

Sube Singh Bahmani and Others

Vs

State of Haryana

Civil Appeals No. 5324-26 of 1999

(CJI Dr. A. S. Anand, K. Venkataswami, G. B. Pattanaik, S. P. Kurdukar, M. Jagannadha Rao JJ)

16.09.1999

JUDGMENT

M. JAGANNADHA RAO, J.:-

1. Leave granted in special leave petitions.

2. These three appeals arise out of the dispute between general candidates and reserved candidates in Harman in regard to their seniority. The appellants are the reserved candidates. In Harman, it is important to note that the Government had issued a circular on 9-2-1979 that on promotion at the roster point, the reserved candidates would not count their seniority. This was reiterated by an elaborate circular dated 10-1-1997 recently issued after Ajit Singh' (hereinafter called Ajit Singh I)[Ajit Singh Januja v. State of Punjab, (1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33] was decided by this Court on 1-3-1996. Before us, the learned Senior Counsel for the State of Haryana, Shri Rajeev Dhavan submitted that the said circulars correctly reflect the legal position.

3. Today, we have delivered judgment in IAs Nos. 1 to 3 filed by the State of Punjab in CAs Nos. 3792-94 of 1989 (Ajit Singh case). We shall describe it as Ajit Singh II2 (ACT 239 2 Ajit Singh v. State of Punjab, (1999) 7 SC. 209). We agree that the above circulars correctly reflect the legal position.

4. There are three civil appeals before us. The first of these appeals is Sube Singh Bahmani v. State of Haryana [civil appeal arising out of SLP (C) No. 16648 of 1996]. This appeal is filed against the judgment of the Punjab and Haryana High Court in CWP No. 5533 of 1996 dated 10-7-1996. The second one Gian Singh v. State of Haryana [civil appeal arising out of SLP (C) No. 23107 of 1996] is also against the judgment dated 10-7-1999 in CWP No. 5397 of 1996. The appellants belong to the reserved category. The third civil appeal arising out of SLP (C) No. 4945 of 1997 (Kamal Kant v. State of Haryana) is filed against the judgment of the same High Court dated 16-1-1997 in CWP No. 4592 of 1996. The appellants are again reserved candidates. We shall refer to the relevant rules in each of these three cases.

5. In Sube Singh Bahmani case the rules are as follows. The posts belong to the Punjab Financial Commission Officers governed by Group B Service Rules, 1986 which consists of Superintendent and equivalent post in Class II. Below that, the posts of Clerk, Assistant and Deputy Superintendent which are Class III posts, are governed by the Punjab Financial Commission Class III Rules, 1957. In the former, Rule 9(3) provides that the promotion shall be based on seniority-cum-merit but that no person shall be entitled to claim promotion on the basis of seniority alone. Rule Ii states that seniority shall be determined on the basis of continuous length of service. In the latter i.e. the 1957

Rules, Rule 7(2) states that all appointments, whether by promotion or transfer shall be strictly by selection while Rule 1 I(c) states that seniority shall be determined in accordance with the seniority in the appointment from which they are promoted but in the case of Assistant, their seniority shall be determined in the order they are promoted, as such. Admittedly, there is a roster to implement reservation for promotion at Class III Level from the post of Clerk to the post of Assistant and from the post of Assistant to the post of Deputy Superintendent. Beyond that there is no reservation in Class II or Class I post.

