

## **Jagdish Lal & Ors vs State Of Haryana & Ors on 7 May, 1997**

**Equivalent citations: AIR 1997 SUPREME COURT 2366, 1997 (6) SCC 538, 1997 AIR SCW 2257, 1997 LAB. I. C. 2301, 1997 (3) SERVLJ 162 SC, 1997 (4) SCALE 202, (1997) 3 SERVLJ 162, (1997) 5 JT 387 (SC), (1997) 5 SUPREME 1, (1997) 2 SCJ 251, (1997) 4 SERVLR 333, (1997) 4 SCALE 202, (1997) 4 LAB LN 22, 1997 SCC (L&S) 1550, (1998) 1 SCT 26**

**Author: K. Ramaswamy**

**Bench: K. Ramaswamy, S. Saghir Ahmad**

PETITIONER:

JAGDISH LAL & ORS.

Vs.

RESPONDENT:

STATE OF HARYANA & ORS.

DATE OF JUDGMENT:

07/05/1997

BENCH:

K. RAMASWAMY, S. SAGHIR AHMAD, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:

**J U D G M E N T** THE 7TH DAY OF MAY, 1997 Present:

Hon'ble Mr. Justice K. Ramaswamy Hon'ble Mr. Justice S. Saghir Ahmad Hon'ble Mr. Justice G.B. Pattanaik K.B. Rohtagi, Mrs. Aparna Rohtagi Jain, Advs. for the appellants.

Prem Malhotra, Jasbir Malik and K.S. Chauhan, Advs. for the Respondents.

The following Judgment of the Court was delivered:

K. Ramaswamy, J.

Leave granted We have heard learned counsel on both sides. This appeal by special leave arises from the Division Bench Judgment of Punjab & Haryana High Court, made on November 5, 1996 in C.W.P. No.8755/96.

The appellant-general candidates, viz., Jagdish Lal, Ram Dayal and Surinderjit Kapil, challenged the promotion of the Scheduled Caste and Scheduled Tribe candidates (for short, the 'reserved candidates'), viz., Ram Asra, H.S. Hira, Sant Lal and Ajmer Singh, as Superintendents in Class- III Service of Haryana Government. Respective appointments of the appellant and the respondents have been reflected in the judgment of the High Court as under: S.No Name Seniority Dt. of As As As As As no. in apptt. Asstt. Dy. Supdt. Bud- R.E. the seni- as Supdt. get (Cla-

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----- APPELLANTS:

1. Jagdish 22 24.11.58 1.12.68 27.10.87 1.4.90 - - Lal

2. Ram Dayal 28 22.2.61 1.12.68 16.1.89 9.8.91 - -

3. Surinderjit 56 1.9.66 10.4.72 2.2.96 - - -

Kapil PRIVATE RESPONDENTS (Reserved Category candidates)

1. Ram Asra 48 31.1.66 22.9.71 26.5.82 4.9.87 - -

2. H.S. Hira 64 18.4.67 31.5.73 27.10.83 27.5.88 - 2.2.96 promoted on ad hoc basis for a period of 4 months only and 31.5.96 on regular basis.

3. Sant Lal 91 16.8.71 6.11.78 4.11.87 8.2.90 - -

4. Ajmer Singh 99 24.8.72 9.9.79 31.10.88 1.7.90 - -

In the lowest cadre post, i.e., Clerks and Assistants, in the Education Department, admittedly, the appellant were senior to the respondent. But as Deputy Superintendents, Respondent Nos. 1 and 2 were promoted respectively on May 26, 1982 and October 27 1983, while the appellants were promoted on different dates, viz., October 27, 1987, January 16, 1989 and February 2, 1996. Sixth respondent, Sant Lal was promoted on November 4, 1987, that is, prior to the promotion of Surinderjit Kapil. Equally, respondent No.7 Ajmer Singh also was promoted earlier to Ram Dayal and Surinderjit Kapil on October 31, 1988. While working as Deputy Superintendent, Ram Asra was

promoted to the post of Superintendent on September 4, 1987; H.S. Hira was promoted as Superintendent on May 27, 1988 while the first appellant, Jagdish Lal was promoted on April 1, 1990 and Ram Dayal, appellant No.2 was promoted on August 9, 1991; Sant Lal, respondent No.6 was promoted on February 8, 1990, that is, prior to the promotion of Jagdish Lal as Superintendent. Equally, Ajmer Singh, 7th respondent was promoted as Superintendent on July 1, 1990, that is, prior to the promotion of second appellant, Ram Dayal on August 9 1991. While all of them were working as Superintendents, H.S. Hira was further promoted on ad hoc basis w.e.f. February 2, 1996 for a period of 4 months and from May 31, 1996 on regular basis, in his own right, as Registrar (Education) which post is now classified as Class I post. On June 4, 1996, the appellants filed a writ petition claiming that right from the post of Clerk upto the post of Superintendent, the Class III Service of the Education Department, they were senior to the reserved candidates. Though they were promoted on the basis of rule of reservation applying the 100 point roster maintained by the Government, they stole a march over the appellants who were being members of the same Class III Service. They further claimed that though the reserved candidates has got promotion to the different posts earlier to them, the appellants still were entitled to be senior to them for the purpose of promotion to Class I posts. As a consequence, they were entitled to be considered for promotion before consideration of the reserved candidates including H.S. Hira, the fifth respondent as Registrar (Education). The sheet anchor of their case was the decision of this Court in Ajit Singh Januja & Ors. v. State of Punjab [JT 1996(2) SC 727]. The High Court dismissed the writ petition inter alia on the ground of abnormal delay in challenging the promotion of the reserved candidate to the post of Asstt./Dy. Superintendents and Superintendents. It observed that though the reserved candidates were promoted on different dates as Superintendents etc. earlier to the appellants, they having become members of the Service in the lower cadres earlier to the appellant, were entitled to be considered for further promotion to the higher ladders of the Service; their promotions are not vitiated by an error of law. The Haryana Education Deptt. (State Service Class II) are governed by the Haryana Education Deptt. (State Service Group B) Rules, 1980 (For short, the 'Rules') Rule 11 of the Rules deals with seniority. By operation thereof the reserved candidates became senior to the appellants in the respective cadres. Fifth respondent, H.S. Hira was promoted to Group 'B' Class- I Service in his own right as a general candidate as there was no reservation. Therefore, their promotion is valid in law. It was also held that even otherwise, since the promotions of the reserved candidates came to be made prior to the decision in Sabharwal's case, they could not be declared invalid. The High Court has pointed out that "Here it is important to mention that as on the date of promotion of respondent No.4 on the post of Superintendent, the petitioners has not been promoted even as Deputy Superintendents. Similarly, as on the date of promotion of respondent Nos. 4 and 5 , the petitioner No.2 has not been promoted as Deputy Superintendent and so far as petitioner No.3 is concerned, he came to be promoted as Deputy Superintended after almost 8 years and 6 months of the promotion of respondent No.4; after 7 years and 9 months of the promotion of respondent No.5; and after almost 4 and 5 years and 6 months of the promotion of respondent Nos.6 and 7 as Superintendents. Thus the petitioners cannot have any claim to be assigned seniority over and above respondent Nos. 4 to 7 as Superintendents." The High Court negated the contention that the appellants were denied of right to equality on account of the application of rule of reservation and roster point violating Articles 14 and 16 of the Constitution. The High Court further pointed out thus:

