

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

1. O.A. No. 387/1999
2. O.A. No. 419/1999

DATE OF DECISION : 29.03.2001

1. M.D. Sharma

Petitioner_s

2. K.L. Mehta

Mr. P.V. Kalla

Advocate for the Petitioner (s)

Versus

Union of India and Ors.

Respondent_s

Mr. U.D. Sharma, Mr. Virendra Lodha,
Mr. Nand Kishore and Mr. P.P. Mathur

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

The Hon'ble Mr. N.P. Nawani, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? -
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

(N.P. NAWANI)
Adm. Member

(JUSTICE B.S. RAIKOTE)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of order : 29.03.2001.

1. O.A. No. 387/1999

M.D. Sharma son of late Shri Ram Chandra Sharma aged about 49 years Travelling Ticket Examiner in the office of the Chief Ticket Inspector - II, Western Railway, Jaipur Division, Jaipur, resident of 2/72, Jawahar Nagar, Jaipur.

... Applicant.

v e r s u s

1. The Union of India through the General Manager, Western Railway, Church Gate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Jaipur.
3. The Divisional Personnel Officer, Western Railway, Jaipur.
4. Shri Ram Prakash, Executive Director Establishment (RES), Railway Board, Rail Bhawan, New Delhi.
5. Shri K.L. Chholak, Substantive Travelling Ticket Inspector, at present working on ad hoc basis on the post of Chief Ticket Inspector under the Chief Ticket Inspector, Bandikui.
6. Shri Ishwari Prasad Substantive Travelling Ticket Inspector, at present working on ad hoc basis as Chief Ticket Inspector under the Divisional Chief Ticket Inspector, Western Railway, Jaipur.
7. Shri Suraj Mal Meena, Substantive Travelling Ticket Inspector, at present working on ad hoc basis as Chief Ticket Inspector under the Chief Ticket Inspector-II, Western Railway, Jaipur.
8. Shri Madan Lal Meena, Substantive Travelling Ticket Inspector, at present working on ad hoc basis as Chief Ticket Inspector under Chief Ticket Inspector, Western Railway, Jaipur.
9. Shri Ram Singh II, Train Conductor (TNCR), under the Divisional Chief Ticket Inspector, Western Railway, Jaipur.
10. Shri Om Prakash Meena, Travelling Ticket Inspector, working under the Chief Ticket Inspector, Western Railway, Bandikui.
11. Shri Nand Lal K, Travelling Ticket Inspector, under the Chief Ticket Inspector, Western Railway, Bandikui.



12. Shri Jagdish Prasad, Travelling Ticket Inspector, under the Chief Ticket Inspector, Western Railway, Sikar.
13. Shri Gopal Krishna Meena, Travelling Ticket Inspector, under the Chief Ticket Inspector-II, Western Railway, Jaipur.
14. Shri Girdhari Lal Meena, Train Conductor (TMC), under the Divisional Chief Ticket Inspector, Western Railway, Jaipur.
15. Shri Sedu Ram Meena, Travelling Ticket Inspector under the Chief Ticket Inspector-II, Western Railway, Jaipur.

... Respondents.

Mr. P.V. Kalla, Counsel for the applicant.

Mr. U.D. Sharma, Counsel for the respondents Nos. 1 to 4.

Mr. Virendra Lodha, counsel for the respondents Nos. 5, 10 and 11.

Mr. P.P. Mathur, Counsel for the respondents Nos. 7 and 8.

Mr. Nand Kishore, Counsel for the respondents Nos. 12 and 14.

None is present for other respondents.

2. O.A. No. 419/1999

K.L. Mehta, aged about 56 years son of Shri Ratan Lal Mehta, presently working as Chief Ticket Inspector in the office of the Western Railway, Jaipur Division, Jaipur, resident of I/T-57. Sushilpura, Ajmer Road, Ajmer.

... Applicant.

e r s u s

1. The Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Jaipur.
3. Shri K.L. Chholak, Substantive Travelling Ticket Inspector, at present working on ad hoc basis on the post of Ticket Inspector under the Chief Ticket Inspector, Bandikui.
4. Shri Ishwari Prasad, Substantive Travelling Ticket Inspector, at present working on ad hoc basis as Chief Ticket Inspector under the Divisional Chief Ticket Inspector, Western Railway, Jaipur.
5. Shri Suraj Mal Meena, Substantive Travelling Ticket Inspector, at present working on ad hoc basis as Chief Ticket Inspector under the Chief Ticket Inspector-II, Western Railway, Jaipur.

6. Shri Madan Lal Meena, Substantive Travelling Ticket Inspector, at present working on ad hoc basis as Chief Ticket Inspector under the Chief Ticket Inspector, Western Railway, Jaipur.
 7. Shri Ram Singh M. Train Conductor (TWCR), under the Divisional Chief Ticket Inspector, Western Railway, Jaipur.
 8. Shri Om Prakash Meena, Travelling Ticket Inspector, working under the Chief Ticket Inspector, Western Railway, Bandikui.
 9. Shri Mand Lal K, Travelling Ticket Inspector under the Chief Ticket Inspector, Western Railway, Bandikui.
 - 10.. Shri Jagdish Prasad, Travelling Ticket Inspector, under the Chief Ticket Inspector, Western Railway, Bandikui.
 11. Shri Gopal Krishna Meena, Travelling Ticket Inspector, under the Chief Ticket Inspector II, Western Railway, Jaipur.
 12. Shri Girdhari Lal meena, Train Conductor (TWCR), under the Divisional Chief Ticket Inspector, Western Railway, Jaipur.
 13. Shri Sedu Ram Meena, Travelling Ticket Inspector under the Chief Ticket Inspector II, Western Railway, Jaipur.
- All through the Divisional Chief Ticket Inspector, Jaipur.

... Respondents.

Mr. P.V. Kalla, Counsel for the applicant.

Mr. U.D. Sharma, Counsel for the respondents Nos. 1 and 2.

Mr. Virendra Lodha, Counsel for the respondents Nos. 3 to 6 & 8 to 13.

None is present for the respondent No. 7.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. N.P. Nawani, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. RAIKOTE)

These two applications were heard alongwith the batch of cases involving a controversy relating to the principles for determining the seniority of Scheduled Caste/Scheduled Tribe candidates promoted earlier on roster principles vis-a-vis general category candidates promoted later. These two cases we are disposing of by a separate common judgement, so as to appreciate with the help of the facts of these cases, the law declared by Hon'ble the Supreme Court in number of judgements, so that judgements in these two cases could be followed in the remaining cases in the batch.