6. In Gian Singh case and in Kamal Kant case the parties belong to the Haryana Civil Secretariat Service. The appellants are reserved candidates. The parties are governed by the Punjab Civil Secretariat (State Service, Class III) Rules, 1952 as adopted/amended in Haryana (vide notification dated 15-3-1978 etc.). Rule 6 deals with recruitment including by way of promotion to the posts of Assistant and Deputy Superintendents. Rule 6(3) requires promotion by way of "selection". Clause 9(c) states that seniority in respect of those who are promoted shall be determined according to the seniority in the appointments from which members are promoted. In the Class II service i.e. Superintendents etc. they are governed by the Punjab Civil Secretariat (State Service, Class II) Rules, 1963 (adopted by Haryana by notification dated 25-9-1968). Rule 8 of the rules deals with recruitment by promotion and sub-rule (3) states that promotion shall be on the basis of seniority-cum-merit and no person shall be entitled to claim promotion on the basis of seniority alone. Rule 10 (1) states that seniority shall be reckoned from the date of continuous appointment. There is roster promotion in Class III and not in Class II. At the level of Under-Secretary and above, they are governed by the Haryana Secretariat Service (Group A) Rules, 1979. Admittedly, there is a roster for reserved candidates so far as Class III posts are concerned but not to Class II or Class I posts.

7. Under all these rules the seniority rule of continuous officiation is linked up with the promotion rule and cannot be delinked as explained in Ajit Singh II² and applied to the cases of the roster-point promotees.

8. All these three appeals will therefore be governed by our decision on Points 1 to 3 in Ajit Singh II in regard to seniority and our decision on Point 4 in that case in regard to the prospectivity of R.K. Sabharwal [R.K. Sabharwal v. State of Punjab (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] and Ajit Singh I. The respective cut-off dates of each of these decisions as explained in Ajit Singh II will apply.

9. We shall now take up the special factual points arising in these three cases.

(A) Sube Singh Bahmani [civil appeal arising out of SLP (C) No. 16648 of 1996]

10. There is one important aspect of the case which deserves notice. It is the claim of the sole appellant, Sube Singh Bahmani that he has been promoted as Deputy Superintendent (see p. 192) on 15-5-1986 subject to the result of Chander Pal v. State of Haryana since disposed of by judgment reported in Chander Pal (4 (1997) 10 SCC 474 : 1997 SCC (L&S) 1624) He contends that he had also been promoted as Superintendent on 6-1-1988 and that Respondents 2, 3, 4, 5, 6 had been promoted as Deputy Superintendents on 16-11-1988, 20-9-1989, 11-8-1992, 8-11-1995 and 8-12-1995, much after his further promotion as Superintendent on 6-1-1988 and that the other respondents had not even reached the level of Deputy Superintendents by that date.

11. But as per the counter filed by the State of Haryana in this Court dated 14-1-1997 (see p. 209 of paper-book), it is clear that on account of some dispute raised by other reserved candidates (like

Shri Ravi Prakash), the date 6-1-1988 of promotion of the appellant as Superintendent has been altered by the Government as 10-4-1989 (vide government order dated 19-21990) (p. 145). That, in our view, makes all the difference. That will mean that the 2nd respondent (Darshan Singh, Ist writ petitioner, general candidate) had reached the level of Deputy Superintendent on 16-11-1988 before Sube Singh Bahmani was promoted as Superintendent on 10-4-1989. It is true, the fact that Sube Singh Bahmani was promoted as superintendent before 1-3-1996 would require his not being reverted. But Darshan Singh, the 2nd respondent had become Deputy Superintendent on 16-11-1988, long before Ajit Singh I and as stated by us in Ajit Singh II it does not matter whether the general candidate reaches the level of Deputy Superintendent before or after Ajit Singh I. Darshan Singh has to be considered senior to Sube Singh Bahmani at the level of Deputy Superintendent.

12. Of course, so far as Respondents 3 to 6 and other respondents (general candidates) are concerned, we are of the view that they can have no claim against Sube Singh Bahmani as none of them reached the level of Deputy Superintendent before 10-4-1989.

13. Thus, if the 2nd respondent, Darshan Singh (general candidate), in spite of his seniority at the level of Deputy Superintendent was not considered for promotion as Superintendent when Sube Singh Bahmani was promoted as Superintendent. it will be necessary to consider his case vis-à-vis Sube Singh Bahmani for fixing up their inter se seniority at the level of Superintendent. We direct accordingly. However, this appeal will succeed as against the other private respondents (i.e. other than Respondent 2), subject of course to the principle relating to prospectivity of Sabharwal³ and Ajit Singh I' as explained in Ajit Singh No. 112 and the respective cut-off dates as stated therein will apply.

