

ï»¿CASE NO.:
Appeal (civil) 6970-6971 of 2000

PETITIONER:
M.G. BADAPPANAVAR AND ANR. ETC.

RESPONDENT:
STATE OF KARNATAKA AND ORS.

DATE OF JUDGMENT: 01/12/2000

BENCH:
M. JAGANNADHA RAO & M.B. SHAH & R.P. SETHI, JJ

JUDGMENT:
JUDGMENT

2000 Supp(5) SCR 302

The Judgment of the Court was delivered by M. JAGANNADHA RAO, J. Leave granted

These appeals arising out of SLP (C) Nos. 24115-24116 of 1996 (hereinafter called the main batch) are directed against the judgment of the Karnataka Administrative Tribunal dated 20.11.1996 in Application No. 3756 of 1996 and 4849 of 1996. The Civil Appeal arising out of SLP (C) No. 11218 of 2000 is directed against an interlocutory order dated 11.4.2000 in RP 240/ 2000 filed by the State of Karnataka staying an earlier order passed by the Karnataka High Court in W.P. 45205 to 45210 of 1999 on 11.1.2000, directing disposal of a representation to be filed by the general candidates seeking implementation of the recent judgment of this Court in Ajit Singh 11 v. State of Punjab, [1999] 7 SCC 2091. That is now these cases have come before us.

The facts in the main batch of Civil appeals are as follows :

In a group of OAs filed before the Tribunal, the basic contention raised by the applicants (appellants in this Court) who were general candidates was that when they and the reserved candidates were appointed at level 1 and the Junior reserved candidates got promoted earlier at roster points to level 2 and again by way of roster points to level 3, and when the senior general candidate got promoted in due course to level 3, then the general candidate would become senior to the reserved candidate at level 3. At level 3, the reserved candidate had therefore to be considered along with the senior general candidate for promotion to level 4. This was precisely what was decided by the constitution Bench of this Court recently in Ajit Singh II v. State of Punjab, [1999] 7 SCC 209, which was followed in Ram Prasad v. D.K. Vijay, [1999] 7 SCC 251, Jatindrapal Singh v. State of Punjab, [1999] 7 SCC 257 and Sube Singh Bahmani v. State of Haryana, [1999] 8 SCC 213, all decided on the same day.

The above contention raised by the appellants before us was rejected by the Karnataka Administrative Tribunal in its judgment under appeal. It held on a consideration of Rule 2(c), 4 and 4A and Article 16(1) & (4) of the Karnataka Government Servants (Seniority) Rules, 1957 that the reserved candidates promoted on the basis of roster at Levels 1 and 2 would become seniors from the date of the roster point-promotions and even if a senior general candidate reached Level 3 later, he would not be able to claim seniority over the reserved candidate at Level 3 because the reserved candidate had reached Level 3 earlier. In other words, reserved candidates; could count their seniority at Level 3 from the date of promotion to Level 3. The Tribunal relied upon the words "it is open" to the Government occurring in Union of India v. Virpal Singh, [1995] 6 SCC 684 (at 701, para 24) and distinguished Ajit Singh v. State of Punjab, [1995] 5 SCC 684, Indira Sawhney v. Union of India, [1992] Suppl. 3 SCC 217, R.K. Sabharwal

v. Slate of Punjab. [1995] 2 SCC 745 and other cases. The Tribunal further observed that the parties would be governed by the law as it prevailed prior to the date of the decision in Sabharwal. The Applications of the general candidates were dismissed.

The general candidates have, therefore, filed these main batch of appeals.

So far as the other appeal arising out of the SLP(C) No. 11218 of 2000 is concerned, the appellants are again the general candidates. After the judgment of this Court in Ajit Singh II, the general candidates filed WPs 45205 to 45210 of 1999 seeking directions to the Government to follow A/it Singh II. The High Court passed an order on 11.1.2000 directing the State Government to consider the representation of the appellants to be filed by the general candidates raising the above point. The appellants preferred representation to the State Government, but the State filed RP 240/2000 for recalling the order dated 11.1.2000 on the ground that the present batch of appeals were pending in this Court. The High Court then passed orders on 11.4.2000 slaying its earlier orders dated 11.1.2000. Against the said order dated 11.4.2000, the present appeal has been preferred by the general candidates.

On 9.1.98, the main batch was directed to be listed after disposal of the appeals in Ajit Singh I. After the judgment in A/it Singh II was rendered on 16.9.1999, an order was passed on 21.7.2000, to list the main batch on a non-miscellaneous day. Thereafter the batch along with the other matter was listed before this Bench on 23.11.2000.

In the meantime, the respondent 7 in the main appeal filed IAs 7-8/2000, contending that one Jayachandra, a direct-recruit Executive Engineer, Karnataka had filed an application on 6.8.2000, seeking modification/clarification of paragraph 83 of Ajit Singh II's judgment by deleting the said para on the ground that Ajit Singh II was unworkable, and that till the said IA filed in Ajit Singh II was decided, the hearing of this batch should be postponed.