2. In both the applications, the applicants have sought amendment of the seniority list dated 16.04.1999 of the cadre of

Train Conductors (for short, TNCR) and Travelling Ticket Examiner (for short, TTI) in the pay scale at Rs. 1600-2660 (revised to Rs. 5500-9000), keeping in view of the base grade seniority. They have also challenged Annexure A/2, by which their representations were rejected by the department. They have also sought quashing of the eligibility list dated 7.7.99 (Annexure A/3) prepared for the purpose of promotion to the post of CTI in the pay scale at Rs. 2000-3200 (revised to Rs. 6500-10500) of the persons belonging to the cadre of TNCR/TTI with the pay scale at Rs. 1600-2660. The whole grievance of the applicants, who belong to the general category, is that certain persons belonging to the Scheduled Caste/Scheduled Tribe communities (in short, reserved category) though junior to the applicants at the base level, are now sought to be promoted to the post of CTI, without revising the seniority list at Annexure A/1 on the basis of the catching up principle enunciated by Hon'ble the Supreme Court. In order to appreciate the contentions, we think it appropriate to refer to the pleadings and documents in OA No. 387/99 and the pleadings and documents as annexed by the official respondents to avoid any repetition and confusion in the matter.

3. It is the case of the applicants that the post of Ticket Collector is the base grade, and in that base grade, they are seniors to the private respondents, who belong to reserved category. They have annexed seniority list of that base grade at Annexure A/10 dated 10.11.76, and a further revised seniority list vide Annexure A/11 dated 20.12.82. They contended that as per this seniority list of the Ticket Collector, they were seniors to the private respondents, who belonged to the reserved category. They have also contended that on the basis of seniority cum suitability, they were next promoted to the post of Senior T.C. in the pay scale at Rs. 1200-2040. They have also filed seniority

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list of Senior T.C. cadre vide Annexure A/12 dated 16.7.87, and contended that the applicants were senior to the private respondents. From the post of Senior TC, Senior TTC, the next promotion is to the post of Head TC, Train Conductor/Head Travelling Ticket Examiner (hereinafter referred to as HTTE) with the pay scale at Rs. 1400-2300, and the normal mode of promotion to this post of HTTE is by selection. But the private respondents were selected to this cadre by modified selection procedure and they were promoted on the roster point basis as against the applicants, who are senior to them in the base grade. The next promotional post from HTTE is to the post of THCR, TTI in the pay scale of Rs. 1600-2650 on seniority-cum-suitability basis. To this post, the applicants and the respondents were promoted simultaneously with effect from 1.3.93 vide order dated 23.7.93 (Annexure E/7) on the basis of restructuring/ upgradation. As a result, the applicants have caught up with the private respondents. Since the applicants have caught up with the private respondents, who were earlier promoted on the basis of accelerated promotion, the seniority of the applicants vis-a-vis the private respondents requires to be revised on the basis of the applicants' seniority at the base level, and on the basis of such revised seniority list, the case for further promotion to the next cadre of CTI requires to be considered. But without undertaking such exercise, the official respondents have now prepared the eligibility list vide Annexure A/3 for the purpose of promotion to the next higher cadre, i.e. to the cadre of CTI, in the pay scale at Rs. 2000-3200, and on that basis, the private respondents are sought to be promoted by preparing the panel. But such action of the respondents is contrary to the law declared by Hon'ble the Supreme Court. Shri P.V. Halla, the learned counsel appearing for the applicants and similarly placed general category candidates advancing leading arguments relied upon the judgements of Hon'ble the Supreme Court

in AIR 1996 SC 1189, Ajit Singh Januja vs. State of Punjab and Ors., AIR 1999 SC 3479 - Ajit Singh Januja vs. State of Punjab and Ors., 1995 SCC (L&S) 548 - R.K. Sabharwal vs. State of Punjab and AIR 1996 SC 448 - Union of India vs. Virpal Singh Chouhan. These judgements and other judgements, we will be referring to in the course of this order.

4. By filing reply, the official respondents Nos. 1, 2, 3 & 4 have denied the case of the applicants. The private respondents Nos. 7, 10, 11, 12 and 14, have filed separate replies, denying the case of the applicants. In substance, the contention of the private respondents and the official respondents is the same. The case of the respondents is that the applicants no doubt, were seniors to the private respondents upto the cadre of Senior TC, Senior TTE in the pay scale at Rs. 1300-2040, but the private respondents were promoted by modified selection procedure to the post of HTTE in the pay scale at Rs. 1400-2300 earlier to the applicants vide Annexure R/5 dated 20.6.86. At that time, the applicants were not promoted to the said post of HTTE. But the applicants were promoted to the said post of HTTE later on vide Annexure R/6 dated 22.8.88. Thus, the applicants being promoted subsequent to the private respondents to the post of HTTE, they have become junior to the private respondents. They further contended that vide Annexure R/5, promotion was made to the post of HTTE on the basis of merits, but not on the basis of roster point. Therefore, the judgement of Hon'ble the Supreme Court do not apply to the facts of the case. They further contended that in subsequent promotion to the post of TNER/TTI in the pay scale at Rs. 1600-2660, the applicants and the private respondents were no doubt, simultaneously promoted, but in the promotion order vide Annexure R/7 dated 23.7.93, the private respondents have been shown at higher ranking than the applicants. They also contended that

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Accordingly, a seniority list for the post of TMC/TTI at Rs. 1600-2660 was prepared, vide Annexure R/1 dated 23.04.97. In the said seniority list, in the cadre of TMC/TTI, the applicants have been specifically shown as junior to the private respondents, and this seniority list, the applicants have not challenged, and the same has become final. On the basis of this seniority list at Annexure R/1, now the official respondents have prepared the impugned seniority list vide Annexure A/1 dated 16.4.99, in which also the applicants were shown junior to the private respondents. On the basis of these two seniority lists vide, Annexures R/7 and Annexure A/1, the eligibility list has been prepared vide Annexure A/3 dated 7.7.99, showing the private respondents over and above the applicants. This eligibility list is prepared for the purpose of promotion to the post of CTI is strictly in accordance with the seniority list vide Annexure A/1, which in turn is based on Annexure R/1. Therefore, the applicants cannot question the eligibility list vide Annexure A/3. They also contended that this Hon'ble Tribunal vide its order dated 16.8.99 had passed an interim order, directing that if any selection was held for the post of CTI in pursuance of Notification at Annexure A/3 dated 7.7.99, the result of the same should not be declared till the next date, and the said order was continued from time to time. But the same was vacated vide order dated 15.9.2000. After vacation of the interim order, the official respondents had rightly issued the panel dated 2.11.2000 (Annexure MA/6) for the purpose of promotion to the post of CTI in the pay scale at Rs. 2000-3200, in which the names of the applicants were not found. However, this Tribunal vide order dated 10.11.2000 in MA No. 403/2000 (in OA No. 387/99) directed the respondents not to issue any promotion/ appointment order on the basis of the said panel (Annexure MA-6). They further contended that the said panel MA-6 is neither the subject matter of this OA nor the applicants had challenged the same. Therefore, the

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applicants are not entitled to the reliefs, as prayed for. They further contended that since the applicants have not challenged the promotion of the private respondents to the post of HTTE vide Annexure R/5 dated 20.6.86, the applicants could not challenge the seniority list of Annexure A/1, nor they can challenge the eligibility list prepared for the purpose of promotion to the post of CTI. Their claims, if any, regarding their challenge to the promotion of the respondents vide Annexure R/5 dated 20.6.86 would be hopelessly barred by time. Even the seniority list of HTTE dated 23.05.97 vide Annexure R/1, the applicants have not challenged in time. The impugned seniority list vide Annexure A/1 based on seniority list of Annexure R/1 dated 23.5.97 cannot be challenged at this stage. Therefore, these applications are liable to be dismissed on the ground of limitation. Their further contention is that in view of these circumstances, the judgements of Hon'ble the Supreme Court in Ajit Singh-I and II, Jatender Pal Singh etc. do not apply to these cases. Mr. U.D. Sharma for official respondents and S/Shri Hand Fishore and Virendra Lodha advanced leading arguments on behalf of all the contesting respondents and other similarly placed reserved category candidates. They have cited following judgements in support of their contentions.

