scheduled caste candidate though the scheduled caste candidate had been promoted earlier. It is further observed by the Apex Court in para 27 that these special circulars issued by the Railway Board touching the question of seniority in the case of SC/ST candidates, are special rules by way of these circulars, would prevail over the general instructions contained in para 306, 309 and 319 of the Indian Railway Establishment Manual. We emphasis this point because one of the Learned Counsel who appeared for the SC/ST candidates, namely - Shri D. V. Gangal, had contended before us that the Supreme Court had not considered the application of the general rules in the Indian Railway Establishment Manual. Again in para 59,

the Supreme Court has observed that earlier promotion of the SC/ST candidates does not confer upon them the seniority over the general candidates even though the general candidate is promoted later to that category. The judgement of the Supreme Court refers to both selection post and non-selection post. Infact, in the last sentence of para 46 the Supreme Court has made it clear that in principles, there is no distinction between selection and non-selection post so far as this point is concerned.

Therefore, we find that in identical situation, by interpreting the 1972 and 1982 Railway Board circulars, which are produced by the Railway Administration in all these cases, the Apex Court has interpreted them and has held that the accelerated promotion of SC/ST candidates will not give them accelerated seniority and that they will have the same seniority viz-a-viz the general candidates as per the "panel" position in the lower cadre/feeder cadre.

9. The above judgement of two Hon'ble Judges of Supreme Court in Virpal Singh Chauhan's case came to be approved by a Bench of three Hon'ble Judges of the Supreme Court in Ajit Singh Januja's case. In Ajit Singh Januja's case also the same point arose for consideration before the Supreme Court - namely, about seniority of promoted SC/ST candidates with reference to their erstwhile senior general candidates in the lower cadre. In para 8 of the reported judgement, the Supreme Court approved the view taken in the earlier case, namely - Virpal Singh Chauhan's case. Then the

Supreme Court observed in para 9, page 729 as follows :-

> "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 Castes 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 we have not superseded them, because there was no inter se comparision 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 Classes 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. Sabharwali 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%. The 50% posts already being reserved against which promotions have been made then any promotion against general category posts taking into consideration that they are members of the Scheduled Castes and Backward Classes, shall amount to exceeding the limit fixed in the case of Indra Sawhney."

In para 16 of the reported judgement at page 734 it is observed as follows :

"We respectfully concur with the view in Union Of India V/s. Virpal Singh Chauhan, that seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give the accelerated "consequential seniority". If a Scheduled Caste/Scheduled Tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category is promoted later to that higher grade the general category candidate shall regain his seniority over such earlier promoted Scheduled Caste/Tribe candidate. As already pointed out above that when a Scheduled Caste/Tribe candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such Scheduled Caste/Tribe candidate, in this process he does not supersede his seniors belonging to the general category. In this process,

there was no occasion to examine the merit of such Scheduled Caste/Tribe candidate viz-a-viz his seniors belonging to the general category. As such, it will be only rational, just and proper to hold that when the general category candidate is promoted later from the lower grade to a higher grade, he will be considered senior to a candidate belonging to the Scheduled Caste/Tribe who had been given accelerated promotion against the post reserved for him. 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 sho has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority-cum-merit or merit-cum-seniority. If this rule and procedure is not applied then result will be that majority of the posts in the higher grade shall be held at one stage by persons who have not only entered service on the basis of reservation and roster but have excluded the general category candidates from being promoted to the posts reserved for general category candidates merely on the ground of their initial accelerated promotions. This will not be constituent with the requirement or the spirit of Article 16(4) or Article 335 of the Constitution."

Therefore, the Bench of Learned Hon'ble three Judges of the Supreme Court have in unequivocal terms held that accelerated promotion will not give accelerated seniority to the SC/ST candidates.

(37)

On the basis of the above two decisions, the Division Bench of this Tribunal has held that SC/ST candidates will not get accelerated seniority due to accelerated promotion in the case of Samuel Pal Raj (1998 (3) SLJ 420). But the argument by the Learned Counsel appearing for the SC/ST employees and the Learned Counsels appearing for Railway Administration is that, this decision requires reconsideration in view of the subsequent judgement of the Supreme Court in Jagdish Lal's case.