After hearing learned senior counsel, Sri Rama Jois for the applicant in IA7-8 and Dr. Rajeev Dhawan for the respondents, we have come to the conclusion that the hearing of the present batch need not be postponed because of the pendency of the said IA filed in Ajit Singh II. Firstly, the present respondents before us are not direct recruits but are all promotees. The said IA was filed by a direct recruit and, in our view., it has no bearing on the dispute between the promotee general candidates and promotee reserved candidates. Secondly, it has to be noticed that the said IA was filed by a single direct recruit from Karnataka for clarification of Ajit Singh II (when no other direct recruit from any State or Central or public sector in the whole country had filed any similar clarification petition and when neither the Central nor State Government nor Public Sector undertakings found any difficulty in implementing Ajit Singh II to review the seniority lists)-cannot come in the way of disposal of these appeals before us. We, therefore, dismiss IAs 7-8 of 2000.

We shall now deal with the points in the main batch of appeals preferred by the general candidates. As already stated, the Tribunal applied the seniority Rules in favour of the reserved candidates from the dates of their promotions under the roster at Level I and Level 2. Further, promotions were made from Level 3 to Level 4 treating them as seniors even to those general candidates (who were seniors at level I) who reached Level 3 before the reserved candidates moved to level 4.

We shall first refer to the rules relating to seniority. The said Rules of 1957 read as follows :

"Rule 2 (c) : Seniority inter se persons appointed on temporary basis will be determined by the dates of their continuous officiation in that grade and where the period of officiation is the same, the seniority inter se in

the lower grade shall prevail.

Rule 4 : When promotion to a class of post or cadre are made on the basis of seniority-cum-merit at the same time, the relative seniority shall be determined-

(i) if promotions are made from any one cadre of class of post, by their seniority-inter-se in the lower cadre or class of post;

(ii) if promotions are made from several cadres or classes of posts of the same grade, by the period of service in those grades;

(iii) if promotions are made from several cadres or classes of posts, the grades of which are not the same, by the order in which the candidates are arranged by the authority making the promotion, in consultation with Public Service Commission where such consultation is necessary, taking into consideration the order in which promotions are to be made from those several cadres or classes of posts.

Rule 4A: When promotion to a class of post or cadre are made by selection at the same time either from several cadres or classes of posts or from same cadre or class of post by the order in which the candidates are arranged in order of merit by the appointing authority making the selection, in consultation with Public Service Commission where such consultation is necessary

Explanation-For purposes of this rule, 'several cadres or classes of posts' shall be deemed to include cadres or classes of posts of different grades from which recruitment is made in any specified order of priority in accordance with any special rules of recruitment."

There is no specific rule here permitting seniority to be counted in respect of a roster promotion. In *Ajit Singh I.* [1995] 6 SCC 684, a circular which gave seniority to the roster point promotees was held to be violative of Articles 14 and 16. In *Virpal.* which was later decided, this Court used the words "it is open to the State" and it gave an impression that the State could give seniority to roster point promotees. But in *Ajit Singh II.*, this aspect has since been clarified. It was held that seniority Rules like Rules 2(c), 4 and 4A permitting seniority to be counted from date of initial promotion, govern normal promotions made according to rules - by seniority at basic level, by seniority-cum-fitness or by seniority-cum-merit or by selection - but not to promotions made by way of roster. The roster promotions were, it was held, meant only for the limited purpose of due representation of backward classes at various levels of service. If the rules are to be interpreted in a manner conferring seniority to the roster point promotees, - who have not gone through the normal channel where basic seniority or selection process is involved, - then the rules, it was held will be ultra-vires of Article 14 and Article 16 of the Constitution of India. Article 16(4A) cannot also help. Such seniority, if given, would amount to treating unequals equally, rather, more than equals.

In fact, while dealing with the fundamental right under Article 14 and Article 16, this Court held in *India Sawhney v. Union of India*, (known as the Kerala Creamy layer case). [2000] 1 SCC 168 at 202 while holding that if creamy layer among backward classes were given same benefits as Backward classes, it will amount to treating equals unequally. Equality is a basic feature of the constitution of India and any treatment of equals unequally or unequals as equals will be violation of basic structure of the Constitution of India. That is one more reason why, according to us, the roster point promotees cannot be given seniority. Therefore, if seniority is given, it will violate the equality principle which is part of the basic structure of the Constitution. Even Article 16(4A) cannot, therefore, be of any help to the reserved candidates. That is the legal position under the Constitution of India.

