

# **SUPREME COURT OF INDIA**

Chairman & Managing Director Central Bank of India

Vs.

Central Bank of India SC/ST Employees Welfare Association

C.A.No.209 of 2015

(J.Chelameswar and A.K.Sikri JJ.)

09.01.2015

## **JUDGMENT**

### **A.K. SIKRI, J.**

1. Leave granted. Impleadment and intervention applications are allowed.
2. The issue which arises for consideration in these appeals lies within a narrow campus and is crisp one, though at the same time it is of seminal importance for the parties before us. It relates to the rule of reservation of the Scheduled Castes (SC) and Scheduled Tribes (ST) in the promotion in the officer grade/scale in the appellant Banks. There is no dispute that the appellant Banks, which are statutory/public sector banks, are following the applicable guidelines of the Central Government pertaining to reservation of SC and ST employees insofar as their promotion from clerical grade to officer grade is concerned. The question to be answered is as to whether there is any reservation in the promotions from one officer grade/scale to another grade/scale, when such promotions are made on selection basis. As per the appellant Banks, there is no rule of reservation for promotion in the Class A (Class-I) to the posts/scales having basic salary of more than ₹5,700/- and in the relevant instructions, issued in the form of Office Memoranda, only a concession is provided in the manner officers belonging to SC/ST category are to be considered for promotion. To put it otherwise, the position taken by the Banks is that there is no rule of reservation for promotions and the candidature of these officers belonging to these categories for promotion is to be considered on the basis of relaxed standards. The respondents, who are SC/ST Employees' Unions of the appellant Banks or individuals belonging to such categories, dispute the aforesaid stand taken by the Banks. According to them, the

circular issued by the Central Government expressly provides for such a reservation.

3. It is interesting to note that for taking their respective positions both the parties rely upon O.M. dated 13-08-1997 issued by the Central Government (which, of course, is to be read along with other connected office memoranda). Thus, outcome of these appeals would depend upon the interpretation that is to be accorded to the said Office Memorandum dated 13-08-1997. As the Banks are in appeal against the judgment of High Court of Judicature at Madras rendered on 09-12-2009 whereby number of writ appeals were disposed of, it can clearly be discerned that insofar as High Court is concerned its interpretation to the aforesaid circular has gone in favour of the SC/ST employees.

4. Before we revert to the fulcrum of the issue and give our answer thereto, we deem it apposite to recapitulate in brief the historical facts which have led to the present lis.

5. As already noted above, the appellant Banks, which are statutory Banks and Public Sector Undertakings, have been following the reservation policy of the Government of India as issued by the Government from time to time. For doing so, the Promotion Policy of each of such bank makes specific provision in this behalf. It is also a matter of common knowledge that Ministry of Finance, Government of India is the nodal ministry for framing policy on reservations for financial institutions/banks. To give an example, Regulation 1.1 of the promotion policy for officers of UCO Bank makes such a provision in the following manner:

"The Promotion policy for officers in the Bank has been designed in the context of the guidelines issued by the Government from time to time under the Officers Service Regulations."

6. It will also be relevant to quote hereunder Regulation 22 of the aforesaid promotion policy. This Regulation makes the following reading:

"22. Concession/Relaxations etc for SC/ST, Physically Handicapped, Ex-servicemen and Other categories of officers;

22.1 The guidelines/ directives/ administrative instructions issued by the Government of India from time to time regarding relaxation/concession/reservation etc. for SC/ST, physically handicapped, Ex-serviceman and such other special categories of officers in the matter of scale to scale promotions

within the Officers' Grade shall be deemed to be a part of the policy and given effect to accordingly."

7. It is an accepted position that identical promotion policy is framed by each of these appellant Banks.

8. As per the aforesaid promotion policy, incorporating the reservation policy framed by the Central Government in respect of candidates belonging to SC/ST category, the banks are according 15% reservation for SC and 7.5% reservation for ST candidates. It is done at the initial level of recruitment and also for promotion in the clerical cadre. Such a reservation is also provided for promotion from clerical grade to the lowest rank in the officers grade which is commonly known as Junior Management Grade Scale-I (Scale-I). However, when it comes to promotion from Scale-I to the next scale, which is known as Middle Management Grade Scale-II (Scale-II), the Banks have not been making any reservations while carrying out these promotions. As per the Banks, it is because of Office Memorandum No. 38012/6/83-East(SCT) dated 01-11-1990 issued by the Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training), Government of India clearly stating that there is no reservation within Group 'A' posts.