"A careful reading of the various decisions of the Apex Court and the decision of this Court, shows that in R.K. Sabharwal's case, their Lordships were primarily concerned with the interpretation of the policy circulars issued by the Government of Punjab regarding reservation in favour of the Scheduled Castes and Backward Classes and operation of the roster system. In Court was dealing with circulars issued by the Railway Board with particular reference to the letter dated 31st Aug., 1982 and held that the word "Panel" used in that circular meant the panel prepared by the recruiting authority at the time of initial entry in the service and that the seniority of the employees in the higher grades must also be determined with reference to their panel position. This very principle has been reiterated in Ajit Singh's case in which circular issued by the Government of Punjab and the judgment of the Full Bench case in Jaswant Singh's case (supra) came up for consideration. The Division Bench which decided Madan Lal's case simply applied the observations made in the three decisions of the Supreme Court and held that reserved categories employees have no right to be assigned seniority on the promoted posts over and above the general category employees who were senior in the lower cadre and who got promotion in the next higher post on a later date. However, in Akhil Bhartiya Soshit Karamchari Sangh's case (supra) their Lordships clarified that the principle laid down in R.K. Sabharwal's case and Virpal Singh Chauhan's case (supra) will operate prospectively and not retrospectively.

In our opinion, none of these decisions is of any help for interpreting rules relating to seniority which have been extracted above. In none of the decisions, their Lordships of the Supreme Court interpreted a rule like the one which is under consideration before us. No doubt in Madan Lal's case a similar rules has been referred to but instead of interpreting that rules the Division Bench has limited its considerations made by the Supreme Court in Ajit Singh's case (supra). We are of the opinion that in view of the clear language used in the substantive part of Rule 11 and its first proviso, seniority will have to be determined in different cadres and categories of posts because the services governed by the Rules of 1974 and 1980 consist of different cadres. Posts of Registrar, Assistant Registrar (Examinations), Budget Officer and Superintendents constitute different cadres and, therefore, seniority will have to be determined in each cadre separately. Similarly, the post of Deputy Superintendents, Assistants and Clerks, recruitment to which is governed by '1974 Rules' constitute different cadres and seniority will have to be determined separately in each of these cadres and the general principle laid down in Ajit Singh's case cannot be applied for the purpose of determination of seniority in a case like the present one.

On the basis of above discussion, we hold that:-

(i) the writ petition deserves to be dismissed on the ground of delay and laches in so far as challenge to the promotion of the respondents as Superintendents/Registrar is concerned;

(ii) the principles laid down in Virpal Singh Chauhan's case (supra) and Ajit Singh's case (supra) will operate prospectively and will not affect promotions of reserved category candidates which were made prior to the decision in R.K. Sabharwal's case (supra) or Virpal Singh Chauhan's case (supra);

(iii) the decision in Virpal Singh Chauhan's case and Ajit Singh's case cannot be applied in a case like the present one where the seniority is required to be determined in different cadres and categories of posts. In the absence of any challenge to the vires of Rule 11 the petitioners cannot claim fixation of their seniority who were promoted as Deputy Superintendents earlier than the petitioner."

Shri Rohtagi, learned counsel for the appellant, contended that in all the posts/grades starting from that of Clerk to Superintendents in Class III Service and the posts of Budget Officer, Assistant Registrar and Registrar in Group 'B' Class I Service by operation of ratio of Ajit Singh's case and Union of India v. Vir Pal Singh Chauhan [(1995) 6 SCC 684], seniority is required to be determined keeping the seniority of the general and reserved candidates in the lower grade/cadre in fact as all the posts are of the same Service. As soon as the general candidates get promoted to the higher cadre, the inter se seniority of the general candidates and the reserved candidates is required to be redetermined on the basis of their inter se seniority in the feeder grade/cadre. That was the view taken by this Court in Veer Pal Singh Chauhan case. Even though the reserved candidates were promoted earlier to the general candidates, the inter se merit between the general candidates and the reserved candidates in Group 'B' Class I Service should be redetermined. The promotion is required to be given to Class I Service on that basis. Promotion at various levels in Class II Service is also, accordingly, required to be given and the seniority determined. As soon as the general candidates get promoted, even though later to the reserved candidates, they have right to have their seniority restored. As a consequence, the general candidates are eligible to be considered for promotion in higher posts before consideration of the reserved candidates since for the first time the inter se rights are being considered in Class-I Group 'B' Service. This interpretation in Chauhan's case and Ajit Singh's case is consistent with the principle laid down in Articles 14 and 16 (1) of the Constitution granting equality of opportunity to both the general as well as the reserved candidates. The absence thereof would negate the right to equality to general candidates violating Article 14 and 16 (1) of the Constitution. The mere delay in filing the writ petitions cannot made the base to deny the relief to the general candidates. The right to equality being a constitutional mandate, as and when the right is required to be determined, the Court has to consider the facts of each case and decide it on merits. The High Court, therefore, is wrong in law. Shri Prem Malhotra, learned counsel for the State, contended that whatever be the earlier legal position, after the judgment in Ajit Singh's case, the Government re-examined the matter and issued proceedings restoring the seniority of the general candidate in their respective feeder post/cadres from which reserved candidates came to be promoted. The direction, it is contend, is consistent with and is in implementation of the law laid down by this Court. The High Court, therefore, is not right in refusing to grant the relief to the appellants. Shri K.S. Chauhan, learned counsel for the reserved candidates, contended that under Rule 11 of the Haryana Education Department Class III Service Rules, 1974 [for short, the "1974 Rules"] and Rule 11 of the Rules provide for determination of seniority of the employees in the said Service. The Service as per 1974 Rules consists of various cadres, starting from Clerk to