10. Now let us refer to the judgement of the Supreme Court in Jagdish Lal's case reported in 1997 (2) SC SLJ (1). There the dispute was between general candidate and SC/ST candidates regarding promotion and seniority in the Haryana Education Department. The Supreme Court was concerned with interpreting of Rule 11 of the Haryana Education Department Class-III Service Rules, 1974 and 1980. The two earlier decisions of the Apex Court in the case of Ajit Singh Januja and Virpal Singh Chauhan's cases were considered but they were distinguished on facts. That means, the Bench of the Supreme Court which decided Jagdish Lal's case did not disagree or dissent from the view taken in the two earlier cases of Ajit Singh Januja and Virpal Singh Chauhan, but only pointed out that those decisions should be read in the backdrop of facts of those cases. After having noticed the rival contentions urged before it, the Supreme Court observed in para 7 of the reported judgement that in order to decide the rival contentions, it is necessary to refer to Rule 11 of the Haryana Education

Department Rules and extracted the rules in extenso in that para and in the next three paras. Then in para 11 it is observed as follows :

> "... ... As seen, under Rule 11, the inter se seniority of the members of the Service shall be determined by the length of continuous service in a post in the service."

Then again in para 12 there is discussion of the 1974 Rules, where again it is mentioned that by virtue of Rule 11 xx xx xx xx the seniority stands determined from the date of appointment to the particular cadre/grade. Again in para 14 of the reported judgement it is observed as follows :

> "On promotion to the higher cadre, the reserved candidate steals a march over general candidates and becomes a member of the service in the higher cadre or grade earlier to the general candidates. Continuous length of service gives him the seniority as determined under Rule 11."

Having considered Rule 11 and expressed opinion in favour of the SC/ST candidates that the seniority should be determined with reference to the date of promotion as laid down under Rule 11, the Bench of the Supreme Court then examined the earlier decisions in Virpal Singh Chauhan's case and Ajit Singh Januja's case. In para 18 it is mentioned that in order to appreciate the effect and real impact of these two decisions, it is necessary to look into the facts there in. Then it is observed that Virpal Singh Chauhan's case mainly concerned itself with interpreting the Railway Board Circular dated 31.08.1982 and the meaning of the word "Panel"

(39)

mentioned in that circular. It is further mentioned that it is settled legal position that the ratio decidendi is based upon the facts actually decided. Then in para 18 it is observed as follows :

> "That was the real ratio in that case, on the basis of the circular letter referred to hereinbefore. Accordingly, the said ratio, as pointed out by the High Court, does not help the appellants-general candidates for the reasons that Rule 11 of 1974 Rules or 1980 expressly occupies the field and determines their inter se seniority in each cadre/grade..."

Similarly, after considering the Ajit Singh Januja's case, the Supreme Court pointed out that the ratio in that case should be understood in the above backdrop and perspective. In number of places, the Supreme Court has observed in Jagdish Lal's case that in view of Rule 11 of 1974 and 1980 rules, the seniority has to be determined from the date of promotion to the cadre and nothing else.

The Learned Counsel for the SC/ST candidates and also the Learned Counsel for the Railway Administration invited our attention to an unreported judgement dated 04.12.1997 in Special Civil Application No. 10426 of 1996 (M. V. Kaila V/s. State of Gujarat & Others), where a Learned Single Judge of the Gujarat High Court followed the deceision of the Supreme Court in Jagdish Lal's case and held that the date of promotion should determine the seniority. In our view, this decision cannot be

applied to the facts of the present cases, since we are dealing with the interpretation of two circulars of the Railway Board which are already interpreted and decided by the Apex Court in Virpal Singh Chauhan's case that accelerated promotion will not confer accelerated seniority. We are not considering the question on the basis of first principles or general principles, we are deciding the question only on the basis of two Railway Board circulars of 1972 and 1982 which are already interpreted in a particular way by the Supreme Court in Virpal Singh Chauhan's case, which according to us, applies to the present cases, since these cases also are concerned with the said two circulars of the Railway Board.

The Bench of the Supreme Court deciding Jagdish Lal's case never dissented from the view taken in the two earlier decisions of the Supreme Court in Virpal Singh Chauhan and Ajit Singh Januja's case. Further, in this latest judgement, it is made very clear that Virpal Singh Chauhan's case is distinguishable since it was interpreting the circulars of the Railway Board dated 31.08.1982 but in Jagdish Lal's case the Supreme Court was considering Rule 11 of the Haryana Rules.