14. This appeal is disposed of accordingly.

(B) Gian Singh case: civil appeal arising out of CWP No. 5397 of 1996 (SLP No. 23107 of 1 996)

15. The three appellants are reserved candidates. Respondents 6 to g are also reserved candidates. All 7 of them were impleaded as Respondents 2 to 8 in the writ petition. Respondents 2 to 4 were the writ petitioners (general candidates). The writ petition was allowed following Ajit Singh I.

16. In order to appreciate the factual issues arising in the case, we have to note the following relevant dates. We have analysed the various dates of appointments/promotions as disclosed from pp. 60, 77, 108-09 of the paperbook and the printed tabular statement filed in the case. It will be sufficient to note the following dates. (it is convenient to adopt the array of parties as in the CWP.)

Writ petitioners: General candidates (as on 1996)	Clerk	Asst.	Dy. Supdt.	Supdt.	Dy./Under -Secy.
(1) Balwant Kr. Gupta, Under- Secy. (WP 1) (R 2 in CA)	1-3-1958	-	6-5-1985	-	6-9-1991

(2) S. B. Bhatia, Under-Secy. (WP 2) (R 3 in CA)	19-1-1959	-	13-3-1987	-	18-6-1993
(3) R. D. Gupta, Supdt. (WP 3) (R 4 in CA)	7-4-1960	-	30-4-1990	3-4-1991	-
(4) H. C. Chhabra, Supdt. (WP 4) (R 5 in CA)	4-11-1960	-	7-1-1991	8-7-1991	-
Respondents in WP: Reserved candidates					
(1) Sagar Mal, Dy. Secy. (R 2 in WP) (R 6 in CA)	16-11-1960	-	-	-	23-1-1987
(2) Chanan Ram, Dy. Secy. (R 3 in WP) (R 7 in CA)	14-5-1965	-	-	-	5-3-1990
(3) Baldev Singh, Dy. Secy. (R 4 in WP) (R 8 in CA)	8-12-1959	-	-	-	11-2-1991
(4) Gian Singh, Under-Secy. (R 5 in WP) (Appt. 1 in	15-6-1971	30-10-1973	17-6- 1983	11-2-1985	7-3-1991

CA)					
(5) Sammat Singh, Under-Secy. (R 6 in WP) (R 9 in CA)	9-8-1971	-	-	-	-
(6) Sadhu Singh, Supdt. (R 7 in WP) (Appt. 2 in CA)	9-8-1971	2-5-1977	21-3-1990	3-4-1991	-
(7) B.L. Grover, Supdt. (R 7 in WP) (Appt. 3 in CA)	12-8-1971	28-7-1977	23-11-1990	8-7-1991	-

(It appears from CP No. 133 of 1997 that the general candidates were further promoted as Under-Secretary on 19-2-1997 before the reserved candidates Sadhu Singh and B.L. Grover were so promoted.)

17. The paper-book further discloses that when the reserved candidate Gian Singh was promoted as Assistant under the roster, he moved over 33 Clerks (general) and when he was promoted as Deputy Superintendent again as per roster, he moved over 157 Assistants (general); similarly Sadhu Singh moved over 13 Clerks (general) and 158 Assistants (general); likewise B.L. Grover moved over 7 Clerks (general) and 163 Assistants (general) at these stages and that is how they reached the level of Deputy Superintendent.

18. It will be noticed that when Gian Singh (reserved) became Superintendent on 11-2-1985, none of the general candidates (writ petitioners) reached the level of Deputy Superintendent before that date. Thus the writ petitioners (general candidates) can have no claim against Gian Singh. Obviously, other reserved candidates who were senior to Gian Singh viz. Sagar Mal, Chanan Ram and Baldev Singh who were Deputy Superintendents must have become Superintendents even before Gian Singh i.e. before 11-2-1985 and thus the writ petitioners (general candidates) can have no claim even against them.