It is clear on facts of this batch of cases that the initial recruitment of these general candidates and the reserved candidates was as Junior Engineers (now called Assistant Engineers) and then the next promotion was to the post of Assistant Executive Engineer and then to the post of Executive Engineer. At both these levels admittedly, there has been a roster operating. Beyond Executive Engineer's post, there is no roster. The appellants and respondents (reserved candidates) were recruited as Junior Engineers and the appellant-general candidate were senior to one or other of the reserved candidates at level 1. The reserved candidates thereafter got promotion as per roster points from Level 1 to Level 2 (Assistant Executive Engineer). From Level 2 the roster promotees were promoted again to Level 3 as Executive Engineers by way of a further roster. The senior general candidates got promoted as per rules - either by seniority at basic level or by selection - and reached the Level 3. By that time the reserved candidates were still at Level 3. But they were promoted to Level 4 treating them as senior to the general candidates. This was done taking into account the fact that the reserved candidates reached the category of Executive Engineers earlier than the general candidates. According to Ajit Singh II, if by the date when the reserved candidates were promoted as Superintending Engineers, the general candidates had already reached the said level by normal promotion system, then the general candidates must be treated as seniors as Executive Engineers to the reserved candidates. The general candidates had a right under Articles 14 and 16 to be considered for promotion as Superintending Engineers as seniors to the reserved candidates. This was unfortunately not done. After Ajit Singh II, this had to be rectified.

It is, therefore, obvious that, in accordance with Ajit Singh II, the seniority lists in the category of Executive Engineers has to be first reviewed, treating the general candidates as seniors to such of the reserved candidates provided the senior general candidates reached Level 3 (Executive Engineer) before the concerned reserved candidate was promoted as Superintending Engineer. After reviewing the seniority and re-fixing the same at the level of Executive Engineer, the promotions to the category of Superintending Engineer have to be next reviewed. While considering the promotions of the reserved candidates at Level 1 (Junior Engineer called later as Assistant Engineer) and at Level 2 (Assistant Executive Engineer), the principles laid down in R.K. Sabharwal's case have also to be kept in mind, as explained in Ajit Singh II. Once the promotions at the level of Superintending Engineers are reviewed, the further promotions to the post of Chief Engineer or equivalent posts or posts higher up have also to be reviewed.

However, in Ajit Singh II, reversions were directed not to be made in respect of reserved candidates promoted on basis of roster-point seniority before 1.3.96. In other words, notwithstanding the review of seniority at various levels starting from the level of Executive Engineer and the consequent downgradation of seniority, if any, at that level, any promotion of a reserved candidate to the post of Superintending Engineer which took place before 1.3.96, - contrary to principles now laid down in Ajit Singh II - should not be disturbed. In Ajit Singh II, this Court also explained what was meant by the prospectivity of Sabharwal w.e.f. 10.2.95. That has also to be borne in mind.

In view of the above general directions, we are therefore not going into individual facts and seniority etc. details of which were placed before us by way of various charts. In our view, the general directions given in this judgment will be sufficient for the purposes of disposal of these appeals.

It was stated before us that the 1st appellant had retired but the 2nd appellant is in service. It was stated that several respondents had also retired. It was also stated that one Sri R.A. Audi, a reserved candidate is now posted as Secretary, in the Department and that therefore, there is no need to pass any orders. We do not agree.

In fact, some general candidates who have since retired, were indeed entitled to higher promotions, while in service if Ajit Singh II is to apply, they would, get substantial benefits which were unjustly denied to them. The decision in Ajit Singh II is binding on us. Following on us, we set aside the judgment of the Tribunal and direct that the seniority lists and promotions be reviewed as per the directions given above, subject of course to the restriction that those who were promoted before 1.3.96 on principles contrary to Ajit Singh II need not be reverted and those who were promoted contrary to Sabharwal before 10.2.95 need not be reverted. This limited protection against reversion was given to those reserved candidates who were promoted contrary to the law laid down in the above cases, to avoid hardship.

We are here adding one more protection to the retired reserved candidates in these cases. Though their seniority is revised at the level of Executive Engineer or above and though they might not have been promoted if the law laid down by this Court in Ajit Singh II and Sabharwal (as explained in Ajit Singh II) were applicable to them at the relevant time, still for purposes of their retiral benefits, the said benefits shall be computed on the basis of the posts factually held by them at the time of retirement and on the emoluments actually drawn by them and not on the basis of the result of any review that is now directed.

So far as the general candidates are concerned, their seniority will be restored in accordance with Ajit Singh II and Sabharwal (as explained in Ajit Singh II) and they will get their promotions accordingly from the effective dates. They will get notional promotions but will not be entitled to any arrears of salary on the promotional posts. However, for purpose of retiral benefits, their position in the promoted posts from the notional dates - as per this judgment - will be taken into account and retiral benefits will be computed as if they were promoted to the posts and drawn the salary and emoluments of those posts, from the notional dates.

The main batch of appeals arising out of SLP(C) Nos. 24115-24116 of 1996 is allowed but without costs and the judgment of the Tribunal is set aside and the directions set out above will be implemented expeditiously from stage to stage. The exercise may be completed, as far as possible, within six month from today.

In view of the directions given in the main batch, the same shall apply in the Civil appeal arising out of SLP 11218 of 2000.

All the appeals stand disposed of accordingly.