In the present case, we are very much considering the same circular of the railway board dated 31.08.1982, which was interpreted by the Supreme Court in Virpal Singh Chauhan's case.

11. In view of the above discussions we find that Jagdish Lal's case was concerned about interpreting of Rule 11 of Haryana Rules but we are directly concerned with the Railway Board circular dated 31.08.1982 on which the Railway Administration is placing reliance, even in the latest affidavit filed in 1998, The Supreme Court in Virpal Singh Chauhan's case has interpreted the 1982 circular and has held that in case of accelerated promotion to SC/ST candidates the seniority will be as in the original panel position, meaning - the panel in the feeder cadre. Therefore, in view of the facts and circumstances of this case and the circulars involved, that decision of the Supreme Court in Virpal Singh Chauhan's case is directly applicable to these present cases. Therefore, we hold that in view of the circulars of the Railway Board dated 19.01.1972 and 31.08.1982, as interpreted by the Supreme Court in Virpal Singh Chauhan's case, we hold that the accelerated promotion of SC/ST candidates will not give them accelerated seniority but their seniority viz-a-viz the general candidates will have to be determined with reference to the panel position in the lower/feeder cadre. It is, therefore, necessary for the Railway Administration to issue a proper circular in the light of the directions of the observations of the Supreme Court in Virpal Singh Chauhan's case, if not already done.

12. Having expressed our view on the questions of law placed before us, we will now have to consider the individual cases, which we do now one by one.

(i) T.R. NO.: 139/89.

In this case the dispute is about promotion to the post of different grades of Draughtsman in Central Railway. It is stated that 47 SC/ST employees are denied promotion and their junior general candidates are promoted. Another contention raised is that the reservation is for vacancies which occurred from time to time but the respondents in their earlier reply have clearly stated that the 47 SC/ST candidates had got earlier promotions in view of the reservation policy and, therefore, their erstwhile seniors in the feeder cadre who got promotion from general category / became seniors and that is why these further 47 SC/ST employees could not be given promotion since they did not get accelerated seniority viz-a-viz general candidates. In view of the findings given by us on this questions of law, we hold that the stand of the Railways in not giving promotion to these 47 employees is fully justified and no reliefs can be granted to these applicants. Similarly, in the light of the earlier Division Bench judgement in Samuel Pal Raj, the reservation is for the post in a cadre and not for the vacancies which occur from time to time. In view of this finding, the applicants in this O.A. are not entitled to any relief and the O.A. has to fail.

(ii) O.A. NO.: 555/88

There are two applicants in this case. They are S.J. Phale and R. B. Rathod. Both of them were holding the post of Divisional Store Keeper Grade.III

and they wanted the next promotion as Divisional Store Keeper Grade-II. There is a provision for passing written test and viva-voce for being selected for promotion. The applicants' grievance is that their juniors from General Category have been called for interview. In the reply it is pointed out that in the promotional cadre the SC/ST quota had already been exhausted and on the other hand the SC/ST candidates were in excess and, therefore, the applicants being SC/ST candidates could not be promoted to the post of Divisional Store Keeper Grade-II. In view of our view expressed on the questions of law, we have to hold that the stand of the Railway Administration is perfectly justified.

In addition to this, it is brought to our notice that the first applicant retired on 31.08.1990 by taking voluntary retirement. The second applicant retired on superannuation on 31.08.1997. Even if the applicants would have succeeded, now they cannot appear for written test and viva-voce for being considered for promotion in view of their retirement during the pendency of the present O.A. Even on this ground the applicants are not entitled to any relief in this O.A.

(iii) <u>O.A. NO.: 440/89.</u>

This is an application filed by one Scheduled Caste candidate - L.T. Bharit. He was working as Office Superintendent Grade-II on adhoc promotion. He wants regular promotion as Office Superintendent Grade-II. He appeared for the written test, etc. but not selected. It appears that he was

earlier promoted on adhoc basis as Office Superintendent Grade-II and then reverted as Head Clerk. He wants promotion on regular basis to Office Superintendent Grade-II w.e.f. 27.04.1988 and again next promotion as Class-II Officer w.e.f. 01.06.1988 and he is also challenging the order of reversion as Head Clerk.