19. However, so far as the reserved candidates Sadhu Singh and B.L. Grover are concerned, by the time they were promoted as Superintendents on 3-4-1991 and 8-7-1991, all the 4 writ petitioners became Deputy Superintendents. Sammat Singh appears to be in a like position. Writ Petitioners 1 to 4 reached the level of Deputy Superintendent on 6-5-1985, 13-3-1987, 30-4-1990 and 7-1-1991. The four writ petitioners have therefore, a rightful claim for seniority over Sadhu Singh, B.L. Grover and Sammat Singh at the level of Deputy Superintendent. In that event, even if the above reserved candidates have been earlier promoted as Deputy Superintendents, they have to be treated as juniors to the 4 writ petitioners at that level. True, promotions made before 1-3-1996 when Ajit Singh I' was decided will stand and there will be no reversions. But the seniority of the general

candidates at the level of Deputy Superintendents is to be fixed as stated above.

20. If the seniority of these four general candidates has not been taken into account when the reserved candidates were promoted as Superintendents and above, the same has to be reviewed. The promotion to and the seniority at the level of Superintendent and Under-Secretary between the 4 writ petitioners (general candidates) and Sadhu Singh, B.L. Grover and Sammat.-: Singh has, therefore, to be reviewed because their case is not like the case of Gian Singh. *Ajit Singh II* will have to be implemented. Points 1 to 3 as decided there will govern seniority and Point 4 there will govern the prospectivity of *Sabharwal* and the prospectivity of *Ajit Singh I*. The respective cut-off dates have to be adhered to. This appeal is disposed of accordingly.

(C) *Kamal Kanta case [civil appeal arising out of SLP (C) No. 4945 of 1997.]*

21. The facts of the case are that the two appellants, Ms Kamal Kanta and Shri Girdhari Lal are reserved candidates while Respondents 2 to 5 are general candidates. The writ petition was filed by the general candidates Shyam Sunder and others and was allowed by the High Court. The promotions from the post of Clerk to Assistant and Assistant to Deputy) Superintendent were by way of a roster so far as the appellants were concerned. The two appellants were promoted as Deputy Superintendents on 23-6-1995 and 23-11-1995 respectively while Respondents 2 to 5 (general candidates), who were senior to them as Assistants, were all promoted as Deputy Superintendents on 8-2-1996. Now Ms Kamal Kanta was promoted as Superintendent on 18-3-1996 (p.58) subject to Chander Pa14 [later decided as (1997) 10 SCC 474] but by that date Respondents 2 to 5 were also promoted as Deputy Superintendents. Respondents 2 to 5 have to be treated as seniors to her at the level of Deputy Superintendent. No doubt, Ms Kamal Kanta was promoted as Superintendent on 18-3-1996 and Respondents 2 to 5 were promoted later as Superintendents on (see p. 65), 8-10-1996 (p. 67) and 11-12-1996 respectively. She will not be reverted. But the seniority at the level of Deputy Superintendent has to be refixed and if the case of the senior general candidates at the level of Deputy Superintendent was not taken into account while promoting the reserved candidate as Superintendent, the said promotion will have to be reviewed and seniority has to be refixed at the level of Superintendent also. Seniority is to be fixed as per what is stated in Points 1 to 3 of *Ajit Singh I* and "prospectivity" of *Sabharwal* and *Ajit Singh I* as stated in Point 4 of *Ajit Singh II* will be followed. The respective cut-off dates of *Sabharwal* and *Ajit Singh I* have to be adhered to.

22. In the result, we hold that the promotion and seniority of Kamal Kanta as Superintendent be reviewed vis-à-vis Respondents 2 to 5 as stated above. (The paper-book reveals that a provisional list was prepared on 28-3-1997 and a show-cause notice dated 31-3-1997 had been issued.)