9. The matter regarding reservations in promotions was considered by a nine Judge Bench of this Court in *Indra Sawhney v. Union of India*[1], which was a judgment rendered on 15-11-1992. The Court specifically held that the reservation under Article 16(4) of the Constitution of India is confined to initial appointment and cannot extend to reservation in the matters of promotion. In order to nullify the effect of the aforesaid dicta, there was an amendment to Article 16 by Constitution (Seventy-Seventh Amendment) Act with effect from 17-06-1995. Vide this amendment, after Clause 4, Clause 4A was inserted in Article 16 of the Constitution, which was couched in the following language:

4A. Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the state."

Clause (4) of Article 16 is worded as follows:

"4. Nothing in this article shall prevent the State from making 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.

10. The constitutional position on the insertion of Clause 4A is that the State is now empowered to make provision for reservation in matter of promotions as well, in favour of SC and ST wherever the State is of the opinion that SCs and STs are not adequately represented in the service under the State. Nevertheless, it is only an enabling provision which empowers the State to make any provision for reservation for SC and ST candidates in the matter of promotion as well.

11. In order to complete the historical narration of facts, it becomes necessary to mention that after the aforesaid amendment, a question had arisen as to whether a person in SC or ST category, who gets accelerated promotion because of reservation would also get consequential seniority in the higher post if he gets that promotion earlier than his senior in general category. The Court answered this question in the case of Union of India and Others etc. v. Virpal Singh Chauhan and Others[2] holding that such an employee belonging to SC/ST category on promotion would not get consequential seniority and his seniority will be governed by the panel position. This led to another Constitution amendment and the Parliament enacted Constitution (Eighty-Fifth Amendment) Act, 2001 whereby Clause 4A of Article 16 was amended. The amended Clause 4A reads as under: "4A. Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

12. The constitutional position, as it stands now, in view of the aforesaid amendment, is that such SC/ST candidates who get the benefit of accelerated promotion are provided consequential seniority as well. This amendment, thus, nullifies the effect of the judgment of this Court in Virpal Singh Chauhan (supra). Another significant aspect which is to be noted is that this amendment was made retrospectively from 17.06.1995, i.e. the date of coming into force the original Clause 4A of Article 16.

13. Constitutional validity of Clause 4A of Article 16 as well as Clause 4B which was also amended vide Eighty-Fifth Constitution Amendment, was challenged before this Court and this challenge was repelled in the case of M. Nagaraj and

others v. Union of India and Others[3]. The Court specifically held that these provisions flow from Article 16(4) and, therefore do not alter the structure of Article 16(4). Further, they do not obliterate any of the constitutional requirement, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs, on the one hand, and SCs/STs on the other hand, as held in Indra Sawhney (supra). The Court, at the same time, made it clear that the ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are the constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.

14. After the amendment in Article 16 of the Constitution, with incorporation of Clause 4A therein, the Government of India issued Office Memorandum dated 13-08-1997 as the interpretation of this O.M. is the bone of contention. As the outcome of these appeals largely depends on the interpretation of this Memorandum, we feel apposite to reproduce the said O.M. dated 13-08-1997 in toto:

"No. 36012/18/95-Esst(Res.) Pt:II GOVERNMENT OF INDIA Ministry of Personnel Public, Grievances and Pensions, Department of Personnel and Training North Block, New Delhi Dated the 13th August, 1997 OFFICE MEMORANDUM SUBJECT: RESERVATION FOR THE SCs/STs IN PROMOTION The undersigned is directed to invite attention to this Department's OM No. 36012/37/93-Esst. (SCT) dated 19.8.1993 clarifying that the Supreme Court had, in the Indira Sawhney case, permitted the reservation for the Scheduled Castes and Scheduled Tribes, in promotion, to continue for a period of five years from 16.11.1992.

2. Consequent to the Judgment in Indira Sawhney's case the Constitution was amended by the Constitution (Seventy seventh Amendment) Act, 1995 and Article 16(4A) was incorporated in the Constitution. This article enables the State to provide for reservation in matters of promotion, in favour of the Scheduled Castes and the Scheduled Tribes, which in the opinion of the State are not adequately represented in the Services under the State.

3. In pursuance of Article 16(4A), it has been decided to continue the Reservation in promotion as at present, for the Scheduled Castes and the Scheduled Tribes in the services/posts under the Central Government beyond 15.11.1997 till such time as the representation of each of the above two categories in each cadre reaches the prescribed percentages of

reservation whereafter, the reservation in promotion shall continue to maintain the representation to the extent of the prescribed percentages for the respective categories.