Superintendents in the Class III Service. Under 1980 Rules, the Gazetted Cadre consist of Budget Officers, Assistant Registrar (Education) and Registrar (Education) all of which constitute Class I Service. Rule 11 of the respective Rules is a substantive rules creating right to seniority. The moment the officer is appointed to the service/cadre on putting probation, on successful completion of the probation period and on being duly declared, they cease to be the members of the feeder cadre from which they came to be promoted, As and when the vacancies arise in the posts in the respective cadres as per the roster point, the candidates, whether general or reserved, are required to be considered for promotion and duly promoted in accordance with the existing Rules. They became members of the service in the respective cadres of Class III or Group B Class I Service. The moment they started discharging the duties of the posts and on declaration of the successful and satisfactory probation period, they became fullfledged members of that Service. They also ceased to be members of the feeding cadre. Therefore, the moment, the termination of probation was declared, they ceased to be members of the Service of the lower feeder cadres at various levels as cadre officers. The subsequent promotions to the general candidates do not have the effect of denying the seniority secured by the reserved candidates due to their early promotion. Even if promotions to Group 'B' Class I service are to be made without applying the rule of reservation, the reserved candidates having become senior to general candidates, are entitled to be considered for promotion as per Rules in their own merit. Accordingly, the 5th respondent came to be promoted to the post of Registrar (Education) in his own right. The appellants have no right to claim seniority over the respondent-reserved candidates. He also contended that promotion to the reserved candidates is as member of the Dalits and Tribes as a Class. Constitutional right to equality enshrined under Article 14, the genus, and Article 16 (1), the species thereof, provide for protective discrimination in favour of the Dalit and Tribe. Appointment by promotion to a post or Service under the State is a constitutional right given by Article 16(1) or (4A) of the Constitution. Therefore, when the reserved candidates are promoted in accordance with the Rules, applying rules of reservation, and are promoted to posts as per the roster and are appointed to the posts reserved for reserved candidates as per the roster, no unconstitutionality result and it is not discriminatory or arbitrary, violating Article 14 of the Constitution. He also contended that the reserved candidates were promoted long prior the general candidates in Class III and Group B Class I Service. The writ petition came to be filed after Ajit Singh's case. The High Court, therefore, is right in dismissing the writ petitions on the ground of delay as well.

In view of the diverse contentions, the questions that arise for consideration are: from what date seniority of reserved or general candidates should be determined? Whether the accelerated promotions given to the reserved candidates to various cadres, applying the rule of reservation, will not enure to them the seniority from the date of respective promotion? Conversely, whether on the promotions given to the general candidates as per the roster point, the promotions will have the effect of giving them the seniority over the reserved candidates in the respective feeder/promoted cadres? Whether the view taken by the High Court is correct in law? In order to appreciate the contention, it is necessary to refer to Rule 11 of the 1974 Rules and Rule 11 of the 1980 Rules. They read as under:

"1974 Rules : Rule 11 : The seniority, inter-se seniority of members of service shall be determined by the length of continuous service on a post in the service;

Provided that where there are different Cadres of categories of the post in service, the seniority will be determined separately for each cadre or category of posts;

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by the commission shall not be disturbed in fixing the seniority and candidates recommended earlier shall be senior to the candidate recommended later; Provide further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:

(a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;

(b) a member appointed by promotion shall be senior to a member appointed by transfer;

(c) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and

(d) in the case members appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a member, who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same, then by the length of their service in the appointments, and if the length of such service is also the same, the older member shall be senior to the younger member.

`1980 Rules' : Rules 11 : Seniority of members of the service : The seniority, inter se, of members of the Service shall be determined by the length of continuous service on a post in the service;

Provided that where there are different cadres or categories of posts in the service, the seniority shall be determined separately for each cadre or category of posts;

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by the Commission shall not be disturbed in fixing the seniority and candidates recommended earlier shall be senior to the candidates recommended later;

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:

(a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;

(b) a member appointed by promotion shall be senior to a member appointed by transfer;

(c) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the seniority of such member in the appointment from which they were promoted or transferred; and

(d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member, who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same, the y by the length of their service in the appointments, and if the length of such service is also the same, the older member shall be senior to the younger member."

1974 Rules and 1980 Rules mutatis mutatis are the same.

Rule 2 (g) of 1980 Rules defines "Service" to mean Haraya Education Department (State Service, Group B). Under Rule 3, the Service shall comprise the posts shown in Appendix A to the Rules. Rule 4 prescribes the general eligibility criteria and Rule 5 prescribes age requirement. Rule 6 prescribes educational qualifications as per Appendix B. Rule 8 enumerates certain grounds for disqualification for appointment to any post in the service. Relevant part of Rule 9 with which we are concerned reads as under :

"9. (1) Recruitment to the Service shall be made,

(a) in the case of Registrar, -

(i) from amongst the Assistant Registrar (Examinations), Budget Officer in the Service or by promotion from amongst the Superintendents in the Service;"

In other words, all feeder posts enumerated constitute source of recruitment to the post of Registrar.

