

Supreme Court of India

Ajit Singh Januja & Ors vs State Of Punjab & Ors on 1 March, 1996

Equivalent citations: 1996 AIR 1189, JT 1996 (2) 727

Author: S N.P.

Bench: Singh N.P. (J)

PETITIONER:

AJIT SINGH JANUJA & ORS.

Vs.

RESPONDENT:

STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 01/03/1996

BENCH:

SINGH N.P. (J)

BENCH:

SINGH N.P. (J)

VERMA, JAGDISH SARAN (J)

VENKATASWAMI K. (J)

CITATION:

1996 AIR 1189 JT 1996 (2) 727

1996 SCALE (2)526

ACT:

HEADNOTE:

JUDGMENT:

**J U D G M E N T** N.P.SINGH.J These appeals have been filed against the judgment of a Full Bench of the Punjab & Haryana High Court dated 23.8.1989 dismissing three writ petitions (C.W.P.No.2190/88, C.W.P.No 7860/87 and C.W.P.No.7861/87) filed on behalf of the appellants. The petitioners in C.W.P. No. 2190 of 1988 were working on the posts of Superintendent Grade I, Superintendent Grade II and Assistant, in Punjab Civil Secretariat, Chandigarh. They were members of the cadre of Punjab Civil Secretariat. The petitioners in C.W.P.No.7860 of 1987 were working on the posts of Under-

Secretaries/Superintendent Grade I, in the Punjab Civil Secretariat, Chandigarh, and were members of the cadre of Punjab Civil Secretariat. The petitioners in C.W.P.No. 7861 of 1987 were working against the posts of Deputy Secretaries/Under Secretaries in the Punjab Civil Secretariat and were members of State Service Class-I. The primary grievance made in all these writ petitions on behalf of

the different petitioners, was that the policy for reservation in respect of candidates belonging to Scheduled Castes and Backward Classes, was being implemented by the State Government in a manner, because of which the members belonging to the Scheduled Castes and Backward Classes were holding posts in excess to their reservation quota. This was not only prejudicial but detrimental to the right of the petitioners for being considered for promotion to higher grade. Several other similar writ petitions had also been filed on behalf of others which were heard together and were dismissed by the common impugned Judgment.

The State has been issuing from time to time Government Orders in respect of reservations for members of Scheduled Castes and Backward Classes. One such order was issued on 19.10.1949, making 15% reservation of posts in favour of Scheduled Castes to be filled up from amongst candidates who held minimum qualification for the posts. By another order dated 19.8.1952, the percentage of 15% was increased to 19%. By yet another order, dated 29.1.1959 roster system was introduced for implementing the policy of reservation. By an order dated 14.1.1964 reservation was fixed in all classes of posts i.e. I, II, III and IV. However, by an order dated 23.8.1966, the State withdrew reservation for Class I and II posts but the reservation in respect of Class III and IV posts were increased to 20%. On 19.7.1968 a clarification was issued by the State Government saying that in direct recruitment the roster points shall be taken as seniority points for Scheduled Castes. By an order dated 4.5.1974, reservation was reimposed even in respect of Class I and II posts and it was fixed at 16% (14% for Scheduled Castes and 2% for Backward Classes). This reservation was to be provided by applying the roster system. The reservation of 14% posts for Scheduled Castes was the substantive provision and the roster was a machinery provision. By an Order dated 6.6.1974, the quota of reservation was increased to 25% for scheduled Castes and 5% for Backward Classes w.e.f.6.3.1974. On 7.1.1980 the State issued an order, the relevant part whereof says:

"....it is made clear that those scheduled castes/Backward classes employees who get appointed/promoted against reserve points on the basis of their merit/seniority should not be counted for the purpose of reservation but that reserve point should be carried over to the next point on the roster and filled by a candidate/employee belong to Scheduled Castes/Backward Classes so that the deficiency of representation in service is made up".

The aforesaid Government Order dated 7.1.1980 was considered by the High Court in the case of Joginder Singh Sethi vs. Punjab Government, (1982 (2) SLR 307). The operative part of the Judgment of the High Court is:

"For working out this percentage the promotees/appointees in this cadre whether on the basis of reservation or otherwise, have to be taken notice. In the light of this conclusion of ours we hold that any promotions of the members of the scheduled Castes and Backward the basis of above noted instructions of the Government are void and honest".