4. All Ministries/Department are requested to urgently bring these instructions to the notice of all their attached/subordinate offices as also the Public Sector Undertakings and Statutory Bodies etc. Sd/-

(Y.G. PARANDE) Director (Reservation)"

15. Impugned Judgment The respondents Associations representing SC and ST employees had filed writ petitions in the High Court of Madras submitting that in spite of there being a clear policy of reservation even for promotion from one category of officer to the higher category of officers, the appellant Banks had not been making any provision for such reservations while carrying out the promotions. Mandamus was sought seeking directions against the Bank to specify such reservation to SC/ST officers as per the promotion policy for officers. The learned Single Judge of the High Court dismissed the writ petitions holding that Article 16(4A) was only an enabling provision which permits the State to make provisions for reservation insofar as promotions are concerned. However, in the instant case, no such provision was made. No material was produced by the writ petitioners which could demonstrate any such specific provision for promotion.

16. The writ petitioners challenged said order by filing writ appeals before the Division Bench. The Division Bench has taken a contrary view. A perusal of the judgment of the Division Bench would spell out that it has gone by the spirit behind Articles 15 and 16 of the Constitution which are in the nature of affirmative actions that can be taken by the State in providing reservations for the socially and educationally backward people and that includes SC and ST classes. It has pointed out that Article 16(4) is specifically designed to give a due share in the State power to those who have remained out of it mainly on account of their social, educational, economic backwardness as reservation affords such classes of citizens a golden opportunity to serve the nation and thus gain security, status, comparative affluence and influence in decision making process. It was with this spirit in mind Clause 4A was inserted introducing an enabling provision for providing reservation in the matter of promotion as well. The High Court thereafter took note of the statistics that was placed on record to show the strength of SC/ST officers in various grades/scales/cadres in respect of UCO Bank as well as Central Bank of India and found that there was hardly any representation in the higher scales, what to talk of adequate representation. The figures given in respect of Central Bank of

India are noted in para 22 of the impugned judgment, stating as under: "22. ....A consolidated statement for the promotions from the year 1997 to 2008 in MMG:III-IV:, SMG: IV-V; SMG V-VI; TMG VI-TMG VII would depict a bleak picture regarding the entire aspect since least or no presentation for SC/ST could be seen glaringly. As per these calculations for the total promotions of 20 posts, only one SC candidate got promotion in the year 2007 and for a total promotions of 171, within these categories only nine SC candidates got promotion. In promotions effected for the years 1997 and 2002, respectively for 19 posts and six posts, no SC/ST candidate was offered promotion. In the year 1999, for a total number of 126 posts, only one SC candidate was given promotion. Likewise, for a whopping 308 numbered of promotions in the year 2006 a meager 36 candidates of SC/ST were promoted."

17. The Court also noticed almost identical feature in UCO Bank giving the following details :

"23. ....As per the scale wise representation of SC/ST officers as on 31.3.2008 in the UCO Bank, in Scale IV posts there is a short fall of 50 SC officers and 31 ST officers in Scale V posts, there is a short fall of 10 SC officers and 7 ST officers; in Scale VI, there is a short fall of 5 SC officers and 2 ST officers and in Scale VII posts, there is a short fall of 3 SC officers and one ST officer."

18. Office Memorandum dated 13-08-1997 has been read in the light of the aforesaid constitutional spirit as well as inadequate representation of SC/ST category officers in the Banks holding that the mandate of the said O.M. was to provide for reservation.

19. While holding so, the High Court also repelled the contention of the Banks predicated on Article 335 of the Constitution on the basis of which it was contended that introduction of rule of reservation in promotion would reduce the efficiency of administration of Banks. The Court specifically took note of Constitution Eighty-Second Amendment which was made effective from 08-09-2000 and provides that nothing in this Article shall prevent in making any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State. In the opinion of the High Court, when Constitution has given such extra protection to the under privileged communities so as to enjoy equal opportunities as guaranteed

by the Constitution, the Banks are not justified in sleeping over the matter providing reservations in promotions for a decade with no good reasons to offer.

20. The position taken by both the parties remains the same before us as well. According to the Banks, vide O.M. dated 13-08-1997 "it has been decided to continue the reservation in promotion as at present, for the Scheduled Castes and the Scheduled Tribes in the services/posts.....". It is, thus, argued that this O.M. did not make any reservation in the matter of promotion but whatever was existing earlier has been continued. M/s. C.S. Vaidyanathan and Raju Ramachandran, learned Senior Advocates, who argued for these Banks laid strong emphasis on the aforesaid language employed in the O.M. and submitted that only existing position continued and the position which was existing was that there was no specific provision for reservation. The only provision which existed was judging the candidature of SC/ST candidates for promotion in Class A (Class I) service drawing more than basic salary of ₹5,700/-, to apply relaxed standards. It was submitted that such a provision existed in O.M. dated 01-11-1990. It was pointed that in para 2 of this O.M. a mention was made about the concession which was to be given to the officers belonging to these categories and in para 3 it was amply clarified that there is no reservation in promotion by selection. Paras 2 and 3 of O.M. dated 01-11-1990 read as under:

"2. Though in the OM cited above it has been clearly mentioned that in promotion by selection within Class I (now Group A) to posts which carry an ultimate salary of Rs. 2000/- per month or less (since revised to Rs. 5700/- ) the Scheduled Castes and Scheduled Tribes will be given concession namely "those scheduled Castes and Scheduled Tribes who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion", doubts have been expressed in certain quarters as to whether the concession given herein above is a reservation or a concession.