"or

(c) in the case of Budget Officer,-

(i) by promotion from amongst the Superintendents; or

(ii) by transfer or deputation of an officer of equivalent grade/experience, already in the service of Government of India or any State Government.

(d) in the case of Superintendent,-



(i) by promotion from amongst the Deputy Superintendents, or Assistants in the Haryana Education Department (State Service, Group C) Services; or

(ii) by transfer or deputation of an officer of equivalent grade already in the service of Government of India or of any State Government; or

(iii) by direct recruitment."

(2) Whenever any vacancy occur or is about to occur in the Service, the appointing authority shall determine in what manner such vacancy shall be filled.

(3) All promotions, whether from one grade to another or from one class of service to another class of service, shall be made by selection based on merit and taking into consideration seniority but seniority alone shall not given any right to such promotions.

On appointment so made, by operation of Rule 10, person appointed to nay post in the Service shall remain on probation for a period of two years, if appointed by direct recruitment and one year if he is appointed otherwise (promotion). However, under proviso thereto, among others, any period before such appointment, spent on deputation on a corresponding post or a higher post shall count towards the period of probation of one year. Under sub-rule (2) of Rule 10, if in the opinion of the appointing authority the work or conduct of a person during the period of probation is not satisfactory, it may, (a) if such person is appointed by direct recruitment, dispense with his services; and (b) if such person is appointed otherwise then by direct recruitment (promotion) or transfer, (i) revert him to his former post; or (ii) deal with him in such other manner as the terms and conditions of his previous appointment permit.

On completion of the period of probation by a person, under sub-rule (3), the appointing authority may, (a) if his work or conduct has in its opinion, been satisfactory - (i) confirm such person from the date of his appointment, if appointed against a permanent vacancy; or (ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy; or in case of non- availability of permanent vacancy (iii) declare that he has completed his probation satisfactorily and awaits appointment to permanent vacancy; or (b) If his work or conduct has, in its opinion, not been satisfactory, - (i) dispense with his services, if appointed by direct recruitment or if appointed otherwise, revert him to his former post or deal with him in such other manner as the terms and conditions of his previous appointment permits; or

(ii) extend his period of probation and thereafter pass such order, as it could have passed on the expiry of the period of probation. Under proviso, however, the total period of probation, including extension, if any, shall not exceed three years. It would thus in the Service, either by direct recruitment or by promotion/transfer, the incumbent officer is required to be put on probation and on completion of the probation or extended probation period, upto a maximum of three years, the

authority is enjoined to declare completion of his probation. In other words, he stands confirmed to the Service. He gets appointed to a permanent vacancy subject to availability and thereafter he becomes full-fledged member of the Service. It is settled legal position that confirmation is an inglorious uncertainty. Continuous length of service; if appointed according to the Rules on consideration of claims of eligible persons as on that date as per rules accords seniority and gets counted from the date of initial appointment by direct recruitment/promotion/ transfer to the cadre/post.

The question then arises : as to from what date the seniority is required to be determined? As seen, under Rule 11, the inter se seniority of the member of the Service shall be determined by the length of continuous service in a post in the Service. However, exceptions are carved out to the said general rule. Under the first proviso, where there are different cadres or categories of posts in the Service, the seniority shall be determined separately for each cadre or category of posts. The second proviso being not relevant for our purpose, is omitted. Under the third proviso, in case of two or more members are appointed on the same date, their seniority shall be determined in the following manner:

"(a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;

(b) a member appointed by promotion shall be senior to a member appointed by transfer;

(c) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred;"

[Class (d) being irrelevant for the present purpose, is omitted] Conjoint reading of the provisions referred to hereinabove would indicate that according to 1974 Rules, there exist in the Service cadre/grades consisting of Clerks, Assistants, Deputy Superintendents and Superintendents in the Service. Similarly, under 1980 Rules, there exist cadre/grade of Budget Officer, Assistant Registrar and Registrar. It is also seen that under the Rules, appointment by promotion to Grade B-Class-I, i.e., Gazetted cadre, is to be made from amongst the Budget Officers or Superintendents. Therefore, promotion to the post of Registrar (Education) one of the feeder posts is Superintendent. It is seen that as soon as a person is appointed to a cadre/grade, he starts discharging the duties of appointment to the post and his seniority is determined on the basis of that date unless he is appointed only as a stop-gap arrangement or on ad hoc basis and de hors the Rules. In case of regular appointment, the appointing authority is enjoined to put him on probation and on successful completion of the probation period of one year including the period spent on the higher post (s), unless the probation is extended upto a maximum of three years, he stands confirmed in the promoted post. Thus, his confirmation dates back to his initial date of appointment by promotion and by operation of Rule 11 and the

proviso referred to hereinabove, the seniority stands determined from the date of his appointment to the cadre/grade. It would thus be manifest that as soon as the candidate, whether general or reserved, gets promoted from one cadre, e.g., a Clerk is promoted as Assistant on his completion of probation and on declaration thereof, he gets confirmed as Assistant and becomes a member of the Service from the initial date of appointment by promotion. Equally, when an Assistant become Deputy Superintendent and Deputy Superintendent becomes Superintendent, the method of computation of seniority would be the same, viz., as soon as his probation is declared, he becomes a member of the Service. On availability of permanent post, he gets appointed to the post and thereafter ceases to be a member of the feeder/lower cadre. In this regard, under Fundamental Rule 14-A(a) a Government Servant's lien on a post may, in no circumstance, be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. Under Fundamental Rules 14-A(d) a Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or a State Government) outside the cadre on which he is borne. A conjoint reading, thus, would establish that a Government servant shall always have a lien on the post and simultaneously, he shall not have right to hold any lien on more than one post. In other word, the articulated be a member of two post/service/grade/cadre nor is he eligible to hold lien on two posts. On promotion from the post of Clerk as Assistant, on successful and satisfactory completion of probation and declaration thereof, he becomes a member of the Service in the cadre of Assistant and so on till the cycle is complete. Vice versa, there are various stages of promotion to the higher echelons of Service and the same resultant consequence follow. The same principle equally applies in Group B Service under 1980 Rules. This principle is applicable equally to the general as well as reserved candidates. On this principle, there is and there should be no dichotomy and this is the settled service jurisprudence. In the case of appointment by promotion of Dalits and Tribes, no different yardstick should be applied. This is the normal/common phenomenon is service jurisprudence in Service under, either the Union Government or the State Government, or for that matter, semi-Government authorities/corporations/undertakings.