The reply in this case is, there was vacancy of one Scheduled Caste candidate in the promotional post and therefore, one Senior most Scheduled Caste candidate, Smt. V. V. Yasugade was selected. As far as the post of Assistant Personnel Officer is concerned, there is no vacancy for SC/ST category.

In view of our finding that the reservation is for the post in the cadre and not for vacancies and further finding that accelerated promotion will not get accelerated seniority, the applicant in this O.A. is not entitled to any relief.

(iv) O.A. NO.: 666/89

This is an application filed by six general candidates, namely - P. L. Verma & 5 others. They were in the grade of Assistant Chief Ticket Inspectors but working on adhoc promotion as Chief Ticket Inspectors. Their grievance is that, in the promotional post of Chief Ticket Inspector, SC/ST quota had already exhausted. That in the feeder

cadre reserved candidates are given seniority over the applicants. In the eligibility list, the SC/ST candidates are shown as seniors to the applicants. Therefore, the applicants want that the seniority list dated 19.09.1988 in the cadre of Head Ticket Collector should be quashed. That the eligibility list of candidates dated 04.08.1989 should be quashed and for a further direction to the respondents to prepare fresh seniority list as per rules.

The respondents in their reply have stated that the seniority list has been prepared as per the prevailing law. It is admitted that some junior scheduled caste candidates are shown in the eligibility list due to vacancies of SC post and as per rule of zone of consideration.

In view of our finding on the two points mentioned earlier, we have to hold that the seniority list dated 19.09.1988 and eligibility list dated 04.08.1989 are not valid and are liable to be quashed. The respondents should prepare the seniority list as per the panel position in the lower cadre and not from the date of promotion to the higher cadre. The eligibility list must be prepared on the basis of new seniority list.

At this stage, we may have to mention that it is brought to our notice that all the six applicants in this case have since retired. The question is, whether inspite of the new seniority list to be

published whether the applicants are entitled to any promotion as per rules or not? If as per rules, for the purpose of promotion the applicants had to pass any written test or viva-voce, etc. then the applicants may not be entitled to promotion since they have already retired. If they are not entitled to promotion, then the question of granting consequential benefits may not arise. Therefore, the respondents will have to consider whether on the basis of new seniority list to be prepared, can the applicants be considered for the purpose of promotion and if so, as per rules they can be promoted retrospectively when they have already retired from service. The Railway Administration may examine this points and pass an order whether the applicants are entitled to any consequential benefits or not ?

v.) O.A. NO.: 778/89.

This is an application filed by the SC/ST employees association and one affected employee. There are 156 affected employees whose names are shown in annexure 'C' to the O.A. These affected persons are claiming promotion to Class-II post (Group 'B') in commercial department of Central Railway. The designation of the promoted post is known as 'Assistant Commercial Superintendent/Assistant Commercial Officer'. It is the case of the applicants that their seniority and claim on the basis of they being SC/ST candidates has been ignored by the

The respondents, who have already prepared a selection list for the promotional post ignoring the claim of the SC/ST candidates. Hence, the applicants want the selection list dated 31.03.1989 to be quashed and 134 SC/ST candidates out of annexure-'C' should be directed to be selected and promoted.

The respondents have denied the claim of the applicants that they are entitled to be promoted.

In view of our finding that accelerated promotion does not give accelerated seniority, the claim of the applicants in this case for promotion on the basis of they being SC/ST candidates is not sustainable in law. Hence, the applicants in this case are not entitled to any relief.

(vi) O.A. NO.: 785/89

This is an application filed by seven general candidates, namely - S. K. Mukherjee and six others. They are working as Travelling Ticket Inspectors in the Central Railway. Their next promotion is to the post of Chief Travelling Ticket Inspector. Respondent Nos. 4 to 11 in this O.A. are SC/ST candidates. According to the applicants, respondent nos. 4 to 11 are juniors to them but they have got the present promotion by accelerated promotion by virtue of reservation policy. It is stated that in the promotional post SC/ST quota has already

exhausted and therefore, respondent nos. 4 to 11 who belong to SC/ST community could not have been promoted. However, ignoring the claim of the applicants who are seniors and inspite of the reserved quota being exhausted, respondents have promoted respondent nos. 4 to 11, therefore, the applicants wants that the seniority list dated 18.01.1989 should be quashed, the promotional order dated 27.07.1989 should be quashed and for a direction to prepare a fresh seniority list and for a direction to promote the applicants and to restore their original seniority.