23. We, however, make it clear that on the above facts, Respondents 6 to 8 (general candidates) can have no claim against Kamal Kanta inasmuch as they did not get promotion as Deputy Superintendents before Ms Kamal Kanta was promoted as Superintendent. The appeal is disposed of accordingly. We direct accordingly.

24. All the three appeals are disposed of accordingly.

(D) CP No. 133 of 1997 and IA No. 3 of 1997 in SLP (C) No. 23/07 of 1996

25. CP No. 133 of 1997 is filed by the reserved candidates for taking action for contempt of the order of this Court dated 9-12-1996 in Gian Singh case (to which they are parties) while the State of

Haryana has filed IA No. 3 of 1997 for clarification as it feels that there are two conflicting orders of this Court, one dated 9-12-1996 and the other one is *Chander Pal*" dated 4-12-1996.

26. The petitioners in CP No. 133 of 1997 are the reserved candidates Sadhu Singh and R.L. Grover. They are, as already noted in Gian Singh case Petitioners 2 and 3 in SLP (C) No. 23107 of 1996. We have held in the appeal arising out of SLP (C) No. 23107 of 1996 of Gian Singh that the general candidates (writ petitioners Balwant Kumar Gupta, S. B. Bhatia, R. D. Gupta and Hari Chand Chhabra) have a valid claim of seniority against these two reserved candidates i.e. Sadhu Singh and B.L. Grover, though not against the other reserved candidate, Gian Singh. We have also directed that though Sadhu Singh and B. L. Grover might have been promoted as Superintendents earlier on the basis of their actual dates of promotion as Deputy Superintendents, that was not correct and a review of seniority has to take place in respect of promotion and seniority to the level of Superintendents. All that is protected is that there are to be no reversions. But seniority has been refixed at the level of Deputy Superintendent on the basis of Ajit Singh I- as stated above. It is obvious that the promotion to and seniority in the category of Superintendent and above will also have to be refixed as between the four writ petitioners and Sadhu Singh and B.L. Grover. Their case is not like that of Gian Singh. This aspect has been considered above while dealing with the case of Gian Singh [CA arising out of SLP (C) No. 23 107 of 1996].

27. The petitioners Sadhu Singh and B.L. Grover have, however, submitted' in CP No. 133 of 1997 that the status quo order dated 9-12-1996 in Gian Singh [SLP (C) No. 23107 of 1996] has been violated by promoting the general candidates on 19-2-1997 to the level of Under-Secretary. On the other hand, the State of Haryana in its IA No. 3 of 1999 points out that there is a conflict between the status quo: order dated 4-12-1996 passed in Gian Singh and the direction given in *Chander Pal* on 4-12-1996.

28. Our judgment in *Ajit Singh II* delivered today lays down the manner in which seniority has to be decided. *Chander Pal* dated 4-12-1996 has also been explained but the "prospectivity" of *Sabharwal* and *Ajit Singh I* will be as stated in detail by us under Point 4 in *Ajit Singh II*. There can be no difficulty in implementing the same.

29. Coming to the status quo order dated 9-12-1996, it does not present any difficulty because while it continues status quo, it also states that any promotion given shall be subject to the result of SLP No. 23107 of 1996. It reads as follows:

"Status quo to continue. However, any promotion given to anyone shall be subject to the result of this special leave petition."

30. Now that the civil appeal arising out of SLP (C) No. 23107 of 1996 in Gian Singh case (to which Sadhu Singh and B.L. Grover are parties) is disposed of after refixing seniority at the level of Deputy Superintendent and by directing a review of the promotions made to the posts of Superintendent and Under-Secretary, as per *Ajit Singh II* there can be no difficulty in the way of the State. We do not also think that any contempt has been committed when the promotion orders were passed on 19-2-1997 for that was done bona fide in implementation of the order of this Court dated 4-12-1996.

31. CP No. 133 of 1997 and IA No. 3 of 1997 are disposed of accordingly.

32. All the matters are disposed of as stated above. There will-be- no order as to costs.