1. JT 1996 (8) SC 274 : Akhil Bhartiya Soshit Farmachari Sangh through its Secretary and Anr. vs. Union of India through its Secretary, Ministry of Railways & Ors.
 2. 1994 (2) SLR 126 (F.B) C.A.T., Calcutta Bench - Durga Charan Halder ors. vs. Union of India and Ors.
 3. 2000 (6) Apex decision 605 = 2000 (3) ATJ 392 - Rudra Kumar Sain & Ors. etc. vs. Union of India & Ors.
 4. 1995 (2) SCC 745 = 1995 SCC (L&S) 548 : R.K. Sabharwal & Ors. vs. State of Punjab & Ors.
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5. 1995 (6) SCC 684 = AIR 1996 SC 448 : Union of India vs. Virpal Singh Chouhan
6. 1999 SCC (L&S) 1280 = JT 1999 (6) SC 638 - Jatinder Pal Singh & Ors. vs. State of Punjab
7. 1998 (3) SCC 694 = 1998 SCC (L&S) 916 : Union of India and Anr. vs. N. Chandrashekhara & Others.

5. On the basis of the pleadings of the parties and arguments addressed by the learned counsel at the Bar, we find that the controversy relates to the principles for determining the seniority of SC/ST candidates promoted earlier on roster points vis-a-vis general category candidates promoted later, and catching up with their junior reserved category candidates. But this kind of controversy has already been settled by Hon'ble the Supreme Court in number of judgements. Very important of them being in Union of India & Ors. vs. Virpal Singh Chouhan etc. - AIR 1996 SC 448 (hereinafter referred to as Virpal Singh case), R.K. Sabharwal and Others vs. State of Punjab and Ors. - 1995 SCC (L&S) 548 (hereinafter referred to as Sabharwal case), Ajit Singh Januja and Others vs. State of Punjab & Ors. - AIR 1996 SC 1189 (hereinafter referred to as Ajit Singh-I), Ajit Singh and Ors. vs. The State of Punjab and Ors. - AIR 1999 SC 3471 (hereinafter referred to as Ajit Singh-II), Jatinder Pal Singh & Ors. vs. State of Punjab - JT 1999 (6) SC 638 (hereinafter referred to as Jatinder Pal Singh case) and M.G. Badappanavar and Anr. etc. vs. State of Karnataka and Ors., 2000 (5) SLR 801 (hereinafter referred to as Badappanavar case). We have underlined the relevant portions of the judgements only to emphasise the relevant principle of law laid down by the Apex Court.

6. In R.K. Sabharwal case, the Constitution Bench of Hon'ble



the Supreme Court pointed out that the reservation in favour of Scheduled Caste/Scheduled Tribe has to be on the basis of posts, but not vacancies. In paras 6, 7, and 8, Hon'ble the Supreme Court further pointed out as under:

6. xxxxxx 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".

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. Jeevan Reddy, J. speaking for the majority in *Indra Sawhney vs. Union of India* (1992 Supp. [3] SCC 217) observed as under: (SCC P.737, para 814)

"Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes and other Backward Classes is 50% which means that out of 1000 posts 500 must be held by the members of these classes i.e. 270 by other Backward Classes, 150 by Scheduled Castes and 80 by Scheduled Tribes. At a given point of time, let us say the number of members of OBCs in the unit/service category is only 50, a shortfall of 220. Similarly, the number of members of Scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all Backward Classes reaches 500, i.e. till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age-barred and in-eligible equality of opportunity in their case would become a mere mirage. It must be remembered that equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit as the case may be."

8. The quoted observation clearly illustrate that the rule of 50% a year as a unit and not the entire strength of the cadre has been adopted to protect the rights of the general category under clause (1) of Article 16 of the Constitution of India. These observations in *Indra Sawhney* case are only in relation to posts which are filled initially in a cadre. The operation of a roster, for filling the cadre-strength, by

itself ensures that the reservation remains within the 50% limit. Indra Sawhney case is not the authority for the point that the roster survives after the cadre-strength is full and the percentage of reservation is achieved."

7. In Virpal Singh case, by following the judgement of the Constitution Bench in Sabharwal case, it is further clarified by Hon'ble the Supreme Court that the method of operating the rule of reservation in favour of reserved category, as under:-

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

By following the judgement in Sabharwal case, in para 28, Hon'ble the Supreme Court further clarified with example as under:-

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

(ii) The percentage of reservation has to be worked out in relation to number of posts in a particular cadre, class, category or grade (unit for the purpose of applying the rule of reservation) and not with respect to vacancies.

(iii) So far as Railway Guards in Railway service are concerned that is the only category we are concerned herewith-the seniority position in the promoted category as between reserved candidates and general candidates shall be the same as their inter se seniority position in Grade 'C' at any given point of time provided that at that given point of time, both the general candidate and the reserved category candidates are in the same grade. This rule operates whether the general candidate is included in the same batch of promotees or in the subsequent batch. (His is for the reason

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that the circulars/letters aforesaid do not make or recognise any such distinction). In other words, even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon his seniority over the general candidate even though the general candidate is promoted later to that category."

In this judgement, Hon'ble the Supreme Court pointed out that the concept of the panel position would arise only in recruitment, but not in promotion. So far as the Railway Board is concerned, while determining the seniority of the general candidates vis-a-vis roster reserved candidates, Hon'ble the Supreme Court clarified the concept of the panel as under:-

"18. xxxxxxxx The several instructions in Indian Railway Establishment Manual are also not helpful on this aspect. We are, therefore, left to interpret the expression ourselves. Having regard to the fact that in all the above circulars/letters, the expression "panel" has been used to denote a merit list or select list, as it may be called, we think it reasonable to understand as a panel which is prepared in the case of selection posts only. In the case of non-selection posts, there is no question of such a panel. In their case, the senior is promoted automatically unless he is found to be unsuitable to hold the promotion post. No panel i.e., merit list or select list is called for in the case of non-selection posts. May be, ultimately, a list of persons to be promoted is prepared but that is neither a merit list, nor a select list."