Civil Appeal Nos.3326-27 of 1982, which have been heard along with the present appeals is against the aforesaid judgment of the High Court in the case of Joginder Singh Sethi (supra). This Court in

those appeals on 8.2.1983 passed an order of stay saying:

"We made it clear by our order dated 19.10.82 that there will be an interim order of stay against reversion of any of the person already appointed on the basis of instructions issued by the Govt of Punjab which have been held to be invalid by the Judgment of the High Court impugned in these appeals and writ petition. We do not think that there is any doubt in regard to what we said, namely that no scheduled castes and scheduled Tribes employees who has already been appointed or promoted pursuant to the instructions of the Government of Punjab will not be reverted but so far as the future appointments/promotions are concerned these shall be made according to the judgment of the High Court and these will be ultimately subject to the result of the writ petition and appeals. If the Govt. makes any appointment/promotions in accordance with the judgment of the High Court the State Govt. will make it clear in the letter of appointment/promotion that the appointment/promotion is subject to the result of the writ petition and appeal so that there is no difficulty in future in case the High Court judgment is reversed by this Court....."

So far the appellants are concerned, they took a stand before the High Court in writ petitions filed on their behalf that when the reservation quota was completes the Scheduled Castes candidates should not further be appointed/promoted. It was said on their behalf that Scheduled Castes and Backward Class candidates who compete on merit, should also be adjusted against the quota reserved for them, otherwise there shall be increase in the percentage of the quota reserved for them. The writ petitions were referred to a Full Bench of the said High Court. Before Full Bench it was also submitted that Scheduled Castes and Backward Class candidates cannot be considered for appointment/promotion against general category posts in a cadre. The Full Bench however said in the case of Jaswant Singh vs. The Secretary to Govt. of Punjab, (1989) 4 SLR 257 that non-consideration of Scheduled Castes candidates against general category posts for purpose of appointment or promotion will be hit by Articles 14, 15 and 16 of the Constitution. It also observed that there was no bar to the appointment/promotion of larger number of members of Scheduled Castes. The members of the Scheduled Castes, appointed on merit or promoted on seniority-cum-fitness basis shall not be taken into consideration for working out the reserved percentage. The High Court also said that roster points were seniority points. In result the Full Bench over-ruled the view taken by the same High Court in the aforesaid Joginder Singh Sethi's case. The conclusion of the Full Bench is:

"Thus, while non-Scheduled Caste candidates are not eligible for appointment or promotion to the reserved posts at the reserved point, the Scheduled Castes candidate are eligible to compete with the general category candidate in respect of the posts which are not reserved and also claim promotion to the same if they are otherwise eligible by virtue of seniority and merit and merely because they happen to be members of the Scheduled Caste, they cannot be deprived of their right to compete for appointment or promotion on the basis of seniority and merit that is constitutionally protected under Articles 14 and 16(1)(2) of the Constitution even

when the total number of Scheduled Castes members in that cadre holding posts are more than the prescribed percentage. Secondly, where Scheduled Caste/Backward Class secure an appointment against 'a reserved point' on the basis of his own merit and seniority and not on the basis of only his being Scheduled Caste/Backward Class, such candidate should not be counted while calculating the percentage of reservation meant for Scheduled Caste/Backward Class, but that reserved point should be carried over to the next point on the roster and filled by candidates belonging to Scheduled Castes/Backward Classes. Thirdly, Scheduled Castes/Backward Classes candidates who are appointed or promoted on the basis of appropriate reservation under the prescribed roster point shall be assigned seniority as per the point reserved for them in the relevant roster irrespective of their position in the general merit list (in case of direct recruitment in Class I, II, III and IV services. In other words, roster points are the seniority points in respect of Scheduled Castes Backward Classes.

In the case of Scheduled Castes/Backward Classes candidate getting selected or promoted on his own merit/seniority, he will retain his original higher seniority position secured by him. The seniority cannot be ambivalent and fluctuating.

It was further said:

"We have already held that reservation does not mean that the Scheduled Castes candidates are deprived from being considered for promotion to the general category seats on the basis of seniority- cum-merit or on the basis of selection on merit. It also not possible to invoke the principle of reservation not exceeding 60 per cent on the total strength as reaching above 50 per cent is not by reason of any such reservation as such it so happened that the candidates who competed for the selection belonged to a particular category in the counter statements that on a number of occasions previously all these posts were held by non-Scheduled Castes. But if two Schedule Castes had already come purely on merit it is, to be taken as a matter gratifying and not to be frowned upon. It is only if reservation in effect amounted to an unreasonable percentage that could if at all be questioned. The percentage of reserved candidates in this case is only 14 and if the Scheduled Castes candidates have come and occupied that position in that cadre on account of their own merit and ability, the reservation itself could not be questioned and they could not be deprived of their right to be considered for selection on the basis of merit and ability. We are, therefore, unable to accept the contention of the learned counsel for the petitioners that the Scheduled Castes candidates cannot be considered for the vacant post".