3. It is hereby clarified that in promotion by selection within group A posts which carry an ultimate salary of Rs. 5700/- p.m. there is no reservation."

21. It was argued that a conjoint reading of the aforesaid two circulars, namely, O.M. dated 01-11-1990 and 13-08-1997 would manifest that the provision was made for concession and not reservation in the matter of promotion. Reliance was placed on two judgments of this Court where distinction between concession and reservation is explained lucidly:

(i) National Federation of S.B.I. and Others v. Union of India and Others[4] "15. In 1987, the Government of India issued the 7th Edn. of the said Brochure in which para 9.2, corresponding to the one quoted above, reads as follows:

MHA OM No. 1/9/69. Estt.(SCT) dated 26-3-70 and Deptt. of Personnel & AR OM No. 1/10/74-Estt.(SCT) dated 23-12-1974 "9.2 Promotion by selection method.- (a) Promotions by selection within Group A (Class-I).

22. In promotions by selection to posts within Group A (Class I) which carry an ultimate salary of Rs 2000 per month, or less, (Rs 2250 per month or less in the revised scale) there is no reservation, but the Scheduled Castes and Scheduled Tribes officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has been drawn up, would be included in that list provided they are not considered unfit for promotion. Their position in the select list would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. They would not be given for this purpose, one grading higher than the grading otherwise assignable to them on the basis of their record of service.

23. In order to improve the chances of Scheduled Castes and Scheduled Tribes officers for selection to the higher categories of posts in Group A (Class I).

(i) Scheduled Castes/Scheduled Tribes officers in Group A (Class I) Services/Posts should be provided with more opportunities for institutional training and for attending seminars/symposia/conferences. Advantage would also be taken of the training facilities available at the Lal Bahadur Shastri National Academy of Administration, Mussoorie, National Police Academy, Hyderabad, Indian Institute of Public Administration, New Delhi, the Administrative Staff College, Hyderabad etc. and

(ii) It would be the special responsibility of the immediate superior officers of the Scheduled Castes/Scheduled Tribes officers in Class I to give advice and guidance to the latter to improve the quality of their work."

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19. We are unable to agree with the learned counsel. It is admitted on all hands that so far as promotions within Class I are concerned - with which alone the Memorandum dated 26-3-1970 deals - there are no orders of the Government of India applying the rule of reservation. We have referred hereinbefore to the earlier Memorandum dated 11-7-1968 (which in turn refers to a yet earlier Memorandum dated 8-11-1963). Those earlier Memorandums provide for reservation in Classes II, III and IV but not for promotion to Class I and not at any rate to promotions within Class I. Nor does the Memorandum dated 26-3-1970 provide for such reservation. The idea is self-evident. While the rule of reservation is made applicable to the lower categories, viz., Classes II, III and IV (to the extent specified in the said Memorandums), no such reservation was thought advisable in the matter of promotions within Class I. Instead of reservation, a concession was provided, the concession explained hereinabove. It is this fact which has been reiterated, affirmed and clarified in the subsequent letters of the Finance Ministry. It is thus clear that the letters of the Ministry of Finance dated [pic]30-5-1981 and the subsequent ones do not amend or modify the Office Memorandum dated 26-3-1970 but merely explain it. They make explicit what is implicit in it. So is the rendering of para 9.2 in the 7th Edn. in the Brochure. What all they say is that the rule of reservation does not apply to promotions within Class I (i.e., promotions to be made on the basis of selection to posts which carry an ultimate salary of Rs 2250 per month or less in the revised scale) but a concession in terms of para 2 of the Memorandum dated 26-3-1970 is provided in that behalf. It cannot, therefore, be said that either the letters of the Ministry of Finance or the rendering of para 9.2 in the 7th Edn. of the Brochure is inconsistent with the Memorandum dated 26-3-1970 or that they are contrary to the orders of the Government.