8. The above principles laid down in Sabharwal case and Virpal Singh case, have been followed by Hon'ble the Supreme Court in Ajit Singh-I and found fault the circular dated 4.5.74 providing reservation on the basis of "running account". Hon'ble the Supreme Court pointed out as under:-

"4. xxxxxxxx xxxxxxxx it will be proper to point out that the aforesaid circular dated 4.5.74 shall be deemed to be invalid, so far it says that the reservation prescribed shall be given effect to in accordance with a roster to be maintained which will be 'implemented in the form of a running account from year to year' because of the above judgement of the aforesaid Constitution Bench of this Court in

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the case of R.K. Sabharwal (1995) 2 SCC 745 (supra), the Constitution Bench clearly and categorically said that the "running account" is to operate only till the quota provided under instruction is reached and not thereafter. Once the prescribed percentage of posts is filled thereafter the roster does not survive. As such there is no question of implementing the roster in the form of "running account" from year to year as provided in the circular dated 4.5.1974".

Hon'ble the Supreme Court further held as under :-

9. xxxxxx It need hardly be pointed 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 general category, are promoted later it cannot be said that they have been superseded by such members of Scheduled Castes or Backward Classes 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 Class 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 (1995) 2 SCC 745 (supra) by the Constitution Bench, but also by the 9 Judges Bench in the case of Indra Sawhney 1992 (Supp) 3 SCC 217 (supra) 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 or Backward Classes, shall amount to exceeding the limit fixed in the case of Indra Sawhney (supra)."

9. By reiterating the principles laid down in Virpal Singh case, Hon'ble the Supreme Court, in Ajit Singh-I concluded as under:-

"16. We respectfully concur with the view in Union of India vs. Virpal Singh Chouhan JT (1995) 7 SC 231 (supra), that seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give the accelerated 'consequential seniority'. If a Scheduled Caste/Scheduled Tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category candidate is promoted later to that higher grade the general category candidate shall regain his seniority over such earlier promoted Scheduled Caste/Tribe candidate. As already pointed out above that when a scheduled caste/tribe candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such Scheduled Caste/Tribe candidate, in this process he does not supersede his seniors belonging to the general category. In

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Regarding the 'catch up' rules, the Apex Court on the basis of the judgements in Virpal Singh and Ajit Singh-I, clarified with illustration the entire position with a further rider that in order to fulfil the said 'catch up' rules, the seniority may require to be amended at the promotional level, so as to restore the seniority of the senior general candidates on his catching up with his junior roster promotees. We think it appropriate to extract the relevant part of the judgement as under:-

"Two 'catch up' rules contended for by general candidates:

78. Now, as stated earlier, the counsel for the general candidates argued for acceptance of two catch-up rules.

Extreme 'catch up' rule:

79. So far as the extreme contention of the general candidates that at Level 3, the roster candidate must wait at Level 3 - before being promoted to Level 4 - till the last senior general candidate at Level 1 reached Level 3. - we reject the same in as much as that will not amount to a reasonable balancing of the rights of the candidates in the two groups. Nor do we accept that posts must be kept vacant and no promotions of the roster candidates be made.

Other Catch up rule:

80. As accepted in Virpal (see (1995) 6 SCC 634 at 702: (1995 AIR SCW 4309; AIR 1996 SC 448 and Ajit Singh (See (1996) 2 SCC 715 at p. 729: (1996) AIR SCW 1196 at pp. 1205-06: AIR 1996 SC 1189 at p. 1197: 1996 Lab IC 1030 at p. 1038), we hold that in case any senior general candidate at Level 2 (Assistant) reaches Level 3 (Superintendent Grade II) before the reserved candidate (roster point promotee) at Level 3 goes further upto Level 4 in that case the seniority at Level 3 has to be modified by placing such a general candidate above the roster promotee, reflecting their inter se seniority at Level 2. Further promotion to Level 4 must be on the basis of such a modified seniority at Level 3, namely that the senior general candidate of Level 2 will remain senior also at Level 3 to the reserved candidate, even if the latter had reached Level 3 earlier and remained there when the senior general candidate reached that Level 3. In cases where the reserved candidate has gone up to Level 4 ignoring the seniority of the senior general candidate at Level 3, seniority at Level 4 has to be refixed (when the senior general candidate is promoted to Level 4) on the basis of when the time of reserved candidate for promotion to Level 4 would have come, if the case of the senior general candidates was considered at Level 3 in due time. To the above extent, we accept the first part of the contention of the learned counsel for the general candidates. Such a procedure in our view will properly balance the rights of the reserved candidates and the fundamental rights guaranteed under Article 16(1) to the general candidates.

No difficulty in amending seniority list :

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

10. In Ajit Singh - II, Hon'ble the Supreme Court overruled the judgement in Jagdish Lal vs. State of Haryana (AIR 1997 SC 2366) and held that "continuous officiation of roster promotee on the promotional post would not enure to the benefit of roster promotee as against senior general candidate". They have also overruled the judgement in Asok Kumar Gupta vs. State of U.P. [(1997) 5 SCC 201], as being inconsistent to the judgement of Hon'ble the Supreme Court in Indra Sawhney case and in the case of R.K. Sabharwal, and further held that the enabling provision framed under Article 16(4) of the Constitution shall be invalid, if such provision or rules come in conflict with the Articles 14 and 16(1) of the Constitution of India. By following Indra Sawhney case, they further held that Article 16(4) is only an enabling provision and it does not confer any fundamental right, and accordingly, Hon'ble the Supreme Court concluded as under :-

"65. xxxxxxxxxx This Court had therefore, to lay down that any circular, order or rule issued to confer seniority to the roster point promotees, would be invalid. Thus, the decision in Ajit Singh cannot be found fault with."

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81. One of the objections raised before us and which appealed to the Full Bench in Jaswant Singh's case (1990 Lab IC 559) (Funj & Har) was that this 'catch up' principle will lead to frequent alteration of the seniority list at Level 3. We do not find any difficulty in this behalf. The seniority list at Level 3 would have only to be merely amended whenever the senior general candidate reaches Level 3."

11. The above judgement (Ajit Singh-II) also further clarified the prospectivity of the two judgements pointed out in R.K. Sabharwal and Ajit Singh-I, as under:-

" 88. It is axiomatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as ad hoc. This applies to reservation quota as much as it applies to direct recruits and promotee cases. If a Court decides that in order only to remove hardship such roster point promotees are not to face reversions, - then it would, in our opinion be, necessary to hold - consistent with our interpretation of Articles 14 and 16(1) - that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of the roster. In our view, while Courts can relieve immediate hardship arising out of a past illegality, Courts cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10.2.95 are protected, such promotees cannot claim seniority. Seniority in the promotional cadre of such excess roster point promotees shall have to be reviewed after 10.2.95 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate. That disposes of the 'prospectivity' in relation to Sabharwal.