The question then is : whether such a rule becomes arbitrary or violative of equality enshrined under Article 14 read with Article 16 (1) of the Constitution, when applied to Dalits and Tribes? It would be appropriate at this stage to have the benefit of case law on the subject. In the All India Administrative Service (SAS) Association & Ors. V/s. Union of India [(1993) Supp 1 SCC 730], in paras 14 and 15, a Bench of three Judges, to which one of us, K. Ramaswamy, J., was a member, has held that no one has vested right to promotion or seniority but an officer has an interest in seniority acquired by working out the rules. In T.R. Kapoor V/s. Stat of Haryana [(1986) Supp. SCC 584 at 595], this Court observed that "unless it is specifically provided in the rules, the employees who are already promoted before the Amendment of the Rules, cannot be reverted and their promotions cannot be recalled". In State of Maharashtra V/s. Chandrakant Anant Kulkarni [(1981) 4 SCC 130], another Bench of three Judges in paragraph 16 at page 141 had held that "(M)ere chances of

promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service." In *K. Jagadeesan vs. Union of India & Ors.* [(1990) 2 SCC 228 at 230], in para 6, it was held that "a right to be considered for promotion is a term of service, but mere chances of promotion are not"; so also the eligibility for promotion. Passing of the departmental examination is nothing but a mere chance of promotion. In *Ashok Kumar Gupta V/s Stat of U.P.* [1997 (3) SCALE 289 at 299, para 22] this Court comprising all the three of us, had held that "in service jurisprudence, a distinction between a right and interest has always been maintained. Seniority is a facet of interest. When the Rules prescribed the method of selection/recruitment, seniority is given as per the ranking given and governed by such as was laid in the rules". Similar view taken in *A.K. Bhatnagar V/s. Union of India* [(1991) 1 SCC 544] was upheld by this Court. In *Akhil Bhartiya Soshit KarmchariSangh V/s. Union of India* [(1996) 6 SCC 65] to which two of us, K. Ramaswamy and G.B. Pattanaik, were members, this Court has held that no member of the service has a vested right to promotion or seniority but an officer has an interest in seniority acquired by working out the rules. In *Md. Shujat Ali & Ors. etc. v. Union of India & Ors. etc.* [(1975) 1 SCR 449] a Constitution Bench had held that a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing conditions of service. In *Mohd. Bhakar vs. Krishna Reddy* [1970 SLR 268], a Bench of three Judges had held that any rule which affects the promotion of a person, relates to conditions of service. In *State of Mysore v. G.B.* [1967 S.L.R. 753] a Bench of two Judges had held that rule which merely affects chances of promotion cannot be regarded as varying the condition of service. Chances of promotion are not conditions of service. In *Syed Khalid Rizvi & Ors. v. Union of India & Ors.* [1993 supp. (3) SCC 575] to which one of us K.R.S., J. was a members, it was held in para 31 that no employer has a right to promotion; the only right is that he is entitled to be considered for promotion according to rules. Chances of promotion are not conditions of service which defeasible in accordance with the rules. Thus, it is settled principle in the service jurisprudence that mere chances of promotion are not conditions of service and a candidate appointed in accordance with the rule and steal a march over his erstwhile seniors in the feeder/lower cadre. On his having satisfactorily completed probation and declaration thereof, he is given seniority in the higher cadre. He become a member of the higher cadre from the date of starting discharging duty of the post to which he is promoted unless otherwise determined in accordance with the rules. From that date, he ceases to be a Member of the feeder cadre/grade from which he was promoted. The hierarichal promotions to various cadres mentioned hereinabove operate in the same manner and thereby on successive promotion to various cadres/grades, though in the same service, one would steal a march over other, by they general or reserved candidates.

On promotion to the higher cadre, the reserved candidate steals a march over general candidates and becomes a member of the service in the higher cadre or grade earlier to the general candidates. Continuous length of service gives him the seniority cannot get re-opened, after the general candidate gets promoted to the higher cadre/grade, though he was erstwhile senior in the feeder cadre/grade. Would a dual principle of seniority of Dalits and Tribes and general candidates is valid and constitutionally permissible? If a positive finding in that behalf is recorded, it would run contrary to the bed role of judicial precedents and it would be fraught with irreconcilable incongruities in matter of integrating employees drawn from different streams to forge into common seniority or promoted according to rule which hitherto is well-trenched in service jurisprudence. In