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31. For the above reasons, we hold that in the matter of promotion by selection to posts within Class I which carry an ultimate salary of Rs 2250 in the revised scale of pay per month or less, there is no reservation in favour of Scheduled Castes/Scheduled Tribes but they are entitled to the concession contained in para 2 of the Office Memorandum dated 26-3-1970 issued by the Ministry of Home Affairs. The concession is that those Scheduled Castes/Scheduled Tribes officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up will be included in the select list

provided they are not considered unfit for promotion. (This rule has been [pic]explained in the body of the judgment by giving an illustration, which it is not necessary to repeat here.) The position of such candidates included in the select list would, however, be the same as is assigned to them by the Departmental Promotion Committee on the basis of their record of service. The said candidates would not be entitled, for the purpose of the said selection, one grading higher than the grading otherwise assignable to them on the basis of their record of service. This is also the purport of para 9 of the Brochure insofar as it deals with promotions within Class I."

(ii) Pragjyotish Gaonlia Bank (Now known as Assam Gramin Vikash Bank) and Another v. Brijlal Dass[5] "24. Having carefully considered the submissions made on behalf of the respective parties, we are inclined to agree with Mr Mehta that the provision relating to reservation posts extracted hereinabove, contained in the Circular dated 10-6-1997, has been wrongly interpreted by the Division Bench of the High Court. The said condition is in the nature of a concession as was contemplated in the Circular dated 9-11-1994, issued by NABARD in order to give an opportunity to a Scheduled Caste or Scheduled Tribe candidate to be automatically appointed, if he came within the number of vacancies [pic]available. It was a concession to enable such a candidate to avoid the process of selection, which all the other candidates were required to undergo.

25. The said provision has been very elaborately explained by a three-Judge Bench of this Court in National Federation of SBI v. Union of India; (1995) 3 SCC 532 . As has been explained in the said judgment, the zone of consideration is the list of selected candidates chosen in order of seniority to be considered for the purpose of filling up the available vacancies and merely by coming within the zone of consideration a Scheduled Caste or Scheduled Tribe candidate would not be entitled to automatic selection. The concession relating to reservation does not mean that any of the vacant posts were required to be kept reserved for such Scheduled Caste or Scheduled Tribe candidate. It is only when such a candidate came within the number of vacancies that such a concession would be applicable to him/her for appointment without going through the selection process.

24. Learned counsel appearing for respondents, including Dr. Krishan Singh Chauhan, Mr. E.C. Vidya Sagar, Mr. A. Subba Rao, Mr. Satyajit A. Desai and Mr. C.K. Chandrasekhar, Advocates, placed strong reliance on the reasons given by the

High Court in support of its verdict projecting dismal state of affairs virtually no representation of the SC/ST employees in the officers category, particularly, scale IV and above.

25. It was also argued by these respondents that after the impugned judgment of the Division Bench allowing writ appeals of these respondents, on 14-01-2010 and 01-02-2010, the Union Government had directed the implementation of the impugned High Court judgment. The Bank has filed the SLP, thereafter. Their present stand that there will be no reservation but only concession by considering officers who are senior enough to be within the zone and are not declared unfit, is misleading. In fact, a Bill was passed in both the Houses of the Parliament by the previous Government to grant reservations in promotions at all levels, (i.e. 117th Constitutional Amendment), which had lapsed subsequently. It was argued that the Union Government cannot take a different stand now.

26. The claim of the Banks that grant of reservation in promotion from Scale-I level onwards would affect efficiency, was also refuted by contending that the officers belonging to SC/ST have been promoted only on the basis of their own merit/performance. It was submitted that the State cannot act contrary to Constitutional provisions. It was submitted that the decision dated 10-03-1995 in National Federation of S.B.I. (supra) and relied by the Banks related to pre-77th Amendment, which came to be passed on 17-06-1995. As per them, the decision in M. Nagaraj (supra) answers the issues raised by the Banks. Pointed reference was made to the 117th Amendment Bill, which was taken judicial notice of in Himachal Pradesh Scheduled Tribes Employees Federation and another v. Himachal Pradesh Samanaya Varg Karamchari Kalayan Mahasangh and others[6]. Attention was drawn to paras 32 to 34 of the said judgment, which are as under:

"32. Here, we would like to allude to the words of Lord Denning, in *Rondel v. Worsley* (1967) 1 QB 443 about the conduct expected of an advocate:

"... As an advocate he is a minister of justice equally with the Judge. ... I say 'all he honourably can' because his duty is not only to his client. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. He must see that his

client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is the code of honour." (QB p. 502) (emphasis supplied) [pic]In our opinion, the aforesaid dicta of Lord Denning is an apt exposition of the very high standard of moral, ethical and professional conduct expected to be maintained by the members of legal profession. We expect no less of an advocate/counsel in this country.