Prospectivity of Ajit Singh (1996 AIR SCW 1196 : AIR 1996 SC 1189 : 1996 Lab IC 1030):

89. Coming to the 'prospectivity' of Ajit Singh, decided on 1.3.96 the question is in regard to the seniority of the reserved candidates at the promotional level where such promotions have taken place before 1.3.96.

90. We have accepted, while dealing with the points 1 and 2 that the reserved candidates who get promoted at two levels by roster points (say) from Level 1 to Level 2 and Level 2 to Level 3 cannot count their seniority at Level 3 as against senior general candidates who reached Level 3 before the reserved candidates moved upto Level 4. The general candidate has to be treated as Senior at Level 3.

91. Where, before 1.3.96, i.e. the date of Ajit Singh's judgement, at the Level 3, there were reserved candidates who reached there earlier and also senior general candidates who reached later, (but before the reserved candidate was promoted to Level 4) and when in spite of the fact that the senior general candidate had to be treated as Senior at Level 3 (in view of Ajit Singh), the reserved candidate is further promoted to Level 4 - without considering the fact that the senior general candidate was also available at Level 3- then, after 1.3.96, it becomes necessary to review the promotion of the reserved candidate to Level 4 and reconsider the same (without causing reversion to the reserved candidate who reached Level 4 before 1.3.96). As and when the senior

reserved (general) candidate is later promoted to Level 4, the seniority at Level 4 has also to be refixed on the basis of when the reserved candidate at Level 3 would have got his normal promotion, treating him as junior to the senior general candidate at Level 3. Chander Pal vs. State of Haryana (1997) 10 SCC 474 has to be understood in the manner stated above."

12. Hon'ble the Supreme Court further explained the principles of 'prospectivity' as well as 'catch up' rule with illustrations in Jatinder Pal Singh, as under:-

"18. We are acceding to this request made on behalf of the Railways as a special case but subject to a reservation - which was accepted by the learned senior counsel. We agree that there is no need to revert those reserved category officers, if they were promoted even beyond 1.3.96 but before 1.4.97. But their promotions shall have to be deemed ad hoc as they were otherwise irregular and further their seniority in the promoted category shall however have to be determined by following Veerpal and Ajit Singh No.1 as explained in Ajit Singh No. II as if they were not so promoted. To give an example - in the case of roster points at two levels, i.e. from Level 1 to Level 2 and Level 2 to Level 3, if the reserved candidate was promoted before 1.4.97 to Level 4, such reserved candidate need not be reverted. If by the date of promotion of the reserved candidate from Level 3 to level 4 before 1.4.97, the senior general candidate at Level 2 had reached Level 3, he has to be considered as senior at Level 3 to the reserved candidate because the latter was still at Level 3 on that date. But if such a general candidate's seniority was ignored and the reserved candidate was treated as senior at Level 3 and promoted to Level 4, this has to be rectified after 1.3.96 by following Virpal, Ajit Singh No.1 as explained in Ajit Singh No.II. In other words, if a reserved candidate was promoted to Level 4 before 1.4.97, without considering the case of the senior general candidate who had reached Level 3 before such promotion such reserved candidate need not be reverted, but the said promotion to Level 4 is to be reviewed and seniority at Level 3 has to be refixed and on that basis promotion/seniority at Level 4 (as and when the general candidate is promoted to Level 4) is again to be refixed. The seniority of the reserved candidate at Level 4 will be refixed on the basis of when his term would have come for promotion to Level 4, if the case of the senior general candidate was considered at Level 3 in due time."

13. In spite of the above consistent law declared by Hon'ble the Supreme Court, the Karnataka Administrative Tribunal, in its judgement dated 20.11.96 in Application No. 3756 and 4849 of 1996, considering the Karnataka Government Servants (Seniority) Rules, 1957, held that the reserved candidates promoted on the basis of roster at Levels 1 and 2 would become senior from the date of the roster point promotions and even if a senior general candidate reached Level 3 later, he would not be able to claim seniority over the reserved candidate at Level 3 because the reserved candidate had reached Level-3 earlier. The Karnataka Administrative Tribunal further observed that the parties would be


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governed by the law as it prevailed prior to the date of decision in Sabharwal. Finding this conclusion being inconsistent with the law declared by Hon'ble the Supreme Court in Virpal, Ajit Singh-I, Indra Sawhney, and other cases, the said judgement of the Karnataka Administrative Tribunal was set aside by Hon'ble the Supreme Court in M.G. Badappanavar with a further direction that the seniority lists and the promotions shall be reviewed, subject to the restrictions that those who were promoted on principles contrary to Ajit Singh-II and Sabharwal before the respective cut off dates need not be reverted. Hon'ble Supreme Court further held that this limited protection against reversion was given to those reserved candidates who were promoted contrary to the law laid down in the above cases, to avoid hardship.

In the case of Badappanavar, Hon'ble the Supreme Court took note of the benefit to the retired senior general category candidates and hardship to the retired junior reserved roster promotees, as a consequence arising out of the law declared by Hon'ble the Supreme Court in Ajit Singh-II and the case of Sabharwal, and provided two riders as under:-

19. We are here adding one more protection to the retired reserved candidates in these cases. Though their seniority is revised at the level of Executive Engineer or above and though they might not have been promoted if the law laid down by this Court in Ajit Singh II and Sabharwal (as explained in Ajit Singh II) were applicable to them at the relevant time, still for purposes of their retiral benefits, the said benefits shall be computed on the basis of the posts factually held by them at the time of retirement and on the emoluments actually drawn by them and not on the basis of the result of any review that is now directed.

20. So far as the general candidates are concerned, their seniority will be restored in accordance with Ajit Singh II and Sabharwal (as explained in Ajit Singh-II) and they will get their promotions according from the effective dates. They will get notional promotions but will not be entitled to any arrears of salary on the promotional posts. However, for purposes of retiral benefits, their position in the promoted posts from the notional dates - as per this judgement - will be taken into account and retiral benefits will be computed as if they were promoted to the posts and drawn the salary and emoluments of those posts, from the notional dates."



Keeping in view all the principles of law declared by Hon'ble the Supreme Court, referred to above, we proceed to consider the applicability of those principles to the case on hand.

