

SUPREME COURT OF INDIA

V. Lakshmikanthan

Vs.

Union of India

C.A.No.4751-4752/2011

(Kurian Joseph and S.Abdul Nazeer,JJ.,)

22.11.2017

JUDGMENT

Kurian Joseph,J.,

1. Though several contentions are raised in these appeals, finally the learned counsel for the appellants has come down to one submission, since according to him, he is entitled to succeed on that. That submission pertains to the direction in *R.K. Sabharwal and Others v. State of Punjab and Others*¹, regarding post based roster in the matter of promotions. It was made clear in *R.K. Sabharwal (supra)* that 10.02.1995 shall be the date *ned of India and Ors. v. Virpal Singh Chauhan and Others*². In paragraph 33 in *Virpal Singh Chauhan (supra)* it was made clear that the Railways for the purpose of following the post based roster. It appears, the Respondent No.2 was still not following the same which led to the decision in Union has to follow the principles as laid down in *R.K. Sabharwal (supra)*. Paragraph Nos. 29 and 33 of the same are extracted below:

"29. The Constitution Bench has, however, made it clear that the rule enunciated by them shall operate only prospectively [vide Para 11] . It has further been held in the said decision that the "percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength (and that) the concept of 'vacancy' has no relevance in operating the percentage of reservation". (As a matter of fact, it is stated that this batch of cases were also posted for hearing before the Constitution Bench along with *R.K. Sabharwal* batch of cases but these cases were delinked on the ground that they raise certain other issues which did not arise in *R.K. Sabharwal*.) Be that as it may, as a result of the decision in *R.K. Sabharwal* and the views/findings recorded by us hereinabove, the following position emerges:

(i) Once the number of posts reserved for being filled by reserved category candidates in a cadre, category or grade (unit for application of rule of reservation) are filled by the operation of roster, the object of rule of reservation should be deemed to have been achieved and thereafter the roster cannot be followed except to the extent

indicated in Para-5 of R.K. Sabharwal. While determining the said number, the candidates belonging to the reserved category but selected/promoted on their own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

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

(iii) So far as Railway Guards in Railway service are concerned - that is the only category we are concerned herewith - the seniority position in the promoted category as between reserved candidates and general candidates shall be the same as their inter se seniority position in Grade ' C ' at any given point of time provided that at that given point of time, both the general candidates and the reserved category candidates are in the same grade. This rule operates whether the general candidate is included in the same batch of promotees or in a subsequent batch. (This is for the reason that the circulars/letters aforesaid do not make or recognise any such distinction.) In other words, even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category.

33. Shri Dhavan points out yet another anomaly. Where a candidate belonging to Scheduled Caste gets selected on his own merit, i.e., in the general category, he will be treated as a general candidate and on that account he suffers prejudice vis-a-vis another reserved category candidate who could not be selected on his own merit (i.e., in the general category) and was selected only because of and under the rule of reservation. For illustrating his submission, learned counsel says, take an instance where out of forty candidates selected, a Scheduled Caste candidate selected on merit stands at Sl. No.18 in the select list, whereas another Scheduled Caste candidate selected under and only because of the reserved quota stands at Sl. No.33. But when the occasion for appointment arises, the Scheduled Caste candidate at Sl. No.33 will be appointed against the first roster-point, whereas the Scheduled Caste candidate at S. No.18, being a general candidate has to wait for his turn. This, the learned counsel says, amounts, in effect, to punishing the Scheduled Caste candidate at Sl. No.18 for his merit. Because he was meritorious, he was selected in general category and is treated as a general candidate. He suffers all the disadvantages any other general candidate suffers while another Scheduled Caste candidate, far less meritorious than him and who was selected only by virtue of rule of reservation, steals a march over him in the matter of initial appointment and in promotion after promotion thereafter. This is undoubtedly a piquant situation and may have to be

appropriately rectified as and when the occasion arises. It is not pointed out that any such situation has arisen in the appeals before us. It is probable that many such situations may arise which cannot be foretold now. According to the general category candidates herein concerned, of course, the rule of reservation/roster has already given rise to many distortions. According to them, the representation of the reserved categories in Guard Grade ' A ' Special has reached 40 per cent as against the prescribed 22.5 percent. It is not possible for us to say, on the material before us, how and why the said situation has come about. It may be partly because the rule now enunciated in R.K. Sabharwal was not there and was not being followed. It may also be that such a result has been brought about by a combined operation of the factors mentioned in (i) and (ii) above. The fact remains that the situation - assuming that it is what is described by the general candidates - cannot be rectified with retrospective effect now. The Constitution Bench in R.K. Sabharwal too has directed that the rule enunciated therein shall have only prospective operation. So far as the present appeals are concerned, it is sufficient to direct that the Railway authorities shall hereinafter follow Rules (i), (ii) and (iii) [stated in Para No.29] with effect from the date of judgment in R.K. Sabharwal, i.e., 10.02.1995. "

2. However, it is the case of the Railways that it took some more time for them to take a call on the issue of following post based reservation and finally it was clarified on 14.09.2006 that the post based reservation would be followed only with effect from 16.11.2005. In fact, it has been said so in an affidavit filed before this Court in an answer to a query from this Court in the order dated 25.10.2017. The query and answer given in the affidavit filed on 17.11.2017 read as follows:-

"(5) That it shall be clarified as to whether the Railway Board has followed post based roster in any other vacancy after 15.07.2005? In terms of Railway Board' s letter Nos.2005/E(SCT)I/25/14 dated 16.11.2005 and E(GP)2005/2/61 dated 22.11.2005 and 14.09.2006, instructions were issued regarding introduction of post based reservation rosters in promotion from Group ' C ' to Group ' B ' or within Group ' B ' . In terms of aforementioned letter dated 14.09.2006, Railway Board clarified that that post based roster shall be adopted from the next cycle of selections commencing after the issue of Railway Board' s letter No.2005/E(SCT)I/25/14 dated 16.11.2005. Hence Post based roster for Gazetted cadre was not followed for any vacancy filled up to 16.11.2005. Thereafter, Post-based rosters were applied in all selections conducted in Group ' B ' ."

3. We are afraid that this stand cannot be justified. This Court in Virpal Singh Chauhan (supra), having directed the Railways to specifically follow the principles as laid down in R.K. Sabharwal (supra) with effect from 10.02.1995, the post based roster has to be followed from 10.02.1995.

4. In the above circumstances, we dispose of these appeals with the following directions:

“i. The case of the appellants shall be examined in the light of the judgments referred to above for the purpose of their promotion to the post of Assistant Executive Engineer and Executive Engineer.

ii. In the process, we also make it clear that promotions already granted to other incumbents shall not be affected. It is further made clear that as far as promotion to the post of Assistant Executive Engineer is concerned, the same shall be notional and as far as the post of Executive Engineer is concerned, both the appellants shall be entitled to the restoration of seniority, in case they are otherwise found eligible and entitled in the process of selection. We are informed that Appellant No.1 has already been promoted to the post of Executive Engineer, therefore, in his case only restoration of seniority and notional fixation of pay are required to be granted. As far as Appellant No.2 is concerned, benefits regarding seniority shall be conferred in the light of the judgment referred to above, in case he is found eligible and entitled for the monetary benefits with effect from the date of his actual promotion to the post of Executive Engineer, as and when made.

iii. The required process shall be completed in the light of this judgment, within a period of one month from today. “

5. Pending applications, if any, shall stand disposed of.

6. There shall be no orders as to costs.