The respondents have filed their reply justifying the promotion and selection of Respondent Nos. 4 to 11. It is stated that respondent nos. 4 to 11 are given promotion as per their seniority and not on the basis of reservation.

Respondent Nos. 4 to 11 got promoted to the cadre of Travelling Ticket Inspector by virtue of reservation policy. It may be that the applicants got promoted to that cadre later but in the feeder cadre the applicants were senior to Respondent Nos. 4 to 11. In the cadre of Travelling Ticket Inspector though the respondents 4 to 11 got promotion earlier, they cannot claim seniority over the applicants in view of our findings given on the question of law. On the basis of 1972 and 1982 Railway Board circular. Respondent No. 4 to 11 cannot get accelerated seniority in view of their accelerated promotion on the basis of reservation

policy. Therefore, the seniority list dated 18.01.1989 is liable to be quashed. The respondents will have to prepare a fresh seniority list in the light of the directions given in this judgement and on that basis the applicants' case for promotion should be considered as per rules but we hasten to add that Respondent Nos. 4 to 11 should not be reverted as a result of our order but their promotion should be adjusted against future vacancies.

vii) O.A. NO.: 909/89.

This is an application filed by the SC/ST employees association and some of the affected employees of the Central Railway. There are eight affected employees including the second applicant whose names are shown in Annexure 'E'. The affected employees are in different grades like Chargeman Grade 'A', Grade 'B' or Junior Shop Superintendent, working in Electric Locomotive Workshop at Bhusaval Central Railway. Their case is that, their claim for promotion on the basis of they being SC/ST candidates has been denied by the department and their seniority has been ignored and on the other hand the general candidates have been promoted. Therefore, the affected employees want promotion as Sr. Shop Superintendent or as Shop Superintendent, depending upon their present grade and to quash the promotion order issued in favour of general candidates dated 16.06.1989, 15.09.1989 and 12.10.1989.

The respondents have filed a reply stating that the applicants being SC/ST candidates got accelerated seniority over the general candidates. Since in the next promotional cadre the SC/ST quota had already exhausted, the applicants could not be promoted and that is how the general candidates are promoted to the general vacancies.

In view of our findings on the questions of law that accelerated promotion will not give accelerated seniority, the applicants in this cases are not entitled to any relief in this O.A.

viii) O.A. NO.: 341/90

This application is filed by one Scheduled Tribe Official - B. N. Swamy, who is working as Head Typist in the Central Railway. He was promoted as Chief Typist on adhoc basis but after a period of 19 months he was reverted as Head Typist as per order dated 24.03.1989. He is shown at Sl. No. 2 in the seniority list of Head Typist. Respondent No. 5 has been promoted ignoring the claim of the seniority of the applicant. It is stated that Respondent No. 5 is at Sl. No. 6 in the seniority list. Though the applicant was promoted on his representation on adhoc basis, he was subsequently reverted. Then during regular promotion, the applicant has been selected but his

juniors Respondent Nos. 3 to 7 were selected and promoted earlier. Hence, the applicant has filed this O.A. challenging the promotion of Respondent Nos. 3 to 7, challenging his reversion and seeking a direction for his regular promotion either from 13.01.1986 or 24.03.1989 with consequential benefits.

The respondents have seriously disputed the seniority position of the applicant. According to them, the relevant seniority list is dated 16.02.1982 in which the applicant is at Sl. No. 7. Though the applicant was promoted earlier on adhoc promotion, he was reverted after the regular promotion of 5 candidates. It is pointed out by the Railway Administration that in Bhusaval Division the cadre strength of Chief Typist was only 5, of which one was Scheduled Caste and 4 General and there was no post for Scheduled Tribe. Since the applicant was a Scheduled Tribe candidate, he could not be selected on the basis of reservation for want of S/T post as per the roster. The applicant's earlier promotion from the lower post was due to reservation and hence he cannot claim seniority due to accelerated promotion, that is, as per roster one Scheduled Caste candidate and four general candidates were got selected and promoted.