14. In the instant case, the department has brought to our notice the letter of the GM (E)-036 dated 1/2.6.88 indicating the avenue of promotions of ticket checking staff and train conductors, as under :-

"Ticket Collector Rs. 950-1500 (RP) : (Level-1)
-Base Level-

Seniority-cum-suitability:

Senior T.C. Rs. 1200-2040 (RP) : (Level 2)
Senior T.T.C. Rs. 1200-2040 (RP) :

By Selection:

Head T.C./TICR/Hd.TTE Scale Rs.1400-2300 (RP) : (Level 3)

Seniority-cum-suitability:

Train Conductor/TTI Rs. 1600-2660 (RP) : (Level 4)

By Selection:

CTI Scale Rs. 2000-3200 (RP) : (Level 5)

15. The hierarchy of the posts mentioned above, we have noted as Level No. 1, Level No. 2 etc. etc. in the brackets for the sake of convenience so that we may refer to them as Level No. 1, Level No.2 and so on, in the course of judgement. The post of Ticket Collector at Level-1 undisputedly is the base level, to which we will be referring as Level-1. Both sides have not disputed that at Level-1, the applicants were seniors to the private respondents. It is also not in dispute that at Level-2, i.e. at the level of Senior T.C./ Senior T.T.C., the applicants were senior to the private respondents. The dispute starts from the stage Level 3. It is the case of the applicants that from Level-2 to Level-3, the private respondents were promoted on the basis of modified selection procedure on upgradation by promoting them on roster points, whereas it is the case of the private respondents that

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they were promoted from Level-2 to Level-3 on the basis of their own merit. Their further case is that having been promoted on the basis of their own merit from Level-2 to Level-3, they were not promoted on roster points, as such it is not a case of accelerated promotion. Their further case is that by virtue of their promotion from Level-2 to Level-3 vide Annexure R/5 dated 20.06.86, they have become seniors to the applicants who have been promoted to that cadre vide Annexure R/6 dated 22.08.88, much subsequent to private respondents. The learned counsel for the respondents contended that in the seniority list of HTTE at Level-3, vide Annexure R/8 dated 28.10.86, the applicants names were not shown at Level 3, since they were not promoted in 1986 at all. But they were promoted in the year 1988 subsequent to the private respondents. Therefore, their names are not shown in the seniority list at Annexure R/8 dated 28.10.86. The learned counsel for the private respondents, S/Shri Nand Hishore and Virendra Lodha, submitted that the applicants being promoted subsequent to the promotion of private respondents at Level-3, the applicants have become senior to the private respondents and in such circumstances, "catch-up" rules do not apply. Whereas the learned counsel for the applicants contended that the promotions of the private respondents to Level-3 was only on the basis of modified selection procedure/upgradation on the roster points and, therefore, it is an accelerated promotion. They also further contended that in fact, as per the law declared by Hon'ble the Supreme Court, in cases of modified selection procedure/upgradation, the principle of roster does not apply. But the same has been applied to the private respondents and the private respondents were promoted from Level-2 to Level-3 without consideration of the cases of the applicants. The learned counsel for the applicants brought to our notice the judgement of the Jodhpur Bench of the Central Administrative

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Tribunal in Samsudden and Ors. vs. Union of India and Ors. [1996 (3) SLJ (CAT) 124], and contended that as per the law declared by the Jodhpur Bench of the Tribunal, by following the judgements of the Allahabad Bench of the Tribunal in N.K. Saini and Ors. vs. Director General RD80 and Others (CA No. 414/87), and the judgement of Hon'ble the Supreme Court in Special Leave to Appeal (Civil) / No. 9628-30 of 1988 decided on 31.08.88, is that roster reservation is not permissible in case of promotion by modified selection procedure/ upgradation. Therefore, promoting the applicant from Level-2 to Level-3 on the roster point was itself illegal and void, being contrary to the law declared by Hon'ble the Supreme Court. They further submitted that at any rate, the said promotion from Level 2 to Level 3 was an accelerated promotion on the roster points, and the applicants on catching up the respondents, are entitled to their seniority refixed, as per their inter-se seniority at Level-1. As against this argument, the contention of the counsel for the official respondents, Shri U.D. Sharma, as well as the contention of the learned counsel appearing for the private respondents, S/Shri Nand Kishore and Virendra Lodha, is that, the applicants being promoted by selection on the basis of their own merits, it is not the case of accelerated promotion. They also contended that at any rate, the applicants have not challenged the promotions of the private respondents from Level-2 to Level-3 in the year 1986 itself and as such, the claim of the applicants is barred by time.

16. It is not in dispute in these cases that subsequently the applicants were promoted from Level-2 to Level-3 in the year 1986 and thus, the applicants and the private respondents were in Level-3 at some point of time, and they were simultaneously promoted from Level-3 to Level-4 with effect from 1.3.1993. In view of this admitted position, the learned counsel for the

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applicants further contended that the applicants have caught up with the private respondents at Level-3 being subsequently promoted to that level, their seniority should have been revised at Level-3, in view of the law declared by Hon'ble the Supreme Court. After revising the seniority at Level-3, the applicants seniority at Level-4 were also to be revised before processing for promotion to the next cadre at Level-5. In view of the law declared by Hon'ble the Supreme Court, in our opinion, there is substance in the arguments of the applicants.

17. It is not disputed, and it cannot be disputed, that the applicants were promoted from Level-2 to Level-3, though 2 years later, than the private respondents. Thus, at Level-3, the applicants caught up with the private respondents and in view of the law declared by Hon'ble the Supreme Court in Ajit Singh-II, the seniority list at Level-3 has got to be revised before promoting any person to the next level. In the instant case, it is not the case of the respondents that the seniority list at Level-3 was revised or modified in terms of the law declared by Hon'ble the Supreme Court. We also find that when the private respondents were promoted from Level-2 to Level-3, as per the order, produced by them vide Annexure R/5, they were promoted by modified procedure of selection. Admittedly, at Level-2, the applicants were senior to the private respondents, and in case of modified selection, the employees from Level-2 are promoted to the next cadre only on the basis of seniority and the service records. Moreover, the promotion of the private respondents from Level-2 to Level-3, being by way of modified selection procedure vide Annexure R/5, it is not a selection on merits by adopting any method of selection, like written examination, viva voce test, suitability test etc. When

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the applicants admittedly were seniors to the private respondent at Level-2, the case of the applicants was perhaps not considered, only because private respondents were given promotion, prima facie, on the basis of roster principle. Even in the reply filed by the official respondents, we do not find any statement that any selection process was conducted, except saying that the private respondents were found suitable for promotion. At any rate, the promotion order of the private respondents vide Annexure R/5 itself indicates that the said promotion of the private respondents from Level 2 to ~~xx~~ Level 3 was by way of modified selection procedure. In our opinion, without going into the merits of the case as final adjudication on the facts, we think it appropriate that it is for the department to consider the nature of promotion from Level-2 to Level-3 on the basis of the records available. As per the records now placed before us, there is no indication that the applicants, though senior at Level-2, were considered alongwith the private respondents and found unsuitable before promoting the private respondents from Level-2 to Level-3. It is the specific case of the applicants that their case was not considered on merits before the private respondents were promoted at Level-2 to Level-3, and the private respondents were promoted only because of wrong application of reservation in a modified selection procedure, and as such, the promotion of the private respondents from Level-2 to Level-3 was an accelerated promotion. We prima facie find that there is substance in the contention of the learned counsel for the applicant that the private respondents were promoted from Level-2 to Level-3 by modified selection procedure on the roster point, ~~and nothing more~~. From this it follows that the applicability of 'catch up' principle has to be examined by the department at Level-3 and at Level-4 before taking up the process of promotion by selection to Level-5. Therefore, there is, a prima facie case in the contention of the applicants that the seniority list at Level-3 has got to be revised, and consequently, the seniority list at Level-4 requires to be modified in view of the law laid down by Hon'ble the Supreme Court, referred to above. Unless the seniority list at Level-3 and Level-4 ~~are~~ modified, the department could not process the promotion from Level-4 to Level-5 since the applicants have caught up with the respondents at Level-3 only. Therefore, we find fault with the eligibility list prepared by the department vide Annexure