State of U.P. v. Dr. Dina Nath Shukla & Anr. [JT 1997 (2) SC 467 para 8] it was held that the craving for equality generates clash of interest and competing claims amongst the people, for emancipation of the Dalits and Tribes from the pangs of absolute prohibition of legal equality under Articles 15(1) and 16(1). Under Article 15(2) to (4) and Article 16(4) and 4(a) read with the Directive Principles, protective discrimination has poured forth practical content, softened the rigour of legal equality and given practical content of equality in opportunity in favour of unequals to hold an office or post under the State in the democratic governance. In paragraph 9, it is further stated that in a democracy governed by rule of law every segment of the society is entitled to a share in the governance of the country. Permanent bureaucracy is a facet of our democratic governance and an integral scheme of the Constitution. Recruitment to a post or an office under State is governed by the Constitution, law and the rules made under proviso to Article 309 of the Constitution or administrative instructions in the absence of statutory rules. Protective discrimination has been upheld by this Court which connotes mitigation of absolute equality in order to achieve equality in result in favour of the disadvantaged segments of the society. Appointment to an office or post gives an opportunity to have equality of status and dignity of person. The object, thereby, is to provide economic equality, Social equality gets realised through facilities and opportunities given to the Dalits and Tribes to live with dignity and with equal status in the society. Economic equality also gives socio economic empowerment, a measure to improve excellence in every walk of life. Equal opportunity of appointment to a post or office is available to all citizens and legitimately and constitutionally entitles them to consider their claims for employment/appointment to an office or post in accordance with rules. Article 335 mandates the State that in the field of competition the claims of Dalits and Tribes shall be taken into consideration consistently with the maintenance in appointment or promotion in favour of Dalit and Tribes is a constitutional right under Article 16(1) and 16(4A) read with Article 46 and other related Articles. Reservation in promotion was upheld by this Court in R.K. Sabarwal & Ors. v. State of Punjab & Ors. [(1995) 2 SCC 745]. It is well settled constitutional principle that reservation in favour of Dalits and Tribes is in favour of the community but not to the individuals belonging to that community, although other ultimate beneficiaries are individuals. In Dr. Jagdish Saran & Ors v. Union of India [(1980) 2 SCC 768], it was held that Dalits and Tribes for the purpose of admission under Article 15(4) stand as a class. "The Constitution has assigned a special place for that factum and the problems of inherited injustice demanding social surgery which, if applied thoughtlessly in other situation, may by a remedy which extenuates their malady." In other words, in social surgery of effectuating actuality in results, reservation in favour of Dalits Tribes is a resultant surgical remedy to the malady. In Dr. Pradeep Jain & Ors. v. Union of India & Ors. [(1984) 3 SCC 654] which was approved in Indira Sawhney's case, discrimination. Now the concept which takes in its sweep every process of equalisation under the canopy of protective discrimination.

Equality must not remain mere idle incantation but must become a vibrant living reality for the large masses of people. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality are antagonistic to and anathema of equality on the ground that every individual is entitled to equality of opportunity based purely on merit mantra judged by the marks obtained by him. We cannot countenance such a suggestion, for to do so would make the equality clause becomes sterile and perpetuate existing inequalities. Equality of opportunity is not simply a

matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities and opportunity for excellence in each cadre/grade. Where, therefore, there is inequality, in fact, legal equality always tends to accentuate inequality. It is, therefore, necessary to take into account de facto inequalities which exist in the society and in order to bring about real equality, affirmative action fills the bill and allows to give preference to the socially and economically disadvantaged persons by inflicting handicaps on those more advantageously placed. Such affirmative action though apparently discriminatory, is calculated to produce equality in result on a broader basis by eliminating de facto inequalities and placing the weaker section of the community on a footing of equality with the stronger and more powerful and a disadvantaged section so that each member of the community, whatever is by his birth, occupation or social position, may enjoy equal opportunity of using to the full, his natural endowments of physique, of character and of intelligence. This principle was approved and reiterated by the Constitution Bench in *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College & Ors.* [(1990) 3 SCC 130]. It would, thus, i.e., a settled constitutional principle that facilities and opportunities should be given to the Dalits and Tribes for promotion to higher cadre or grade, gain accelerated seniority by the Dalit and Tribes and delimit the seniority of the erstwhile general candidates in the lower cadre or grade in accordance with the roster point. Thereby, the Dalits and Tribes are getting and accelerated placement in the higher echelons of cadre or grade. It is constitutionally a permissible classification bearing reasonable nexus to the object of equality in result as component of economic and social empowerment. It is just and reasonable procedure prescribed to achieve the constitutional objectives of equality in result, of status and opportunity and dignity of person to integrate them in the mainstream of the national life, as per the arch of the Constitution, i.e., the Preamble, Article 14, 15, 16 and 46 and all other related Articles of the Constitution consistent with the efficiency of administration envisaged under Article 335 of the Constitution.

In *A.K. Gupta & Anr. v. State of U.P. & Ors.* [1997 (3) SCALE 289 at 302 para 28] we have held that as regards the competing claims between Dalits and Tribes on the one hand and the general candidates on the other, Article 14 and 16(1) render an balancing right to equality in result adjusting the competing rights of all sections. In *Ahmedabad St. Xaviers College Society & Anr. v. State of Gujarat & Anr.* [(1975) 1 SCR 173 at 252] a larger Bench of nine Judges had held that to establish equality, if it would require absolute identical treatment of both the minority and majority, that would result only in equality in law but inequality in fact. Equality in law precludes discrimination of any kind whereas equality in fact may involve the necessity of differential treatment in order to attain a result which establishes an equilibrium between different situations. This Court held that the fundamental rights are to be construed broadly so as to enable the citizen to enjoy the fundamental right by succeeding generations. In *A.K. Gupta's* case, therefore, it was held that "to give adequate representation to the Dalits and Tribes in all posts or classes of posts of services to make it a reality and truism, facilities and opportunities are required to be provided to the Dalits as enjoined in Article 38 for the purpose of achieving equality of representation as a real content. In para 30, it was observed that in abstract application of equality under Article 14, every citizen is treated alike without there being any discrimination. Thereby, the equality, in fact, subsists. Equality prohibits the State from making discrimination among citizen on any ground. However, inequality in fact without differential treatment between the advantaged and disadvantaged subsists. In order to bridge the gap between inequality in results and equality in fact, protective discrimination

provides equality of opportunity . Those who are unequals cannot be treated by identical standards. Equality in law certainly would not be real equality. In the circumstances, equality of opportunity depends not merely on the absence of disparities but on the presence of abilities and opportunities. De jure equality must ultimately finds its *raison d'etre* in de facto equality. The State must, therefore, resort to protective discrimination of the purpose of making people, who are factually unequally, equal in specific areas. It would, therefore, be necessary to take into account de facto inequality in which exists the society and to take affirmative action by giving preference and making reservation in promotion in favour of the Dalits and Tribes or by inflicting handicaps on those more advantageously placed, in order to bring about equality. Such affirmative action, though apparently discriminatory, is calculated to produce equality in result on a broader basis by eliminating de facto inequality and placing Dalits and Tribes on the footing of equality with non-tribal, non- Dalit employees so as to enable them to enjoy equal opportunity in order to unfold their full potentially. Protective discrimination envisaged in Article 16(4) and 16(4-A) is the armour to establish the said equilibrium between equality in law and equality in results as a fact to the disadvantaged. The principle of reservation in promotion provides equality in results.