On the aforesaid findings the different writ petitions were dismissed by a common judgment as already referred to above.

It may be mentioned that some of the questions raised in the cases of Joginder Singh Sethi (supra) and Jaswant Singh (supra) came up for consideration before a Constitution Bench in the case of R.K.Sabharwal vs. State of Punjab, (1995) 2 SCC 745, on a writ petition filed by members of the

Punjab Service of Engineers (Class I) in Irrigation Department, belonging to the general category challenging the policy of reservation in connection with promotion to higher posts. The respondents to the said writ petition were members of the Scheduled Caste. On behalf of the petitioners in that case a stand was taken that the (i) object of reservation was to provide adequate representation to the Scheduled Castes/Tribes and Backward Classes in service and if more than 14% of Scheduled Castes candidates are appointed/promoted in a cadre on their own merit/seniority by competing with general category candidates then the purpose of reservation in the said cadre having been achieved the Government instructions in respect of reservation would become inoperative and (ii) once the posts earmarked for Scheduled Castes/Tribes and Backward Classes on the roster are filled, the reservation is complete and the roster cannot operate any further and has to be stopped. Any post falling vacant, in the cadre thereafter is to be filled from category reserved or general

- due to retirement etc., of whose members the post fell vacant. In respect of the first question mentioned above, it was said:

"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non- reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation."

It was further said:

"The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition.

In respect of the second question as to whether once the posts earmarked for Scheduled Castes/Tribes and Backward Classes on the roster are filled and the reservation is complete the roster can operate any further the constitution Bench said:

"We see considerable force in the second contention raised by the learned counsel for the petitioners. The reservation provided are to be operative in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Schedule Tribes and Backward Classes get their

percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts...." are reserved for members of the Scheduled castes and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87, and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Castes. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards up to 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instruction is reached and not thereafter. Once the prescribed test of adequacy is satisfied and thereafter the roster does not survive.

It was said thereafter that vacancies arising in the cadre after the operation of the roster and the "running account" comes to an end, they have to be filled up from amongst category to which posts belonged in the roster. It was illustrated by saying:

"For example the Scheduled Caste persons holding the posts at roster points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation".

It was also said that the operation of a roster for filling the cadre strength by itself ensures that reservation remains within 15% limit. It was demonstrated by an illustration as to what shall be the consequences if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled by saying:

"We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100-point roster, 14 posts at various roster point are filled from amongst the Scheduled Caste/Scheduled Tribe candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with roster by 31.12.1994. Thereafter in the year 1995, 25 general category persons (out of 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and

Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained."

Reliance was also placed on the judgment of nine Judges Bench in the case of Indra Sawhney vs. Union of India, 1992 Supp.(3) SCC 217 at page 737 para 814 where it was said:

"Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes and Other Backward Classes is 50% which means that out of the 1000 posts 500 must be held by the members of these classes i.e. 270 by Other Backward Classes, 150 by Scheduled Castes and 80 by Scheduled Tribes. At a given point of time, let us say, the number of members of OBCs in the unit/service/category is only 50, a shortfall of 220. Similarly the number of members of Scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all Backward Classes reaches 500, i.e., till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are competition category would become age-barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit as the case may be".

The controversy which has been raised in the present appeals is: whether, after the members of Scheduled Castes/Tribes or Backward Classes for whom specific percentage of posts have been reserved and roster has been provided having been promoted against those posts on the basis of 'accelerated promotion' because of reservation of posts and applicability of the roster system, can claim promotion against general category posts in still higher grade on the basis of their seniority which itself is the result of accelerated promotion on basis of reservation and roster? The learned counsel, appearing for the appellants, took a clear and definite stand that they have no grievance or objection if members of the Scheduled Castes or Backward Classes, for whom reservation has been made and roster has been prescribed even in the promotional posts, get accelerated promotions against those Posts. But the question is: whether, on this basis such 'accelerated promotees' from lower grade to higher grade in service can claim promotion against the general category posts in still higher grade of service merely because they had been promoted before the general category

candidates, who were senior to them in the lower grade and have been promoted later in their turn? In other words, is the benefit of extra seniority obtained by a reserved category candidate by earlier promotion under the reservation policy to the reserved post, also available to him for competing with his otherwise senior general category candidate, who got promoted to the same cadre later only because of the reservation policy, for promotion to a general category post also in the next higher grade.

The High Court has relied on circulars dated 19.7.1969 and 8.9.1969 for purpose of holding that even after the Percentage reserved in a cadre is filled and the roster is complete, the members of the Scheduled Castes and Backward Classes can be promoted against general category posts on basis of seniority. It may be mentioned that the aforesaid circulars do not refer anything about reservation in promotional posts or in respect of roster to be maintained in the form of a "running account". It appears that it was by oversight that for purpose of coming to the conclusion aforesaid reference has been made to those circulars. However, the circular which is relevant in this connection is No.1494-SWI-74/8105 dated 4.5.1974, which had been challenged by the appellants before the High Court. The relevant part whereof is as follows:-

"I am directed to refer to the subject noted above and to say that at present reservation for Scheduled Castes and Backward Classes is applicable in promotions to and within class III and IV only. Since these Castes/Classes are poorly represented in various higher services in the State Government, it has been under the active consideration of the State Government that some reservation in promotions within higher services as well should be made for them. It has now been decided that except in the case of All India Services, 16% of the posts to be filled by promotion to or within Class I and II services under the State Government should be reserved for members of Scheduled Castes and Backward Classes (14% for members of Scheduled Casts and 2% for members of Backward Classes) subject to the following conditions:

(a) the persons to be considered must possess the minimum necessary qualifications, and

(b) they should have a satisfactory record of service. (2). In a lot of 100 vacancies occurring from time to time, those falling at serial numbers mentioned below should be treated as reserved for the members of Scheduled Castes:

1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87, 94 and so on.

Vacancies falling at serial numbers 26 and 76 should be treated as reserved for the members of Backward Classes.

(3) The reservation prescribed shall be given effect to in accordance with a roster to be maintained in each Department. The roster will be implemented in the form of a running account from year to Year..... "



(emphasis supplied) Before we examine the grievance of the appellants regarding the members of Scheduled Castes and Backward Classes, who have been given 'accelerated promotions' because of the policy of reservation and applicability of the roster system, being considered against general category posts in still higher grade, it will be proper to point out that the aforesaid circular dated 4.5.1974 shall be deemed to be invalid, so far it says that the reservation prescribed shall be given effect to in accordance with a roster to be maintained which will be 'implemented in the form of a running account from year to year' because of the judgment of the aforesaid Constitution Bench of this Court in the case of R.K.Sabharwal.(supra). the Constitution Bench has clearly and categorically said that the "running account" is to operate only till the quota provided under the instruction is reached and not thereafter. Once the prescribed percentage of posts is filled thereafter the roster does not survive. As such there is no question of implementing the roster in the form of 'running account' from year to year as provided in the circular dated 4.5.1974.

In view of the judgment of this Court in the case of R.K.Sabharwal(supra) that a member of Scheduled Castes or Backward Classes who enters in service by process of direct recruitment and is appointed on his own merit belongs to a class different from the class who are appointed at the initial stage or are promoted thereafter, applying the principle of reservation and system of roster, the appellants now cannot make any grievance if a member of Scheduled Castes or Backward Class, who has entered into service on his own merit having competed with the general category candidates, is considered and promoted in the higher grade on the posts which are in the general category because of his seniority and merit. The rub is as to whether the members of the Scheduled Castes or Backward Class who have been appointed/promoted on basis of the Policy of reservation and system of roster can also claim to be promoted against general category posts in higher grade on basis of their 'accelerated promotions'. The appellants have also no objection if accelerated promotions in still higher grade posts are given to such appointees/promotees applying the roster system i.e. against the posts reserved for them till the period of five years fixed by this Court in the case of Indra Sawhney (supra) expires. But whether such appointees/promotees can claim promotion against general category posts in the higher grade, on basis of their seniority in the lower grade having been achieved because of the accelerated promotion or appointment by applying the roster.

In R.K.Sabharwal's case, this Court has treated the members of the Scheduled Castes and Backward Classes in two categories i.e. those who are appointed or promoted having competed with general category candidates on merit and those who are appointed/promoted on basis of reservation and roster. For those who have competed on merit it has been held that their number is not to be taken into consideration while working out the percentage of reservation. In respect of those members of Scheduled Castes and Backward Classes, who have been appointed/promoted on the basis of reservation and roster, it has been said in clear and unequivocal terms that the "running account" shall stop after the quota provided under the instructions is reached and the roster cannot be operated thereafter. In other words, there is no question of promoting further number of such candidates, who have been appointed/promoted on the basis of reservation and roster.

If the contention of the respondents is accepted as has been done by the High Court that such appointees/promotees can be considered against posts meant for general category candidates merely because they have become senior on basis of accelerated promotions then, according to us, that exercise shall amount to circumventing the judgment of the Constitution Bench of this Court in the Sabharwal's case, because for all practical purposes the promotions of such candidates are being continued like a running account although the percentage of reservation provided for them has been reached and achieved. Once such reserved percentage has been achieved and even the operation of the roster has stopped, then how it will be permissible to consider such candidates for being promoted against the general category posts on the basis of their accelerated promotion, which has been achieved by reservation and roster.

Recently, this Court in the case of Union of India vs. Virpal Singh Chauhan, J.T.(1995) 7 SC 231 = (1995) 6 SCC 684, Mr.Justice B.P.Jeevan Reddy, speaking for the Court, has said:

"Hence, the seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position. We have discussed hereinbefore the meaning of the expression "panel" and held that in case of non-

selection posts, no "panel" is prepared or is necessary to be prepared. If so, the question arises, what did the circular/letter dated August 31, 1982 mean when it spoke of seniority being governed by the panel position? In our opinion, it should mean the panel prepared by the selecting authority at the time of selection for Grade 'C'. It is the seniority in this panel which must be reflected in each of the higher grades. This means that while the rule of reservation gives accelerated promotion, it does not give the accelerated - or what may be called, the consequential - seniority."

It has been further said:

"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."

It was also said:

"It is true that this case presents a rather poignant turn of events of the thirty three candidates being considered for eleven vacancies, all are Scheduled Castes/Scheduled Tribes candidates. Not a single candidate among them belongs to general category. The learned counsel for the respondent is justified in complaining that appellants

have failed to explain how such a situation has come about. Not only the juniors are stealing a march over their seniors but the march is so rapid that not only erstwhile compatriots are left far behind but even the persons who were in the higher categories at the time of entry of Scheduled Castes/Scheduled Tribes candidates in the service have also been left behind. Such a configuration could not certainly have been intended by the framers of the Constitution or the framers of the rules of reservation. In the absence of any explanation from the authorities, the best we can do is to ascribe it as faulty implementation of the rule of reservation. In other words, not only have the Railways not observed the principle that the reservation must be vis-a-vis posts and not vis-a-vis vacancies but they had also not kept in mind the rule of seniority in the promotion posts enunciated in the Railway Board's circulars referred to supra. Yet another principle which the authorities appeared to have not observed in practice is that once the percentage reserved for a particular reserved category is satisfied in that service category or grade (unit of appointment) the rule of reservation and the roster should no longer be followed. Because of the breach of these three rules, it appears the unusual situation complained of by the general candidates has come to pass. The learned counsel for general candidates to right that such a situation is bound to lead to acute heart-burning among the general candidates which is not conducive to the efficiency of administration."

(emphasis supplied) Once the quota is full and roster has stopped for members of the Scheduled Castes and Backward Classes in respect of whom reservation has been made and roster has been prescribed then their case for promotion to still higher grade against general category Posts have to be considered not treating them as members of the Scheduled Castes or Backward Classes "on any crutch". They cannot be promoted only on basis of their 'accelerated seniority' against the general category posts. In R.K.Sabharwal's case it was said that the candidates belonging to Scheduled Castes who compete on their own merit along with general category candidates then they are not to be counted within the percentage of reservation made for such candidates in the service, because they have competed with the general category candidates on their own merit. The same principle which has been enunciated by the Constitution Bench in the aforesaid case shall be applicable whenever a member of Scheduled Castes or Backward Classes has got accelerated promotion to a higher grade and is to be considered for further promotion to still higher grade against general category posts. The accelerated promotions are to be made only against the posts reserved or roster prescribed. There is no question of that benefit being available when a member of Scheduled Castes or Backward Classes claims promotion against general category posts in the higher grade. It need hardly be pointed out that such candidates who are members of the Scheduled Castes or Backward Classes and have got promotion on basis of reservation and application of roster before their seniors in the lower grade belonging to general category, in this process have not superseded them, because there was no inter se comparison of merit between them. As such when such seniors who belong to general category, are promoted later it cannot be said that they have been superseded by such members of Scheduled Castes

or Backward Class who have been promoted earlier. While considering them for further promotion against general category posts if the only fact that they have been promoted earlier being members of Scheduled Castes or Backward Class is taken into consideration, then it shall violate the equality clause and be against the view expressed not only in the case of R.K.

Sabharwal (supra) by the Constitution Bench, but also by the 9 Judges Bench in the case of Indra Sawhney (supra) where it has been held that in any cadre reservation should not exceed beyond 50%. The 50% posts already being reserved against which promotions have been made then any promotion against general category posts taking into consideration that they are members of the Scheduled Castes or Backward Classes, shall amount to exceeding the limit fixed in the case of Indra Sawhney (supra).

In the Indra Sawhney's case in respect of the question regarding providing reservation in promotion, it was said by B.P. Jeevan Reddy, J with whom it appears seven out of nine Judges constituting the Bench have agreed while one Hon'ble Judge did not express any opinion on that question:

"We see no justification to multiply 'the risk', which would be the consequence of holding that reservation can be provided even in the matter of promotion. While it is certainly just to say that a handicap should be given to backward class of citizens at the stage of initial appointment, it would be a serious and unacceptable inroad into the rule of equality of opportunity to say that such a handicap should be provided at every stage of promotion throughout their career. That would mean creation of a permanent separate category apart from the mainstream

- a vertical division of the administrative apparatus. The members of reserved categories need not have to compete with others but only among themselves. There would be no will to work, compete and excel among them. Whether they work or not, they tend to think, their promotion is assured. This in turn is bound to generate a feeling of despondence and 'heart-burning' among open competition members. All this is bound to affect the efficiency of administration. Putting the members of backward classes on a fast-track would necessarily result in leapfrogging and the deleterious effects of "leapfrogging" need no illustration at our hands. At the initial stage of recruitment reservation can be made in favour of backward class of citizens but once they enter the service, efficiency of administration demands that these members too compete with others and earn promotion like all others; no further distinction can be made thereafter with reference to their "birth-mark", as one of the learned Judges of this Court has said in another connection. They are expected to operate on equal footing with others. Crutches cannot be provided throughout one's career. That would not be in the interest of efficiency of administration nor in the larger interest of the nation. It is wrong to think that by holding so, we are confining the backward class of citizens to the lowest cadres. It is well-known that direct recruitment takes place at several higher levels of administration and not merely at the level of Class IV and Class III. Direct recruitment is provided even at the level of

All India Services. Direct recruitment is provided at the level of District Judges, to give an example nearer home. It may also be noted that during the debates in the Constituent assembly, one referred to reservation in promotions; it does not appear to have been within their contemplation."

It cannot be disputed that the first promotion to such candidates was given without judging him on principle either seniority-cum-merit or merit-cum-seniority in the lower grade. It was given by applying principle of reservation and roster. The impugned circular dated 4.5.1974 quoted above itself says that it had been decided that the 16% of the posts are to be filled up by promotion to Class-I and Class- II services under the State Government, have been reserved for members of the Scheduled Castes and Backward Classes subject to the conditions (a) the persons to be considered must possess the minimum necessary qualifications, and (b) they should have a satisfactory record of service. Thereafter the roster has been fixed in different grades for their accelerated promotions. In this background, while considering them for promotion to general category posts in still higher grade posts, the fact that they had been promoted earlier on basis of the policy of reservation and applying the roster system cannot be overlooked. It also cannot be overlooked that at the first promotion from the basic grade, there was no occasion to examine their merit and suitability for purpose of their promotion. The only requirement prescribed is that they should possess the minimum necessary qualifications and they should have satisfactory record of service. In actual working, it can be demonstrated by an example. In grade 'C' which is the grade of initial entry in the service, there are 10 Posts. On basis of roster the reserved category candidates are at Serial Nos.2, 6 and 10 whereas general category candidates are at Serial Nos. 1,3,4,5,7,8 and 9. On basis of reservation and roster system, the reserved category candidates at Sl.Nos. 2 and 6 are promoted to grade 'B' first. Thereafter Sl.Nos. 1,3 and 4 are promoted who belong to general category. In grade 'A' which is still the higher grade, there are only 3 posts, out of which one is reserved for members of the Scheduled Castes. The candidate who had been promoted on basis of reservation to post at Sl.No.2 will be promoted before general category candidates at Sl.Nos.1,3 and 4 to one of the 3 posts on basis of reservation. Now so far the two remaining posts in grade 'A' are concerned, are meant for general category candidates. But if the principle of "running account" is applied and only the earlier promotion of the candidate who was at Sl.No.6 is taken into consideration, then he shall be promoted to grade 'A' against the second, out of there posts although the quota of reservation and roster is complete with the reservation of the reserved category candidate at Sl.No.2 against one of the three posts. So out of the three posts in grade 'A' two shall be filled up by reserved category candidates beyond the limit of reservation and without any roster being available. In this process the merit of the reserved category candidate at Sl.No.6 has not been considered. It need not be pointed out that but for principle of reservation and roster, he could not have been promoted earlier than candidates at Sl.Nos. 1,3 and 4 in grade 'C'. IN this background, can it not be said that he has been promoted to the second post in grade A because he is a member of Scheduled Caste, as though the post was to be filled up from amongst general category candidates?

The Constitution Bench in R.K Sabharwal has said in clear and unambiguous terms that after the quota is over and roster points are full, then the "running account" of roster shall stop and there is no question of promoting beyond the posts which had been reserved. In the said judgment it has been said in respect of members of Scheduled Castes that if they are appointed/promoted on their

own merit, then such candidates shall not be counted towards the percentage of reservation fixed for them. On the basis of the same logic, whenever members of the Scheduled Castes are to be considered for promotion against posts which are not reserved for them, then they have to be selected on merit only. They cannot claim that as they had been promoted earlier from grade 'C' to grade 'B' on basis of reservation and roster in this process they have superseded the candidates belonging to the general category and even for promotion against general category posts in grade 'A' only requirement shall be satisfactory record of service.

On behalf of the respondents, reliance was placed on the judgment of P.S. Ghalaut v. State of Haryana and Others, (1995) 5 SCC 625, in support of contention that while applying the roster point the merit list prepared for candidates by process of direct recruitment can be disturbed for placement of the candidates belonging to reserved category, at the relevant roster point and it shall not be violative of article 14 or 16 of the Constitution. That judgment has no bearing, so far the present case is concerned. In that case roster was being applied in respect of posts reserved under the relevant Rules, which were being filled up by process of direct recruitment. That case related to process of direct recruitment to the initial cadre of service on basis of principle of reservation and roster.

On behalf of the respondents it was urged that in the case of Union of India vs. Virpal Singh Chauhan (supra) the view expressed by this Court in respect of inter se seniority between the reserved category candidates who had been promoted on basis of reservation and roster earlier than the general category candidates who were senior in the lower grade, and who have been promoted later, has not to be applied in all services. According to the respondents that view was expressed on basis of the circular which was under consideration, in that case where it had been provided that the seniority of the general category candidate was to be restored vis-a-vis the reserved category candidate after the general category candidate was promoted later. According to us, this question cannot be examined only on basis of any circular, order or rule issued or framed by any State Government or the Union of India. This has to be tested on basis of our constitutional scheme of Articles 14 and 16 of the Constitution.

On behalf of the respondents, a stand was also taken that in view of the Constitution Bench Judgment in the case of Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors., 1990 (2) SCC 715, the date of entry in the service determines the seniority of the officer concerned. As the reserved category candidates in the aforesaid illustration had been promoted from grade 'C' to grade 'B' before the general category candidates who were senior to them in the lower grade 'C', the seniority of the reserved category candidates is fixed and determined with reference to the dates of promotion in grade 'B' and they shall rank senior to the general category candidates who were promoted later although they were senior to them in the grade 'C'. This Court in the case of Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra & Ors. (supra) was not considering the question of inter se seniority of categories, who have been promoted on basis of reservation and roster and those who have been promoted from lower grade to higher grade on consideration of seniority- cum-merit or merit-cum-seniority. There the question under consideration, was as to how to fix the seniority of persons entering n service from different sources i.e. by process of direct recruitment and promotion. The policy of reservation cannot be

implemented in a manner to block the merit channel and to make it dry. It is so heartening to note that for whom the founding fathers introduced the provision for reservation to protect and encourage entry in service, now are able to enter service on their own merit by competing with candidates of general category. For promotion or appointment of a member of Scheduled Caste against the post reserved for him the primary question to be considered is as to whether he belongs to a class for whom reservation has been made. But for being considered for appointment or promotion against a general category post, merit is the primary consideration because the applicant is to enter into the service or grade of service through merit channel.

When framers of the Constitution by Article 16 guaranteed equality of opportunity in matters of public employment, they aimed at combining democratization with efficiency. In the process of democratization Article 16(4) enabled the State to make provisions for 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. As has been pointed out by this Court that at the same time Article 335 of the Constitution enjoins to take into consideration the claims of the members of the Scheduled Castes and Scheduled Tribes "consistently with the maintenance of efficiency of the administration" while the making of appointments to services and posts in connection with the affairs of the union or of a State. Thus it has been conceived by our Constitution that a process should be adopted while making appointments through direct recruitment or promotion in which the merit is not ignored. For attracting meritorious and talented persons to the public services, a balance has to be struck, while making provisions for reservation in respect of a section of the society. This Court from time to time has been issuing directions to maintain that balance in the public services so that there should not be discontentment, heart-burning and frustration, which can never be held to be in the larger interest of the society. It has been pointed out in the case of *Indra Sawhney (supra)* that reservation in promotions at various stages has resulted in considerable discontentment because many senior persons in spite of their efficiency and dedicated work find themselves superseded by their juniors belonging to the Scheduled Castes or Tribes for that reason alone. In many cases seniors to their horror find themselves made junior to even those who actually worked as their subordinates due to this factor alone. All concerned who are involved and interested in the uplift and growth of the nation have to work out a system by which the injustice done to a section of people in our society at certain period of history can be rectified by providing protections to their descendants, but we have to be conscious, at the same time that the efficiency of the administration of the country is not harmed and there is no reverse discrimination. Promotion is an important incident of service. It covers both advancement between grades within the same class and between different classes. Seniority in service is one of the important factors in making promotion. Even where process of promotion by selection is adopted, seniority has an importance in case of equal merit. The principal object of a promotion system is to secure the best possible incumbents for the higher position while maintaining the morale of the whole organization. The best public interest is served when equal opportunities for promotion exist for all qualified employees. Civil servants are able to move up 'the promotion ladder' as the merit deserves and the vacancies occur. Right to equality enshrined in the Constitution is to be reserved by preventing reverse discrimination as well. The guarantee of equality requires maintenance of original or panel inter se seniority between the general category candidate and the earlier promoted reserved category candidate under the reservation policy, for promotion to the higher general vacancy. The equality

principle requires exclusion of the factor of extra weightage of earlier promotion to a reserved category candidate because of reservation alone, when he competes for further promotion to a general category with a general category candidate, senior to him in the panel. Any other view would amount to reverse discrimination and violative of the guarantee of equality in Articles 14 to 16.

We respectfully concur with the view in *Union of India vs. Virpal Singh Chauhan*, (supra) that seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give the accelerated consequential seniority'. If a Scheduled Caste/Scheduled Tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category candidate is promoted later to that higher grade the general category candidate shall regain his seniority over such earlier promoted scheduled caste/tribe candidate. As already pointed out above that when a scheduled caste/tribe candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such scheduled caste/tribe candidate, in this process he does not supersede his seniors belonging to the general category. In this process there was no occasion to examine the merit of such scheduled caste/tribe candidate vis-a-vis his seniors belonging to the general category. As such it will be only rational, just and proper to hold that when the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the scheduled caste/tribe who had been given accelerated promotion against the post reserved for him. Whenever a question arises for filling up a post reserved for scheduled caste/tribe candidate in still higher grade then such candidate belonging to scheduled caste/tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in still higher grade then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority cum merit or merit cum seniority. If this rule and procedure is not applied then result will be that majority of the posts in the higher grade shall be held at one stage by persons who have not only entered in service on basis of reservation and roster but have excluded the general category candidates from being promoted to the posts reserved for general category candidates merely on the ground of their initial accelerated promotions. This will not be consistent with the requirement or the spirit of Article 16(4) or Article 335 of the Constitution.

According to us, the Full Bench was not justified in saying in the case of *Jaswant Singh vs. The Secretary to Govt. of Punjab* (supra) that non consideration of Scheduled Castes candidates against general category posts on basis of their prior promotion will be hit by Articles 14, 15 and 16 of the Constitution. That view shall be deemed to be against the pronouncement of this Court by the nine Judges Bench in the case of *Indra Sawhney* (supra) as well as the view expressed by the Constitution Bench in the case of *R.K.Sabharwal* (supra). Accordingly, the appeals are allowed and that part of the judgment of the Full Bench in the case of *Jaswant Singh vs. The Secretary to Govt. of Punjab* (supra) is reversed. Now the case of the appellants and others similarly situated should be considered in the light of this judgment. We are not inclined to examine individual grievances and to work out the effect of the views expressed by us. That shall be done by the State Government. In the facts and circumstances of the case, there shall be no orders as to cost.