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A/3, dated 7.7.99 for the purpose of promotion from Level-4 to Level-5. In view of such prima facie case only, this Tribunal granted an interim order dated 16.8.99, stating that if any selection is held for the post of C.T.I, pursuant to Notification vide Annexure A/3 dated 7.7.99, the result of the same shall not be declared. Meanwhile, Hon'ble the Supreme Court issued a general direction dated 16.8.2000 in Special Leave to Appeal (Civil) No. 16135-16136/99, directing the Union of India to implement the directions given by the Constitution Bench of Hon'ble the Supreme Court in Jatinder Pal Singh case (supra). The learned counsel for the applicants have also brought to our notice the letter of Railway Board dated 16.1.99 directing the Departments that the judgement in Jatinder Pal case be implemented. Taking note of these developments, we vacated our interim order dated 16.8.99, thinking that our interim order may come in conflict with the implementation of the judgement of Hon'ble the Supreme Court, when the department takes up the whole exercise. But on the contrary, by taking undue advantage on our vacating the interim order, the department issued a panel dated 2.11.2000 for the purpose of promotion from the Level-4 to Level-5, without following the directions of Hon'ble the Supreme Court issued in Jatinder Pal case. We perused the note No.1 appended to the said panel dated 2.11.2000, stating that "the above panel is provisional and can be reviewed when the instructions are issued from Headquarters regarding implementation of Hon'ble Supreme Court's decision dated 16.9.99". From this note, a clear indication has been given to us that the said panel has been prepared without taking the exercise of revising the seniority on the basis of 'catching up' principle etc. enunciated by Hon'ble the Supreme Court in Ajit Singh-II (supra), and hence we restrained the department vide our order dated 10.11.2000 from proceeding further with that panel, giving liberty to the department to prepare a fresh panel, by following the directions issued by Hon'ble the Supreme Court in Jatinder Pal case. It is not the case of either the applicants or the respondents that any panel is prepared thereafter. The fact remains on record that the one panel prepared on 2.11.2000 by the Railway department was the one prepared without following the directions issued by Hon'ble the Supreme Court in Special Leave to Appeal (Civil) Nos. 16135-16136 of 1999, decided on 16.8.2000. Having regard to

these circumstances, though this panel has not been specifically challenged in the O.A., but this being a consequential order to the impugned eligibility list vide Annexure A/3, which is prepared without undertaking the exercise of reviewing the seniority lists at Level-3 and Level-4, after the applicants have caught up with the private respondents, is violative of the law declared by Hon'ble the Supreme Court extensively noted above, and we accordingly declare it as invalid.

18. We also find substance in the arguments of the learned counsel for the applicants that there cannot be any reservation in favour of roster point promotees whenever there is a promotion by modified selection procedure on upgradation/restructuring, as observed by this Tribunal in Samsudden and Ors. vs. Union of India and Ors. [1996 (3) SLJ (CAT) 124. In the said judgement, this Tribunal has followed the judgement of Allahabad Bench of the C.A.T. in N.K. Saini and Ors. vs. Director General RDSO and Ors. (CA No. 414/87), decided on 31.5.88. It has been specifically brought to our notice that the said judgement of Allahabad Bench of C.A.T. has been confirmed by Hon'ble the Supreme Court in Special Leave to Appeal (Civil) No. 9628-30 of 1988 filed by Union of India, decided on 31.8.88. The applicants have brought to our notice another judgement of Hon'ble the Supreme Court passed in Civil Appeal No. 3622 of 1995 (Union of India vs. V.K. Sirothia), connected with Civil Appeal No. 9149 of 1995, decided on 19.11.1999, which is extracted as under:-

" IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3622 of 1995

Union of India

... Appellants.

v e r s u s

V.K. Sirothia

... Respondents

w i t h

CIVIL APPEAL NO. 9149 of 1995

C.A. No. 3622/95:

Heard counsel on both the sides.

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The finding of the Tribunal that "the so-called promotion as a result of redistribution of of posts is not promotion attracting reservation" on the facts of the case, appears to be based on good reasonings. On facts, it is clear that it is a case of upgradation on account of restructuring of cadres, therefore, the question of reservation will not arise. We do not find any ground to interfere with the order of the Tribunal.

The Civil Appeal is dismissed. No costs.

C.A. No. 9149/95:

In view of the order passed in Civil Appeal No. 3622/95 etc., this appeal has to be allowed as in the order under appeal, the Tribunal has taken a contrary view. The appeal is, therefore, allowed. No costs.

(.....J.
(K. Venkataswami)

(.....J.
(B.N. Kirpal)

New Delhi,
November 19, 1989.

19. From the above judgement of Hon'ble the Supreme Court, it is clear that there cannot be any reservation on the basis of roster whenever there is a promotion by upgradation on account of restructuring of cadres. The promotion order of the respondents from Level-2 to Level-3 vide Annexure R/5 is by way of modified selection procedure, and if that is so, there could not be any reservation in their favour on the basis of roster point. Keeping in view of these issues, the department should have undertaken the exercise of revising the seniority list at Level-3 and Level-4, of the applicants and other general category candidates vis-a-vis the private respondents and other roster promotees before processing for further promotion from the Level-4 to Level-5.

20. Atleast, now the department shall undertake this exercise, keeping in view of the law declared by Hon'ble the Supreme Court, the salient features of which we have extracted above. We also think it appropriate to focus the attention of the department to the observation of Hon'ble the Supreme Court in Sabharwal case that if a candidate belonging to reserved category, was selected / promoted on his own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidate. However, ^{in our opinion,} there could be situations that


a reserved category candidate is promoted to Level-3 on his own merit and is thereafter, promoted to Level-4 on the basis of roster principles and on his senior general category candidates catching up with him at Level-4, the seniority list at Level-4 will be required to be modified in relation to such candidates. There could be yet another situation that a reserved category candidate reached at Level-3 on roster point principles, but is promoted from Level-3 to Level-4 on his own merit and on his senior general category candidate catching up with him at Level-4, the seniority lists, both at Level-3 and Level-4 would still be required to be modified, since it would be a case of accelerated promotion and catching up principles would apply. Such a reserved category candidate was found eligible or entered the zone of consideration for the purpose of promotion on merit from Level-3 to Level-4 only because of his accelerated promotion from Level-2 to level-3, provided his senior general category candidates at the base level catches up with the junior roster promotee at Level-4. In case of senior general category candidate not catching up such junior roster promotee at Level-4, the junior reserved category promotee would be free to be promoted to Level-5, without having to wait for senior general category candidate to catch up. This principle has been made clear by Hon'ble the Supreme Court under the Extreme "catch up" rule in the case Ajit Singh-II (see para 10 above).