It is true that Indra Sawhney's ratio on reservation in promotion became a torch bearer to the general candidates but before it could become path-finder, the Parliament enacted 77th Constitution (Amendment) Act and brought on the Constitution Article 16(4A) as a part of the Constitutional Scheme of reservation in promotion to a post. The legislative judgment put off the stream generated by Indra Sawhney's case. It is constitutionally a valid principle which was declared to be so in several judgments referred to and followed and ultimately held as valid in A.K. Gupta's case.

Vir Pal Singh Chauhan's case followed by Ajit Singh's case created euphoria among general candidates that reservation in promotion, though till then had by the Dalits and Tribes, slid back in the seniority scale to the bottom as and when the general candidates in their own turn had got promotion to higher echelons of service. The question is :

whether it is really so and whether it interjected the normal service jurisprudence of continuous officiation in a post or a cadre, unless promotion is not in accordance with rule? In *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors.* [(1990) 2 SCC 715], the Constitution Bench had held in respect of proposition No.1 in paragraph 47 that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his confirmation. The corollary of the above rules is that where the initial appointment is only ad hoc and not according to rules and is made as a stop-gap arrangement, the officiation in such post cannot be taken into account for purpose of determination of the seniority. to appreciate the effect and the real impact of the above two decision, it is necessary to look into the facts therein. In Vir Pal Singh Chauhan's case the principle consideration for promotion was seniority under the rules made by the Railway Establishment Code. The Railway Board issued circular letter dated August 31, 1982 which referred the word `Panel'. It was a case of pure seniority rule. Explaining the meaning of the word `panel prepared by the recruiting authority and in the absence of any specific rules as regards the nature of the effect of seniority in the higher

cadre/grade, the Bench of two Judges considered its effect and held that the word 'panel' used in that circular meant the panel prepared by the recruiting authority at the time of initial entry into service and that the seniority of the employees in the higher grades was also held to be determined with reference to the placement in the initial appointment. It is settled legal position that the ratio decidendi is based upon the facts actually decided. It is an authority of those facts. In the light of the factual position culled out by this Court on the panel position in the lower cadre of the general as well as reserved candidates, this Court in *Vir Pal Chauhan's* case, had held that though the Dalit and Tribes were promoted earlier to the general candidates to a higher cadre/grade, in the absence of such a panel prepared in the promoted cadre/grade, the panel prepared in the lower cadre remained to be operative. Consequently, on promotion of the general candidates, the inter se seniority vis-a-vis reserved candidates remained the same as was found in the lower cadre. That was the real ratio in that case, on the basis of the circular letter referred to hereinbefore. Accordingly, the said ratio, as pointed out by the High Court, does not help the appellants-general candidates for the reason that Rule 11 of 1974 Rules or 1980 Rules expressly occupies the field and determines their inter se seniority in each cadre/grade with reference to the date on which the candidates, be it reserved or general, entered into the service in the promoted cadre/grade. *Vir Pal Chauhan's* case, therefore, is a class of its own and of no assistance when the rules occupy the field governing the seniority position in a particular manner. The Rules alone are required to be looked into and seniority determined in accordance therewith. In fact, this Court in *Vir Pal Chauhan's* case further pointed out that when reserved candidates were promoted from the initial stage to further stage, circular letter has no application and the seniority of the reserved candidates was required to be determined on the basis of seniority position occupied by him in the promoted post. This clearly explains that this Court did not intend to depart from the normal service jurisprudence; nor did it intend to lay down any separate rule of interpretation in determining inter se seniority of the reserved candidates and the general candidates and their fusion into common seniority in the higher echelons over the erstwhile junior reserved candidates. Equally, the ratio in *Ajit Singh's* case, as rightly pointed out by the High Court, is inapplicable. It did not lay down any separate rule in that behalf. In that case it was not brought to the notice of this Court the existence of operation of the service conditions and seniority rule like Rule 11 of the Rule in this case in each grade/cadre or services in Punjab & Haryana Secretariat service or Civil Services. On the other hand, this Court was invited to deal with the circular letter issued by the Punjab & Haryana Government, on the subject of reservation rules. The primary question before the Full Bench of Punjab & Haryana High Court in *Jaswant Singh v. Secretary, Govt. of Punjab & Haryana* [1990 (4) SLR 257] was whether the reserved candidates were eligible for consideration for promotion to the general vacancies? It was held that they were entitled. The further question was :

whether their placement should be in the roster point reserved for Scheduled Castes and Backward Classes, or they are required to be adjusted in the general vacancies