33. Here, in this case, on 26-4-2010 a statement was made on behalf of the State of H.P. that "the State intends to collect more details with regard to representation of the SCs/STs and to pass appropriate orders within a reasonable time i.e. approximately within three months after collecting the necessary details and datas". Having very deftly avoided a decision on merits in SLP (C) No. 30143 of 2009, the State has totally failed to live up to the solemn statement made to this Court. It has hedged and hemmed and prevaricated from 26-4-2010 till date. In spite of the requisite data being available, the policy of reservation already adopted by the State has not been implemented. We, therefore, do not agree with Dr Dhavan that the applicants are seeking a mandamus to adopt a policy in reservation. From the above narration, it is evident that the applicants want the State to implement its own decisions. The prayer is:

"Direct the respondent/State Government to decide the case in time-bound manner on the basis of data already available/submitted to the Cabinet Sub-Committee on 25-4-2011 within a period of one month and; Further direct stay on all promotions pending decision taken in this case."

34. The final excuse offered by the State for not granting the aforesaid relief is that the State now awaits the finalisation of the 117th Constitution Amendment. We decline to accept the reasons put forward for not honouring the statement solemnly made to this Court on 26-4-2010. This Court has been more than considerate to the requests made by the State for extension of time. This last excuse about awaiting the finalisation of the proposed Hundred-seventeenth Constitutional Amendment is the proverbial last straw on the camel's back. As stated earlier, the proposed 117th Constitutional Amendment would not adversely affect the merits of the clam (sic) of the petitioner for grant of promotion with consequential seniority. By the aforesaid proposed Amendment, the existing Article 16 clause (4-A) is to be substituted by the following clause (4-A)-

"16. (4-A) Notwithstanding anything contained elsewhere in the Constitution, the Scheduled Castes and the Scheduled Tribes notified under Article 341 and Article 342, respectively, shall be deemed to be backward and nothing in this article or in Article 335 shall prevent the State from making any provision for reservation in matters of promotions, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes to the extent of the percentage of reservation provided to the Scheduled Castes and the Scheduled Tribes in the services of the State."

27. Much reliance was also placed on a recent decision of this Court in the case *Rohtas Bhankhar and Others v. Union of India and Another*[7], on the basis of which it was contended that the reliance of the Banks in that case on O.M. dated 22.07.1997 was totally misplaced as, inasmuch as, in this case the said O.M. is held to be bad in law as per the discussion contained in the following paragraphs:

"9. We are in respectful agreement with the decision in *UT, Chandigarh v. Kuldeep Singh*, (1997) 9 SCC 199 and approve the same. Ordinarily, we would have sent the matter to the regular Bench for disposal of the matters but having regard to the nature of controversy and the fact that the Central Administrative Tribunal, Delhi (for short "the Tribunal") has followed *S. Vinod Kumar v. Union of India*, (1996) 6 SCC 580 which is not good law and resultantly the 1997 OM is also illegal, in our view, the agony of the appellants need not be prolonged as they are entitled to the reliefs.

10. Consequently, the civil appeals are allowed. The impugned order is set aside. The 1997 OM is declared illegal. The respondents are directed to modify the results in the Section Officers/ Stenographers (Grade B/Grade I) Limited Departmental Competitive Examination, 1996 by providing for reservation and extend all consequential reliefs to the appellants, if not granted so far. No costs."

28. Before discussing the main issue involved, it would be in the fitness of things to iron out some of the creases surrounding the main issue. In fact, this exercise would facilitate understanding the precise tenor of the issue that needs to be addressed and answered.

29. In the first instance, we make it clear that there is no dispute about the constitutional position envisaged in Articles 15 and 16, insofar as these provisions empower the State to take affirmative action in favour of SC/ST category persons

by making reservations for them in the employment in the Union or the State (or for that matter, public sector/authorities which are treated as State under Article 12 of the Constitution). The laudable objective underlying these provisions is also to be kept in mind while undertaking any exercise pertaining to the issues touching upon the reservation of such SC/ST employees. Further, such a reservation can not only be made at the entry level but is permissible in the matters of promotions as well. At the same time, it is also to be borne in mind that Clauses 4 and 4A of Article 16 of the Constitution are only the enabling provisions which permit the State to make provision for reservation of these category of persons. Insofar as making of provisions for reservation in matters of promotion to any class or classes of post is concerned, such a provision can be made in favour of SC/ST category employees if, in the opinion of the State, they are not adequately represented in services under the State. Thus, no doubt, power lies with the State to make a provision, but, at the same time, courts cannot issue any mandamus to the State to necessarily make such a provision. It is for the State to act, in a given situation, and to take such an affirmative action. Of course, whenever there exists such a provision for reservation in the matters of recruitment or the promotion, it would bestow an enforceable right in favour of persons belonging to SC/ST category and on failure on the part of any authority to reserve the posts, while making selections/promotions, the beneficiaries of these provisions can approach the Court to get their rights enforced. What is to be highlighted is that existence of provision for reservation in the matter of selection or promotion, as the case may be, is the sine qua non for seeking mandamus as it is only when such a provision is made by the State, a right shall accrue in favour of SC/ST candidates and not otherwise.

30. It is not in dispute that the rule of reservation is followed for promotions from clerical grade to the lowest rank in the officer grade. The question, however, is as to whether there is any provision for reservation when promotion from a particular rank in the officer grade is to be made to the next rank in the said grade, namely, from Scale-I to Scale-II, Scale-II to Scale-III and so on.

31. While considering this question, we have to keep in mind that reservation policy of the Central Government is applicable to the appellant Banks. It is the common case of both the parties. In fact, as already noted above, there is a specific provision to this effect in the promotion policies framed by the appellant Banks.

32. Next thing which is to be kept in mind is the two office memoranda, one dated 1.11.1990 and the other dated 13.8.1997, which are referred to by the counsel for the parties. We have already reproduced the aforesaid two office memoranda.

Insofar as, Office Memorandum dated 1.11.1990 is concerned, a bare reading of this provision would reflect the following two aspects:

(a) In promotion by selection within Class-I (Group-A) post, the SC/ST candidates are to be given 'concession'.

(b) This concession is available to those SC/ST employees who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which select list has to be drawn up.

33. Thus, first requirement is that such SC/ST candidates who come within the zone of consideration for promotion are senior enough to be within the number of vacancies. Once they come within the aforesaid zone of consideration, they have to be included in the list, provided they are not considered unfit for promotion. It clearly follows from the above that once they come under the zone of consideration for promotion so as to be within the number of vacancies for which select list has to be drawn up, for such SC/ST employees the only embargo to deprive them of promotion is when they are found unfit for promotion. For other officers in general category, depending upon the rule of promotion, there may be much stricter criteria based on comparative merit or selection by merit, etc. However, in case of such senior enough SC/ST candidates, the criteria appears to be seniority, subject to fitness. (c) This OM specifically clears the doubt that the aforesaid provision is only a concession and not reservation in favour of SC/ST candidates, inasmuch as para 3 of the OM states that "It is hereby clarified that in promotion by selection within Group-A post, which carry ultimate salary of ? 5,700/- per month, there is no reservation". It is clear from the above that insofar as Office Memorandum dated 1.11.1990 is concerned, there was no provision for reservation made in favour of SC/ST candidates in promotion by selection within Group-A posts carrying an ultimate salary of ?5,700 per month.

34. No doubt, this Office Memorandum was issued in the year 1990, that is much before amendment in Article 16 of the Constitution, which was carried out in the year 1995 by inserting Clause 4A. However, as already pointed out above, Clause 4A is an enabling provision which empowers the State to make reservations in the matter of promotions as well as in favour of SC/ST employees. There was no such provision till 1.11.1990 in the matter of promotion by selection within Group-A post which carry an ultimate salary of ?5,700/- per month.

35. Having understood this, we come to Office Memorandum dated 13.8.1997 to find out as to whether this Memorandum makes any provision for reservations in

the matter of promotion in favour of SC/ST employees, inasmuch as no other Office Memorandum or Circular or Rule, etc. is produced on record for this purpose.

36. We have already noted above that a nine Judge Bench decision of this Court in Indra Sawhney (supra) held that Clause 4 of Article 16 does not cover the cases of promotion, meaning thereby, as per the said clause no reservation in favour of SC/ST persons in the matter of promotions is permissible. It is to nullify the effect of this dicta in the said judgment that Clause 4A was inserted in Article 16 by Constitution's Seventy-Seventh Amendment with effect from 17-06-1995. However, it is also a matter of record that in Indra Sawhney's case (supra), this Court had also clarified that reservation for SC/STs in promotion would continue for a period of five years from 16-11-1992. What it meant was that if there is a provision of reservation made in the matter of promotions, notwithstanding the dicta in the said case that such a reservation is not permissible, those provisions were allowed to continue for a period of five years from 16-11-1992. Thereafter, before the expiry of five years, constitutional provision was incorporated in the form of Clause 4A by making provision for reservation in the matter of promotions as well. These facts are taken note of in first two paras of Office Memorandum dated 13-08-1997. Thereafter, in the 3rd para of the said Memorandum, it is provided:

"3. In pursuance of Article 16(4A), it has been decided to continue the Reservation in promotion as at present, for the Scheduled Castes and the Scheduled Tribes in the services/posts under the Central Government beyond 15.11.1997 till such time as the representation of each of the above two categories in each cadre reaches the prescribed percentages of reservation whereafter, the reservation in promotion shall continue to maintain the representation to the extent of the prescribed percentages for the respective categories."

37. What is decided is to continue the reservation in promotion, which was prevalent at that time, for the SC/ST employees, which was to continue in terms of the judgment of this Court in Indra Sawhney (supra) till 15-11- 1997, even beyond 15-11-1997, till such time as the representation of each of the above two categories in each cadre reaches the prescribed percentages of reservation whereof. It is, thus, crystal clear from a bare reading of this para that the existing provision relating to reservation in promotion was allowed to continue beyond 15-11-1997. Thus, this Memorandum did not make any new provision for reservation in promotion in favour of SC/ST employees.

38. We have already noticed above that in matters of promotion within Group-A posts, which carry an ultimate salary of ₹5,700/- per month, there was no provision for any reservation. On a conjoint reading of these two Office Memorandums, in the absence of any other provision or Rule evidencing such a reservation in the matter of promotions, it cannot be said that there was reservation in promotion within Group-A posts upto the ultimate salary of ₹5,700/- per month. The High Court in the impugned judgment has gone by the lofty ideals enshrined in Articles 15 and 16 of the Constitution as well as the fact that in these Banks there is no adequate representation of SC/ST category of officers in Group-IV and above. That may be so. It can only provide justification for making a provision of this nature. However, in the absence of such a provision, same cannot be read by overstretching the language of Office Memorandum dated 13-08-1997. It is for the State to take stock of the ground realities and take a decision as to whether it is necessary to make provision for reservation in promotions to the aforesaid post as well.

39. Having said so, one other aspect which has to be necessarily addressed to at this stage calls for our attention. This aspect, which we are going to point out now, has been totally glossed over by the learned Single Judge as well as the Division Bench of the High Court in their respective judgments.

40. It is provided in Office Memorandum dated 01-11-1970, and we have repeatedly stated above, that there is no reservation in promotion by selection within only those Group-A posts which carry an ultimate salary of ₹5,700/- per month. In such cases, it is only concession that applies. We have accepted the contention of the appellant Banks in this behalf, as per the discussion contained hereinabove. Significantly, what follows is that reservation is provided in promotion by selection qua those posts which carry an ultimate salary of less than ₹5,700/- per month (pre-revised).

41. The Department of Public Enterprises had issued an Office Memorandum dated 08-11-2004 as to the salary limit of ₹5,700/- mentioned for the purposes of reservation as ₹18,300/- (5th Central Pay Commission) and in the case of Public Sector Undertakings who are following Industrial Dearness Allowance (IDA) pattern, the monetary ceiling was fixed as ₹20,800/- (from 01-01- 1996, i.e. 5th Central Pay Commission). The said pay ceiling is achieved in the appellant Banks only when an officer reaches Scale-VII. As a fortiori, the policy of no reservation in the matter of promotion is applicable only from Scale-VII and above. It, therefore, clearly follows that insofar as promotion from Scale-I to Scale-II, Scale-II to Scale-III, Scale-III to Scale-IV, Scale-IV to Scale-V, Scale-V to Scale-VI are

concerned, reservation is to be provided. The appellant Banks, therefore, cannot take umbrage under the aforesaid Memorandum and deny reservation in favour of SC/ST employees while carrying out promotions upto to Scale-VI.

42. Upshot of the aforesaid discussion would be to allow these appeals partly. While setting aside the impugned judgment of the High Court to the extent it holds that Office Memorandum dated 13-08-1997 makes a provision for reservation, it is clarified that at present there is no provision for reservation in promotion by selection only in respect of those posts which carry an ultimate salary of ₹5,700/- per month (revised to ₹18,300/- by 5th Central Pay Commission and ₹20,800/- per month in respect of those Public Sector Undertakings following IDA pattern). Qua appellant Banks, that would be in respect of Scale-VII and above. Therefore, to carry out promotions from Scale-I upwards upto Scale-VI, reservation in promotion in favour of SC/ST employees has to be given. It would have the effect of allowing the writ petitions filed by the respondents/unions partly with directions to the appellant Banks to make provision for reservations while carrying out promotions from Scale-I to to Scale-II and upward upto Scale- VI.

43. In view of the above, Contempt Petition (Civil) No. 320 of 2010 is disposed of with directions to the appellant Banks to carry out the promotions by adopting the procedure mentioned in this judgment.

In the peculiar facts of this case, we leave the parties to bear their own costs.

[1] (1992) Supp 3 SCC 217 [2] (1995) 6 SCC 684 [3] (2006) 8 SCC 212 [4] (1995) 3 SCC 532 [5] (2009) 3 SCC 323 [6] (2013) 10 SCC 308 [7] (2014) 8 SCC 872