21. However, the learned counsel appearing for the respondents strenuously contended that the promotion of the private respondents in the year 1986 from Level-2 to Level-3 vide Annexure R/5 dated 20.6.86 and the two seniority lists pertaining to Level-3 prepared in the year 1987 vide Annexure A/8 dated 28.10.86 and the seniority list vide Annexure R/1 dated 23.5.97 at the Level-4, have become final, the applicants cannot challenge the same beyond the prescribed period of limitation. Therefore, the plea of the applicants for revising the impugned seniority list suffers from delay and laches. But in our considered view, this contention is liable to be rejected for the reason that as per the law declared by Hon'ble the Supreme Court, there cannot be any finality of seniority lists in view of the principle of "catching up". According to this principle, wherever the senior general candidate catches up ^{with} the roster promotees at higher

level, such seniority list of that level requires to be modified from time to time. The contention of the counsel appearing for the reserved candidates in Ajit Singh-II that revision of such seniority lists would create administrative problems, has been rejected by Hon'ble the Supreme Court. From this, it follows that no finality can be attached to any seniority list, which requires to be modified from time to time the moment senior general category candidate catches-up roster promotees. However, Hon'ble the Supreme Court has made it clear in Ajit Singh-II, Jitender Pal Singh and Badappanar case that such roster promotees promoted in excess of quota prior to 10.2.95 contrary to the judgement in Sabharwal case, and those roster promotees promoted prior to 1.3.96 contrary to Ajit Singh-II also are not required to be reverted. In Jatinder Pal Singh case, it is further made clear that even those promoted between 1.3.96 and 1.4.97 would also not be reverted (see para 10 and 11 above). But their seniority has got to be reviewed and revised with reference to the senior general candidates, taking into account their seniority at the base level. Hon'ble Supreme Court has further clarified that such promotees shall be considered as being promoted on ad hoc basis. Since "catching up" principle is a continuous process, the revision of seniority would also be one continuous process and, therefore, no finality can be attached to such seniority list, and the contention that plea regarding such seniority list is barred by time, would not be tenable. At any rate, till Ajit Singh-II decided on 16.10.99, the issues were seized by Hon'ble the Supreme Court in one form or the other, and it is only after Ajit Singh-II, the entire issue relating to the seniority of the reserved candidates vis-a-vis general category candidates is settled. Since Hon'ble the Supreme Court has now directed the Union of India and its Department to take up the exercise in the light of the judgement in Ajit Singh-II and in case of Jatinder Pal Singh, the contention regarding limitation cannot be accepted. We think it appropriate to extract the said directions of Hon'ble the Supreme Court vide its interim order dated 16.3.2000 rendered in Special Leave to Appeal (Civil) Nos. 16135-16136/98 as under:-

" Leave granted.

Till further orders the operation of the impugned judgement and the order passed by the Tribunal is stayed. The applicants (Union of India) shall implement the directions given by the Constitution Bench of Hon'ble the Supreme Court in Jatinder Pal Singh and Ors. vs. State of Punjab [(1999)].




7 SCC 257, particularly the paragraphs Nos. 17 and 18 of the said judgement."

22. However, the learned counsel appearing for the respondents persists in his argument that the seniority list at Annexure A/1 has been prepared on the basis of the letter dated 28.2.97 of the Railway Board vide Annexure R/2, and without challenging the said circular/letter, the applicant cannot challenge the impugned seniority list. But this argument also cannot be accepted as held by Hon'ble the Supreme Court in Ajit Singh-II and Indra Sawhney's case that any circular, order or rule issued under Article 16(4) is only regulatory, and if such circular, order or rule comes into conflict with the Articles 14 and 16(1) of the Constitution of India, such circular, order or rule shall be invalid. At the cost of repetition, we extract relevant portion of paragraph 65 of Ajit Singh-II as under:-

"65. xxxxxxxxx This Court has, therefore, to lay down that any circular, order or rule issued to confer seniority to the roster point promotees, would be invalid. Thus, the decision in Ajit Singh cannot be found fault with."

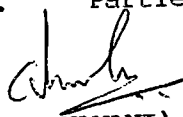
It is needless to say that if there is any conflict between the law declared by Hon'ble the Supreme Court and any circular, order or rule etc., such circular, order or rule would be illegal, as held by Hon'ble the Supreme Court in Badarpanavar case, in which it declared the Karnataka Government Servants (Seniority) Rules, 1957, as illegal. For the same reason, in our considered opinion, respondents cannot rely upon the circular issued by the Railway Board vide Annexure R/2 dated 28.02.97, to the extent it is inconsistent to such law declared by Hon'ble the Supreme Court. At any rate, as we have already stated above, as long as there is roster promotion as against senior general candidates, such seniority lists have to be revised as and when the senior general candidate catches up with the roster promotees. The circular of the Railway Board vide Annexure R/2 or any other circular, order or rule, which conflicts with the law declared by Hon'ble the Supreme Court, such circular, order or rule shall be illegal, and the department should consider the entire issue afresh on the basis of the law laid down by Hon'ble the Supreme Court. We




may point out that the law declared by Hon'ble the Supreme Court is binding on everybody in view of Article 141 of the Constitution of India, therefore, no department can rely on any circular, order or rule for not implementing the judgements of Hon'ble the Supreme Court. Even regarding the retired officials, Hon'ble the Supreme Court also has laid down certain guiding principles in Badappanavar case (supra). The relevant portion we have already extracted above. Though the counsel on both sides rely on some other judgements, including the one decided by the Central Administrative Tribunal, Mumbai Bench, dated 30.1.2001 in O.A. No. 589/1994 and OA No. 1048/1998, we have not considered them since our conclusions are directly based on the judgements of Hon'ble the Supreme Court, more so in view of our having not decided these cases on merits, as a final adjudication on facts.

23. For the above reasons, we allow these applications and declare the impugned eligibility list dated 7.7.99 (Annexure A/3) and the impugned seniority list vide Annexure A/1 dated 16.04.99, prima facie, as illegal, being contrary to the judgements of Hon'ble the Supreme Court. We accordingly direct the respondents to take up fresh exercise of revising the seniority lists on the basis of "catch up" principle at the level(s) senior general candidates catch up with the junior roster promotees and after such exercise, they shall issue a fresh eligibility list for the purpose of promotion to the next level in accordance with law. We make it clear that the findings recorded by us in this judgement are only for the purpose of highlighting the "catching up" principle. Therefore, we direct the official respondents to take up the exercise in accordance with the law declared by Hon'ble the Supreme Court without being influenced by our observations, regarding the merits of the case. This exercise shall be completed within a period of six months from the date of receipt of a copy of this judgement or before initiating the process for any promotion to higher grade, whichever is earlier.

24. Parties are left to bear their own costs.


(N.P. NAWANI)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman