

Ram Prasad and Others

Vs

D. K. Vijay and Others

Civil Appeals Nos. 2866-68 of 1998 with Nos. 3282, 4084, 3935, 3147-50 of 1998

16.09.1999

JUDGMENT

M. JAGANNADHA RAO, J. –

1. Leave granted in the special leave petitions.
2. All the civil appeals arise out of the judgment of the Rajasthan High Court in a batch of writ petitions. There are three sets of appeals.
3. Civil Appeals Nos. 2866, 2867, 2868, 3282 and 4084 of 1998 have been filed by the reserved candidates and arise out of DB CWPs Nos. 2545, 2812, 3086, 2963 of 1996 and 4918 of 1997 respectively. Civil Appeal No. 3935 of 1998 is filed by the general candidates and arises out of CWP No. 3080 of 1996. The State of Rajasthan has filed CAs Nos. 3147-50 of 1998 and they arise out of CWPs Nos. 3086, 6208 and 4918 of 1997 respectively. The civil appeals arising out of SLPs Nos. 9185-88 of 1999 have also been filed by the State of Rajasthan and arise out of CWPs Nos. 2545, 2675 of 1996, 4726 of 1997 (646 of 1997) and 2963 of 1996. The High Court has disposed of all the writ petitions by a common judgment dated 2-4-1988.
4. All the eight writ petitions were filed in the High Court by the general candidates. DB CWPs Nos. 2812, 3086, 6208 of 1996 and 4918 of 1997 were filed in the High Court by the general candidate officers of the Rajasthan Police Service (for short RPS) seeking modification of the seniority list. Similarly, DB Civil Writ Petitions Nos. 2543, 2675 of 1996, 4726 of 1997 (646 of 1997) and 2963 of 1996 were filed by the general candidate officers of the Rajasthan Administrative Service (for short "RAS") challenging the mode of implementation of Rules 8 and 33 of the Rajasthan Administrative Service Rules, 1954.

Decision of the High Court

5. The High Court took up CWP No. 2812 of 1996 in the police service and CWP No. 2545 of 1996 in the administrative service as the main case. The writ petitions were partly allowed so far as the seniority of the reserved candidates at the promotional level was concerned, by following the judgment of this Court in *Ajit Singh Januja v. State of Punjab* ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) i.e. *Ajit Singh I* ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) dated 1-3-1996. Promotions in excess of 28% quota were quashed.
6. In regard to the question whether the placement of Additional Superintendents of Police (Senior Scale) as Additional Superintendents (Selection Scale) amounted to a promotion so as to give the reserved candidates the benefit of reservation by way of roster points the High Court held in favour of the reserved candidates that it amounted to a promotion and that reservation as per the roster

points for promotion to the selection scale has to be given. The High Court in that context followed the decision of this Court in *State of Rajasthan v. Fateh Chand Soni* ((1996) 1 SCC 562 : 1996 SCC (L&S) 340) dated 12-12-1995. The general candidates are aggrieved in this behalf and filed CA No. 3935 of 1998.

7. The High Court has also followed *Ajit Singh I* ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) dated 1-3-1996 and held that the reserved candidates on promotion at roster points cannot count their seniority from the date of such promotion and their senior general candidates at the lower level, on promotion, become senior to them. The reserved candidates have preferred appeals CAs Nos. 2866-68, 3282 and 4084 of 1998 in regard to this part of the judgment. No submissions were made before us on behalf of the reserved candidates that reservation should be in excess of 28% quota.

Contentions in this Court

8. The State of Rajasthan while accepting the principles laid down in *Ajit Singh I* ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) has, however, filed CAs Nos. 3147-50 of 1998 and the appeals arising out of SLPs Nos. 9185-88 of 1999 to contend that the seniority lists accepted in *Fateh Chand Soni* ((1996) 1 SCC 562 : 1996 SCC (L&S) 340) by this Court could not have been altered by the High Court, under the impugned judgment.

9. The general candidates contend that *Fateh Chand Soni* ((1996) 1 SCC 562 : 1996 SCC (L&S) 340) requires reconsideration. They also contend that, in any event, *Fateh Chand Soni* case ((1996) 1 SCC 562 : 1996 SCC (L&S) 340) was decided on 12-12-1995 and at that time this Court was not dealing with the issue of seniority of the roster-point promotees and hence after judgment in *Ajit Singh I* ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) dated 1-3-1996, it becomes necessary for the High Court to modify the seniority lists as accepted in *Fateh Chand Soni* case ((1996) 1 SCC 562 : 1996 SCC (L&S) 340) in implementation of *Ajit Singh I* ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239). The reserved candidates contend that *Ajit Singh I* ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) is not correctly decided and *Jagdish Lal v. State of Haryana* ((1997) 6 SCC 538 : 1997 SCC (L&S) 1550) is to be followed.

10. The State of Rajasthan made an additional plea that between 1-3-1996 when *Ajit Singh I* ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) was decided on (sic and) 1-4-1997, certain further promotions of the reserved candidates had taken place and that the prospectivity of *Ajit Singh I* ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) may be postponed from 1-3-1996 to 1-4-1997 for the limited purpose of preventing reversions of the roster-point promotees who were promoted up to 1-4-1997 though in respect of seniority, *Ajit Singh I* ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) could be given effect in respect of reserved candidates promoted at roster points before 1-4-1997.

The Rules

11. It may be noted that the RPS officers are governed by the Rajasthan Police Service Rules, 1954 and the Indian Police Service (Appointments by Promotion) Regulations, 1955 issued in pursuance of sub-rule (1) of Rule 9 of the Indian Police Services (Recruitment) Rules, 1954. The relevant rules are Rules 8, 9, 28-A and 33 of the 1954 Rules. The above rules are *pari materia* with the Rajasthan Administrative Service Rules, 1954.

12. Rule 8 of the RPS Rules, 1954 deals with "reservation of vacancies for the Scheduled Castes and Scheduled Tribes". Rule 9 deals with the method of determination of vacancies. Rules 27, 27-A and 28 deal with the criteria for selection and procedure for selection by seniority-cum-merit, eligibility being reckoned as on the first day of April of the year of selection. Rule 28-A refers to the "revised criteria, eligibility and procedure for promotion to junior, senior and other posts ex-cadred in the services". Rule 33 deals with "seniority".

Rajasthan Rules are consistent with Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239)

13. Today we have delivered judgment in IAs Nos. 1-3 in Civil Appeals Nos. 3792-94 of 1989 (Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239)) and that is called for convenience, Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209).

14. It is important to note that in Rajasthan, there is a general amendment dated 1-4-1997 made to the RPS and RAS Rules of 1954 which directs that roster-point promotees shall not be given such seniority. That amendment reads as follows :

"After the existing last proviso of rule as mentioned in column 3 against each of the Service Rules, as mentioned in column 2 of the Schedule appended hereto, the following new proviso at the next serial number shall be added, namely :

"That if a candidate belonging to the Scheduled Caste/Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste/Scheduled Tribe in the immediate higher category."

The above circular is consistent with what has been laid down in regard to seniority of reserved candidates in Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) and Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209).

Fateh Chand Soni ((1996) 1 SCC 562 : 1996 SCC (L&S) 340) correctly decided

15. The contention of Shri Gopal Subramaniam for the general candidates that appointment from senior scale to selection scale is not a promotion and that Fateh Chand Soni ((1996) 1 SCC 562 : 1996 SCC (L&S) 340) requires reconsideration in view of the judgments in Union of India v. S. S. Ranade ((1995) 4 SCC 462 : 1995 SCC (L&S) 1033 : (1995) 30 ATC 559) and Lalit Mohan Deb v. Union of India ((1973) 3 SCC 862 : 1973 SCC (L&S) 272) cannot be accepted. We are unable to agree. We find that both these cases have been referred to and explained in Fateh Chand Soni case ((1996) 1 SCC 562 : 1996 SCC (L&S) 340). Therefore, the reserved candidates are entitled to be promoted to the selection scale by way of the roster points. But this has to be done in the manner mentioned in R. K. Sabharwal v. State of Punjab ((1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481). The appeal of the general candidates has to fail.

