

Before R.S. Mongia & S.S. Sudhalkar, JJ.

SHAM LAL,—Petitioner

versus

C.A.T. CHANDIGARH & OTHERS,—Respondents

C.W.P. No. 2266—C/1998

3rd September, 1998

*Constitution of India, 1950—Arts. 16(4) and 226—Government of India instructions dated 24th May, 1974—Reservation Roster—Roster point indicating the slots meant for the reserved categories and general category candidates cannot be treated as seniority points for determination of inter se seniority—Order of Central Administrative Tribunal holding to the contrary set aside.*

*Held*, that if there are any instructions laying down as to how the seniority of a reserved category candidate is to be determined *vis-a-vis* a general category candidate, then we are to follow those instructions. Roster points in the roster do not determine the *inter se* seniority and it is the position in the merit list/select list/panel that would determine the seniority.

(Para 14)

*Further held*, that in view of the letter dated 24th May, 1974 and the law laid down by the Apex Court in *Union of India and others v. Vir Pal Singh Chauhan and others*, 1996(1) RSJ 405, we are of the view that the Central Administrative Tribunal (Chandigarh Bench) was not correct in law in observing that the “question of *inter se* seniority being determined on the basis of the so called merit list prepared by the Selection Committee does not come into picture at all”. This determination was very much required as to whether the roster points are to be treated as seniority points or not.

(Para 15)

Gurdev Singh, Advocate,—for the Petitioner

Ashok Aggarwal, Sr. Advocate with Rajesh Bansal, Advocate,—  
for Respondent Nos. 3 & 4

R.K. Sharma, Advocate,—for Respondent No. 6.

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**JUDGMENT**

*R.S. Mongia, J.*

(1) The primary point, which we are called upon to answer in this case is as to whether the roster point indicating the slots meant for the reserved categories (S.C./S.T./B.C. etc.) and the general category candidates are to be treated as seniority points for determining the *inter-se* seniority of the persons in a particular cadre. Briefly the facts of this case may be noticed.

(2) Respondent No. 6 herein, Smt. Veena Kumari, belonging to S.C. category, a Clerk in the office of the Director, Public Relations, U.T. Administration, Chandigarh, was appointed against a Vacancy reserved for Scheduled Castes category whereas the present petitioner, Shri Sham Lal, was appointed as a Clerk in the same office against the unreserved vacancy i.e. as a general category candidate. The petitioner joined the post on September 20, 1980, whereas Respondent No. 6 had joined on September 22, 1980. As per the roster, the petitioner was shown to have been appointed against the unreserved vacancy at Point No. 3, whereas Respondent No. 6 had been appointed against Point No. 4 on the roster, which was reserved for the Scheduled Castes, thereby making her junior to the present petitioner. Respondent No. 6 represented to the official respondents that in fact she should be made senior to the petitioner inasmuch as she had been appointed against a carried forward vacancy meant for Scheduled Castes and she should be treated to have been appointed at a roster point prior to the roster point on which the petitioner was appointed, which would make her senior to the petitioner. The matter was ultimately referred to the Department of Finance in the U.T. Administration, which clarified that the first vacancy in the year 1980 was reserved for a Scheduled Castes category and since none was available, the reserved vacancy had to be carried forward for three subsequent recruitment years and, therefore, when the petitioner and respondent No. 6 had been appointed, she should have been appointed against a roster point prior to the petitioner, thereby making her senior to the present petitioner. The official respondents, however, referred the matter to the Legal Remembrancer-cum-Director, Prosecution, Chandigarh Administration in September, 1989 for further clarification. The Legal Remembrancer after going through all the points as well as Government of India Brochure of reservation for SC and ST opined that the roster points are intended to determine number of vacancies to be reserved and are not meant