specified in the roster? In Sabharwal's case, the Constitution Bench upheld that the reserved candidates are entitled to compete with the general candidates for promotion to the general post in their own right. On their selection, they are to be adjusted in the general post as per the roster and the reserved candidates should be adjusted in the points ear-marked in the roster to the reserved candidates. Since a slight deviation to that principle was required to be considered in other cases, Ajit Singh case and other cases were delinked. These cases were dealt with in Ajit Singh's case. Therein the question was as to the effect of the consideration of inter se claims of reserved candidates and general candidate to the post/vacancy available to the general candidates. In that background, this Court considered in Ajit Singh's case that since the reserved candidates promoted accordingly to the principal of reservation earlier to the general candidates were not considered, the general candidates and reserved candidates are required to be considered for promotion to the general vacancies on the basis of erstwhile seniority. the inter se seniority in the lower cadre is required to be considered and to that extend the advantage had by the reserved candidates of earlier promotion was not relevant. It is also to be noted that the criteria for promotion in Ajit Singh's case was seniority-cum-merit or merit-cum-seniority in which event the principle of seniority also gains relevancy and is one of the factors to be taken into consideration. It is settled legal position that if the selection is to be made for promotion on the principle of merit and ability, the more meritorious, though junior, steals a march over the less meritorious senior candidate, be it general or reserved candidate. In this case H.S. Hira has stolen a march over his senior Dalits. Where merit and ability are approximately equal, only the seniority in the lower cadre becomes relevant. When the merit-cum-seniority or seniority-cum-merit principle is to be applied, as stated earlier, the seniority being a relevant factor, this Court in Ajit Singh's case has held that the advantage of prior promotion to the reserved candidates is not material circumstance when the general and reserved candidates together are considered for promotion to a higher cadre/grade. The ration in Ajit Singh's case should be understood in the above backdrop and perspective. If so understood, this Court in Ajit Singh's case has not laid down any contra principle to the settled legal service jurisprudence; nor it intended to cut down the effect of the Rule in vogue for determination of the inter se seniority in each cadre/grade in accordance with the Rules. Therefore, it is a simplistic euphoria to think that at all events the earlier promotions had by the reserved candidates have been slide down and put back in the vanguard of the erstwhile seniority position in the feeder cadre/grade. If this clarity of thought is kept in fore-front, there is no occasion to adopt a mistaken application of the principle to all facts in all circumstance. In Ajit Singh's case, this Court did not, therefore, intend to lay down any principle contra to the settled legal principle that continuous officiation to a promoted post in accordance with the rules gives right to seniority. The observation of this Court in Ajit Singh's case that any other rule of construction would be arbitrary violating Article 14 is required to be understood in that backdrop and context. As stated in A.K. Gupta's case, it was held that both general and reserved candidates being citizen of India are entitled to equality of opportunity assured under

Article 14 and 16(1). As held in *Thomas v. State of Kerala* [1976 (1) SCR 906] and approved in *Indra Sawhney's* case, the right to equality to the reserved candidates is a fundamental right under Article 16(1) read with Article 14 which itself guarantees a fundamental right. After the Constitution (77th Amendment) Act, Article 16(4-A) gives fundamental rights to the Dalits and Tribes to promotion to a post or a service in the State. The protective discrimination is a contour to bring about equality in results to the Dalits and Tribes. It is a facet of equality under Article 14, 15 and 16 of the Constitution. Therefore, when competing rights between general and reserved candidates require adjudication and adjustment with the right of general candidates, the doctrine of violation of Article 14 has no role to play since protective discrimination itself is a facet of Article 14 and it does not again deny equality to the reserved candidates. Therefore, in *Ajit Singh's* case when this Court had held that such a rule of reservation would be violative of Article 14 and arbitrary, it does not appear to have meant to destroy the protective discrimination which is a consistent thread running through all situations when reservation was applied in favour of the reserved candidates and the equality in results in achieved. Thus, we hold that the euphoria had by the general candidates from the ratios in *Vir Pal Chauhan's* and *Ajit Singh's* cases is short lived; it does not help in so realising the correct implications arising from the aforesaid ratios. It is settled law that administrative instructions supplement the law but do not supplant the law. It fills only yawning gaps. The administrative instructions issued by the Haryana Government after *Ajit Singh's* case flies in the facet of statutory Rule 11 of the rules. Therefore, it crushes itself with the grinding teeth of the above statutory Rule 11 and the principle. Thus considered, we hold that the view taken by the High Court in that behalf is correct in law and is not vitiated by any infirmity in law. We further hold that the reserved candidates became senior to the general candidates in each successive cadre/grade from Assistant to Superintendent in Class III Service and 5th respondent in Class I Service. Their seniority is not and cannot have the effect of getting wiped out after the promotion of general candidates from their respective dates of promotion. The general candidates remain junior in higher echelons to the reserved candidates as was held by the High Court.

That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or 32 of the Constitution. It is not necessary to reiterate all catena of precedents in this behalf. Suffice it to state that the appellant kept sleeping over their rights for long and elected to wake up when they had the impetus from *Vir Pal Chauhan* and *Ajit Singh's* ratios. But *Vir Pal Chauhan* and *Sabharwal's* cases, kept at rest the promotion already made by that date, and declared them as valid; they were limited to the question of future promotions given by applying the rule of reservation, to all the persons prior to the dated of judgment in *Sabharwal's* case, which required to be examined in the light of law laid in *Sabharwal's* case. Thus earlier promotions cannot be reopened? Only those cases arising after that date would be examined in the light of the law laid down in *Sabharwal's* case *Vir Pal Chauhan's* case and equally *Ajit Singh's* case. If the candidate has already been further promoted to the higher echelons of service, his seniority is not open to be reviewed. In *A.B.S. Karamchari Sangh's* case, Bench of two Judge to which two of us, K.

Ramaswamy and G.B. Pattanik, JJ. were members, had reiterated the above view and it was also held that all the prior promotions are not open judicial review. In Chander Pal & Ors. v. State of Haryana [W.P. (C) Nos. 4715-18/93 dated December 4, 1996] a Bench of two judges consisting of S.C. Agrawal and G.T. Nanavati, JJ. considered the effect of Vir Pal Chauhan's, Ajit Singh, Sabharwal and A.B.S Karmachari Sangh's cases and held that the seniority of those respondents who had already retired or promoted to higher posts could not be disturbed. The seniority of the petitioner therein and the respondent who were holding the post in the same level or in the same cadre would be adjusted keeping in view the ratio in Vir Pal Chauhan and Ajit Singh's cases; but promotion, if any, had been given to any of them during the pendency of this writ petition, was directed not to be disturbed. Therein, the candidates appointed on the basis of economic backwardness, social status or occupation etc. were eligible for appointment against the post reserved for backward classes if their income did not exceed Rs. 18,000/- per annum and they were given accelerated promotion on the basis of reservation. In that backdrop, the above directions came to be issued. In fact, it did not touch upon Article 16(4) or 16(4-A). Therefore, desperate attempts of the appellants to re-do the seniority had by them in various cadres/grades though in the same services according to 1974 Rules or 1980 Rule, are not amenable to judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.

Thus we hold that the decision of the High Court is not vitiated by any error of application of wrong principle of law warranting interference.

The appeal is accordingly dismissed but, in the circumstance, without costs.