It is, therefore, seen that even in this case the applicant cannot get any relief

since he cannot get accelerated seniority on the basis of accelerated promotion in view of our finding on the questions of law. Further, he could not be promoted on the basis of roster since there was no S/T post in the cadre strength. Another point taken in the O.A. and pressed into service at the time of argument is that the applicant has been reverted without following the procedure under the disciplinary rules. There is no merit in the submission. It is not a case of reversion due to misconduct. Admittedly, the applicant's promotion was on adhoc basis. An adhoc promotion by itself does not give any right to the promoted post. It is like a temporary promotion till a regular candidate is appointed. When regular selection and promotion has been done and appointment orders are issued, the adhoc appointee or the adhoc promotee will have to give room for a regular promoted candidate. Hence, the action taken by the Railway Administration is perfectly legal and justified. The applicant is not entitled to any relief in this O.A.

ix) <u>O.A. NO.: 15/91</u>

This is an application filed by a Scheduled Caste candidate by name M.C. Lankeshwar. He was working on adhoc promotion as Chargeman Grade 'B' and he seeks regular promotion as Chargeman Grade 'B'. He was not called for selection. As per his seniority and as per the reservation policy, the applicant is entitled for regular promotion as Chargeman 'B'.

It is stated in the reply that the applicant got accelerated promotion to Skilled Grade-II and later, similar promotion to Skilled Grade-I. Hence, he cannot claim seniority over general candidates and he does not come within the zone of consideration as per the general seniority and hence he was not called for selection.

In the view we have taken on the questions of law that acceleration promotion on the basis of reservation policy does not give accelerated seniority, The applicant has no case and he is not entitled to any relief in this O.A.

x) <u>O.A. NO.: 817/91</u>

This is an application filed by the SC/ST employees' association and one of the affected official. The O.A. is filed on behalf of 8 affected S/C officials including the second applicant whose names are given. The integrated seniority list dated 01.03.1989 has been published and it has to be followed for promotion to the post of Class-II officer. It is stated that the juniors from general category are invited for selection ignoring the claim of senior scheduled caste candidates. It is stated that though the scheduled caste candidates got accelerated promotion, they also get seniority from the date of promotion. Therefore, the applicants have prayed that the fresh seniority list dated 20.09.1991 is bad in law and requires to be quashed, the respondents to be directed to

implement the integrated seniority list dated 01.03.1989, the affected candidates to be called for selection and that the selection of general candidates in pursuance of letter dated 20.09.1991 be quashed.

In the reply, the railway administration has pleaded that there were 25 posts in the promotional cadre of Assistant Signal Telecommunication Engineer (Class-II). Out of 25 available vacancies, 23 belong to general category and two to S/C community. It is stated that the S/C quota had already exhausted. Hence, for this particular selection of 25 candidates no S/C candidates were called for selection. The applicants being S/C candidates, were therefore not called for this selection. The applicants are juniors to general candidates as per the seniority list dated 20.09.1991.

In view of our findings on the questions of law, the applicants cannot claim accelerated seniority due to accelerated promotion. Further, the S/C quota had already exhausted and for the selection of existing 25 vacancies, no S/C candidates could have been called as per roster. The action taken by the respondents is fully justified and does not call for interference. Hence, there is no merit in the O.A. and liable to be dismissed.

xi.) <u>O.A. NO.: 411/93.</u>

This is an application filed by a single Scheduled Caste candidate - B. N. Sonavaria. He was

working as Chief Luggage Clerk on the date of O.A. He is seeking promotion to the post of Chief Booking Supervisor/Chief Luggage Supervisor. His grievance is that, he was not selected but his juniors have been selected and promoted. The applicant claims that he is entitled to be considered for promotion both on the ground of seniority and reservation.

The stand of the Railway Administration in the reply is that the applicant came to the present post by accelerated promotion and hence he cannot claim accelerated seniority in the general seniority list. That for the next promotion he has to stand in the queue as per his position in the seniority list of the previous cadre. The persons who are selected are erstwhile seniors of the applicants in the base grade seniority.

