

Akhil Bhartiya Soshit Karamchari Sangh, Through its Secretary and Another

Vs

Union of India Through its Secretary, Ministry of Railway and Others

SLP (C) No. 16812 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

12.09. 1996

JUDGMENT

G.B. PATTANAİK, J. –

1. Special leave petition was listed before us on 6-9-1996 and the same was dismissed but it was indicated that the reasoned order will follow and accordingly this order is being passed.
2. The question for consideration is whether the Central Administrative Tribunal, Allahabad Bench, committed any error in dismissing the OAs filed before it on interpretation of the different circulars issued by the Railways and following the Constitution Bench decision of this Court in R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] on the question of promotion of a reserved category candidate on the basis of his normal seniority in the cadre from which he is being promoted.
3. Petitioners 1 and 2 filed OA No. 304 of 1992 challenging the promotion of Shri A.S. Rana, Respondent 6 to the post of DSK-I made on 26-2-1991. The case of the petitioners was that Petitioner 2 joined the Railways as a Junior Clerk on 4-12-1956 and was promoted as Senior Clerk on 1-4-1966. He was promoted to DSK-III on 16-10-1978 and further promoted to DSK-II on 24-3-1989. Respondent 6 belonging to the reserved category was appointed in the Railways as Junior Clerk on 30-10-1983 and was promoted as Senior Clerk on 16-8-1984. He was promoted as DSK-III on 26-11-1986. The said Respondent 6 was promoted earlier to Petitioner 2 to the cadre of DSK-II on 8-10-1987, in view of the post available in the cadre of DSK-II for the reserve category people. When the question of promotion to the cadre of DSK-I came up for consideration against the vacancies meant for general category, the said Respondent 6 Shri Rana was promoted on 26-2-1991 on the basis of his accelerated seniority, he having taken advantage of accelerated promotion being a member of the reserved category. Petitioner 2 filed a representation before the authorities making the grievance that Respondent 6 could not have been promoted to a post meant for general category and the authorities illegally promoted him, but not being successful therein, challenged the promotion of Respondent 6 before the Tribunal. The railway administration filed their counter-affidavit before the Tribunal taking several technical objections regarding the maintainability of the proceedings at the behest of the association. So far as the merits of the case are concerned, it was contended that no doubt Respondent 6 had been promoted to the cadre of DSK-III and DSK-II against the reserved vacancy following the roster but so far as promotion to the cadre of DSK-I is concerned he was considered against a vacant post in the general category on the basis of his normal seniority and ultimately he has been promoted in accordance with the circulars issued by the railway

administration and in accordance with the law laid down by this Court in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481]. The Tribunal following the decisions of this Court in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : 1995 29 ATC 481] as well as Virpal Singh Chauhan case [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] rejected the application on the conclusion that the alleged promotion of Respondent 6 was much prior to the decision of this Court in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] in the year 1995 and promotion already made cannot be interfered with.

4. Dr Rajeev Dhavan appearing for the petitioners, however, vehemently contended that the accelerated promotion of a reserve category candidate cannot confer on him the seniority in the promotion cadre and therefore the a impugned promotion of Respondent 6 made in February 1991 to the cadre of DSK-I must be held to be invalid and inoperative and the Tribunal committed gross error in rejecting the OA. We find no force in the aforesaid contention. In Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] this Court was considering the question of promotion and the filling up of the post in the promoted cadre and the implementation of the rosters indicating the reserved point. In explaining the legal position this Court held that the "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster but in the event of non-availability of a reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner. Having indicated the law as above it was categorically held that the principle should operate only prospectively. In further elaborating the point of computation of the percentage of reservation this Court further held : (SCC p. 750, para 4)

"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category

candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of combining reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition."

5. In the case of Union of India v. Virpal Singh Chauhan [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] this Court again considered the case of accelerated promotion and inter se seniority between a general and reserve candidate in the promoted category and after considering the several circulars issued by the railway administration, held : (SCC p. 702, para 25)

"Hence, the seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position. We have discussed hereinbefore the meaning of the expression 'panel' and held that in case of non-selection posts, no 'panel' is prepared or is necessary to be prepared. If so, the question arises, what did the circular/letter dated 31-8-1982 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. There is, however, one situation where this rule may not have any practical relevance. In a given case, it may happen that by the time the senior general candidate gets promoted to the higher grade, the junior reserved category candidate (who was promoted to the said higher grade earlier) may have got promoted to yet higher grade. In other words, by the time the senior general category candidate enters, say, Grade 'B', his junior Scheduled Caste/Scheduled Tribe candidate is promoted to Grade 'A'. It is obvious that in such a case, the rule evolved in the aforesaid circulars does not avail the senior general candidate for there can be no question of any seniority as between, say, a person in 'B' grade and a person in 'A' grade."