Seniority is to be decided as per Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) and Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209)

16. So far as the seniority of the roster-point promotions is concerned, the reserved candidates have contended that upon promotion at the roster points, the promotees can reckon seniority and that senior general candidates who later got promoted cannot be treated as seniors at the promotional stage. But in view of what has been decided in our separate judgment in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) today, the above contention cannot be accepted. Thus, there are no merits in the appeals filed by the reserved candidates.

17. On behalf of the State of Rajasthan, learned Additional Solicitor General, Shri Altaf Ahmed contended that the seniority settled by Fateh Chand Soni ((1996) 1 SCC 562 : 1996 SCC (L&S) 340) could not have been disturbed by the High Court. We are unable to agree. Fateh Chand Soni ((1996) 1 SCC 562 : 1996 SCC (L&S) 340) was decided on 12-12-1995 while Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) was decided on 1-3-1996. In Soni case ((1996) 1 SCC 562 : 1996 SCC (L&S) 340) the question of the seniority of roster-point promotees vis-a-vis senior general candidates was not in issue. Here, the seniority lists prepared in accordance with Fateh Chand Soni ((1996) 1 SCC 562 : 1996 SCC (L&S) 340) have to be modified in the light of Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239). The High Court was, therefore, right in applying Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) and giving direction to implement that judgment. In our view, the question of seniority of the roster-point promotees will be on the basis of what was decided in Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) and under Points 1 to 3 in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209).

Prospectivity of Sabharwal ((1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481) and Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239)

18. We first make it clear that so far as the "prospectivity" of Sabharwal ((1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481) is concerned, the decision in Point 4 in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) will apply. There is no change in the cut-off date so far as Sabharwal ((1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481) is concerned.

19. So far as prospectivity of Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) is concerned, our decision in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) will apply in principle but with a slight modification of the cut-off date.

20. It was argued for the State of Rajasthan that on the peculiar factual situation concerning the RPS and RAS officers, the judgment of this Court in Ajit Singh Januja v. State of Punjab ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) (called Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239)), could not be implemented forthwith and hence a few more promotions of the reserved candidates took place up to 1-4-1997. It was pointed out that as per Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) those reserved candidates who were promoted before 1-3-1996 were not to be reverted, though their seniority in the promoted cadre, even if made before 1-3-1996, would be governed by Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239). It was submitted that this concession of non-reversion could be extended to those reserved candidates who were promoted before 1-4-1997.

21. In view of the peculiar facts of these cases, we are inclined to accede to this contention. The result is that officers from the reserved category who were promoted at the roster points before 1-4-1997 shall not be reverted but their seniority in the promoted category shall be governed by the principles enumerated under Points 1 to 3 in Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540

: (1996) 33 ATC 239) and Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209). The prospectivity of Sabharwal ((1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481) as explained under Point 4 in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) is not disturbed. So far as prospectivity of Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) is concerned, the principles in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) in Point 4 will apply but subject to postponement of 1-3-1996 to 1-4-1997.

22. In other words, we agree that there is no need to revert those reserved category officers, if they were promoted even beyond 1-3-1996 but before 1-4-1997. To give an example - in the case of two rosters from Level 1 to Level 2 and Level 2 to Level 3, if the reserved candidate was promoted before 1-4-1997 to Level 4, such reserved candidate need not be reverted. If by the date of promotion of the reserved candidate before 1-4-1997 from Level 3, the senior general candidate at Level 2 has 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 1-3-1996 by following Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) as explained in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209). In other words, if a reserved candidate was promoted to Level 4 before 1-4-1997, 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 and Level 4 (as and when the general candidate is promoted to Level 4) is to be refixed.

23. Thus, we reject the main contentions of the general candidates and the reserved candidates but accede to the request of the State of Rajasthan to the extent indicated above. All the appeals are, therefore, dismissed subject to the above concession.