In our view, in view of the finding on the questions of law that accelerated promotion will not confer accelerated seniority, the O.A. has no merit and has to be dismissed.

xii.) <u>O.A. NO.: 1095/93</u>

This is an application filed by the two applicants of Scheduled Caste community. They are Kunwar Pal and Girraj Prasad Nimesh. Both of them were working as Personnel Inspector Grade-III on the date of O.A. In this grade the respondent nos.

4 to 8 are juniors to the applicants. Subsequently, the applicants were promoted as Personnel Inspector Grade-II and again subsequently promoted as Personnel Inspector Grade-I from prospective dates. Their claim is that, they are entitled to be promoted retrospectively when their junior - respondent no. 4 got promotion in those two cadres and for consequential benefits like seniority in the new grade and monetory benefits, etc.

The Railway Administration has pleaded that the applicants got promotion in Grade-III on the basis of roster and reservation policy. They cannot get seniority in view of accelerated promotion. Hence, the applicants cannot claim seniority over the general candidates respondent nos. 4 to 8.

This application should also fail in view of our findings that accelerated promotion on the basis of reservation policy does not confer accelerated seniority.

xiii) O.A. NO.: 589/95

This is an application filed by the general employees' association in the Central Railway and five affected officials. They are challenging the promotion of Respondent Nos. 4 to 7 who are SC/ST candidates. The five affected officials are working in two grades - either as Office Superintendent Grade-II or Head Clerks. The next

promotion is Office Superintendent Grade-I. It is stated that in Office Superintendent Grade-I the SC/ST candidates are already in excess. Hence, only general candidates are now entitled to promotion. But the railway administration have promoted respondent nos. 4 to 7, who are junior to the applicants and who belong to SC/ST category. It is stated that since respondent nos. 4 to 7 are junior to the applicants and further, since SC/ST quota has already exhausted, the promotion of Respondent nos. 4 to 7 is bad in law and liable to be quashed. They also pray that the five affected officials be promoted.

The stand of the railway administration is that Respondent Nos. 4 to 7 were promoted as per reservation policy and as per the interim order passed by this Tribunal.

In view of our finding on the questions of law that accelerated promotion on the basis of reservation policy cannot confer accelerated seniority, the promotion of Respondent Nos. 4 to 7 cannot be upheld. The applicants who are seniors to Respondent Nos. 4 to 7 are entitled to be considered for promotion. The Railway Administration will have to prepare a fresh seniority list in the light of the law declared by us and on the basis of the Supreme Court judgement which we referred to earlier, and on that basis they will have to consider candidates for promotion. However, Respondent Nos. 4 to 7 who are already promoted should not be reverted and their promotions should be readjusted during future vacancies.

13. In the result, all the O.As are disposed of as follows :-

(i) It is hereby declared and reiterated, as observed by the Constitution Bench of the Supreme Court in R. K. Sabarwal's case that the reservation percentage has to be decided on the basis of posts in the cadre and not on the basis of vacancies which occur from time to time.

(ii) It is hereby declared and reiterated by following the judgement of Apex Court in Virpal Singh Chauhan's case, that in view of the Railway Board Circulars dated 19.01.1972 and 31.08.1982 the SC/ST candidates who get accelerated promotion by virtue of reservation policy will not get accelerated seniority and their seniority viz-a-viz the general candidates will be the same as in the panel position in the lower/feeder cadre.

(iii) The applications namely - T.A. No. 139/87, O.A. Nos.: 555/88, 440/89, 778/89, 909/89, 341/90, 15/91, 817/91, 411/93 and 1095/93 are hereby dismissed.

(iv) O.A. Nos. 666/89, 785/89 and 589/95 are hereby allowed. In view of the law declared by us as mentioned in (i) and (ii) above, the Railway Administration is directed to prepare a fresh seniority list in these

three cases, for future promotions.

(v) It is hereby further declared and clarified that on the basis of the law declared in this judgement and any seniority list prepared as per this judgement, no employee - whether SC/ST candidate or general candidate shall be reverted. If there are any candidates who are already promoted contrary to the law declared in this judgement, then the promotion of such candidates should not be upset but should be adjusted against future vacancies.

(vi) Respondents are given six months time from the date of receipt of this order to comply with this order.

(vii) In the circumstances of the case, there would be no order as to costs.

(P.P. SRIVASTAVA)
MEMBER (A).

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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