6. This Court in Chauhan case [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 AT 813] accepted the direction in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] that appointments according to roster already made prior to the judgment in Sabharwal case [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 AT 813] are legal and valid. In effect, they were declared legal and valid and direction was given to determine seniority in the light of the principles laid down therein. It was held that when the panel/select list was prepared at the time of making selections for promotion to the selection post it would be that panel and not the panel/select list prepared at the time of appointment to the initial grade that would determine the seniority to the post. It would obviously apply to future cases in accordance with the rule, the subject-matter of the interpretation in the judgment in Chauhan case. [Union of India v. Virpal Singh Chauhan, [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813]. Therefore, the two judgments become effective from the

date of the decision in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481]. All appointments made prior to that date being legal and valid including right to seniority in promoted post or cadre, they require to be given effect to.

7. In *Managing Director ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the Constitution Bench considered the scope of prospective operation of the judgment and held that as on the date of the judgment the order of dismissal or action taken prior to the date of the judgment, as held in *Union of India v. Mohd. Ramzan Khan* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] could not be reopened. The judgment will be prospective in nature, i.e., it will be operative from the date when it is made; if the copy of the enquiry was not supplied to the delinquent officer, from that date the order or action would get vitiated under Article 311(2) of the Constitution.

8. In *Indian Administrative Service (S.C.S.) Assn. v. Union of India* [1993 Supp (1) SCC 730 : 1993 SCC (L&S) 252 : (1993) 23 ATC 788] (SCC at pp. 745-46) in paragraphs 14 and 15, a Bench of three Judges had held that there is a distinction between right and interest. No one has a vested right to promotion or seniority, but an officer has an interest to seniority acquired by working out the rules. It could be taken away only by operation of valid law.

9. In *Mohd. Shujat Ali v. Union of India* [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] a Constitution Bench had held a rule which confers a right of actual promotion or a right to be considered for promotion, is a rule prescribing condition of the service. Another Constitution Bench in *Mohd. Bhakar v. Y. Krishna Reddy* [1970 SLR 768 (SC)] had held that any rule which affects the promotion of a person relates to his condition of service and is not arbitrary or unconstitutional. In *State of Mysore v. G.N. Purohit* [1967 SLR 753 (SC)] another Bench of three Judges had held that the rule which merely affects chances of promotion cannot be regarded as varying a condition of service. Chances of promotion are not conditions of service, which principle was reiterated in another Constitution Bench judgment in *Ramchandra Shankar Deodhar v. State of Maharashtra*. [(1974) 1 SCC 317 : 1974 SCC (L&S) 137] In *Syed Khalid Rizvi v. Union of India* [1993 Supp (3) SCC 575 : 1994 SCC (L&S) 84 : (1994) 26 ATC 192] another Bench of three Judges referred with approval and relied on these cases and had held in para 31 at page 602 that no employee has a right to promotion but he has only the right to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible. An illustration was given as regards the inter se claim between a general candidate and a reserved candidate and their right to seniority in the promotional post. When a reserved candidate was promoted according to the roster and got promotion to a higher post, it was observed that such a reserved candidate having scaled a march over the senior general candidate to higher service, the senior general candidate in the lower cadre who was subsequently promoted to the higher cadre cannot claim seniority over the reserved candidate.

10. In *P.S. Ghalaut v. State of Haryana* [(1995) 5 SCC 625 : 1995 SCC (L&S) 1270 : (1995) 31 ATC 183] a Bench of two Judges has held that in fixing inter se seniority as per the roster, order of merit prepared by the Public Service Commission gets displaced and the reserved candidate gets seniority over the general candidate in accordance with the roster, though the general candidate has been recommended by the Public Service Commission to be more meritorious. It was held that when the roster is maintained to give effect to the constitutional policy of reservation in respect of places reserved for reserved candidates and fitted the general candidates and reserved candidates according to roster, the changed order of merit invariably gets affected which is not arbitrary or unconstitutional.

11. Thus by the time a senior person belonging to the general category gets promoted to the higher grade if the junior person belonging to a reserved category who had been promoted to the said higher grade earlier has been promoted to a still higher grade, question of granting seniority to the general category candidate in the promoted category could not arise. This being the position, and the promotion of Respondent 6 to DSK-I having been made as early as in February 1991 much prior to the judgment of this Court in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] as well as Virpal Singh Chauhan case [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] the Tribunal was wholly justified in rejecting the OA filed before it. That apart in a particular cadre after following the roster meant for reserved category candidate, there is absolutely no bar for filling up the vacancies in the general category even in favour of a candidate belonging to the reserved category if the said reserved category candidate is entitled to the same on the basis of his general seniority. No materials have been placed before us to hold that the promotion of respondent 6 was not on the basis of his general seniority in DSK-II. In the aforesaid premises, we find no substance in the contention of Dr Rajeev Dhavan and the special leave petition must fail.