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to determine the order of appointment or seniority. Accordingly, an official higher in merit has to rank senior to the one who is lower in merit as per the rules. Consequently, the case of Respondent No. 6 for being placed higher in seniority to the present petitioner was rejected by the department. She took the matter before the Central Administrative Tribunal (Chandigarh Bench), who vide impugned order dated 2nd December, 1997 (Annexure P.1), decided the case in her favour to the effect that she had to be given roster point at Sr. No. 3 above the present petitioner and on that basis she would rank senior to the present petitioner, (who was Respondent No. 5 before the Tribunal). The Tribunal observed as under :—

“We are rather surprised that in matters of interpretation of administrative instructions, the respondent-department took the reference to the Legal department in a bid of subterfuge. We are sorry to observe that the interpretation made by the L.R. falls short of the real interpretation behind the reservation rules. There are a catena of judgments of the Hon’ble Supreme Court saying that the reserved points have to be kept for the beneficiaries of the reserved community and that is why, the carry-forward formula has been devised, so that the points which could not be filled up due to non-availability of SC candidates in a particular year are not lost to that community. Latest Judgment in the case of R.K. Sabharwal and others v. State of Punjab and others 1995(1) SCALE 138 clinches the whole issue, which says that the reserved points have to be kept for the reserved community candidates in perpetuity, and the vacancy if reserved for a particular community has to be filled up by a candidate of that community only. It is an admitted fact that Point No. 1 was reserved for a SC candidate and was not filled because of non-availability of a SC candidate during the first recruitment year. Once the third recruitment had been completed and a SC candidate had become available, it was the bounden duty of the respondent-department to have given the same point to the applicant, who belongs to the SC community. The question of *inter-se* seniority being determined on the basis of the so-called merit list prepared by the Selection Committee does not come into picture at all.

3. In view of the above, we find the O.A. sustainable in the eyes of law and we accordingly quash the impugned orders

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at Annexure A1, by which the applicant's representation regarding her seniority was rejected. We also direct that the applicant shall be given seniority as per the roster point at Sr. No. 3 above Shri Sham Lal-respondent No. 5 and her subsequent promotion shall also be made on that basis and respondent No. 5 shall be brought down from the relevant date, if needed. All other consequential reliefs flowing out of this change in the seniority shall also be given. These orders shall be complied with within a period of 3 months from the date of receipt of a copy of this order."

(3) Petitioner has filed the present writ petition challenging the aforesaid order of the Tribunal.

(4) Learned counsel for the petitioner argued that though there may be some constitutional and political justification for reservation of posts in favour of SC/ST/BC and on the basis of such reservation appointments may be given to the members of the reserved categories against the vacancies reserved for them irrespective of their low merit position, but that will not entitle them to claim seniority on the basis of the roster points against which they are given appointments. In support of his contention, he cited a judgment of a learned Single Judge in *Zile Singh Mehra v. State of Haryana* (1).

(5) It was further contended that the Government of India had issued instructions dated 24th May, 1974, which are applicable in the present case, which specifically lay down that seniority is not to be determined as per the roster points, but would depend on the merit position as is determined by the selecting body. The relevant extract of the instructions dated 24th May, 1974, Annexure P. 5, may be reproduced as under :—

*"Subject :—*Reservation for Scheduled Castes and Scheduled Tribes in posts filled by direct recruitment through examination-reservation roster and order of appointments.

The undersigned is directed to say that the rosters which have been prescribed to give effect to the reservations for Scheduled Castes and Scheduled Tribes,—*vide* O.M. No.1/11/69-Estt. (SCT), dated 22nd April, 1970 and No. 1/3/72-Estt. (SCT), dated 12th March, 1973 are for determining the number of vacancies to be reserved for

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Scheduled Castes and Scheduled Tribes in any particular examination, recruitment etc. and the roster is not for determining the order of actual appointment or for the purpose of determining seniority. After determining the number of reserved vacancies on the basis of the roster, the names of the selected candidates both general as well as those belonging to Scheduled Castes/Scheduled Tribes are arranged in the order of their *inter-se* merit. Since in the case of direct recruitment through examination, generally all the selected candidates are appointed simultaneously, the question as to in which order of appointments should be made against reserved vacancies, will not arise normally.....”

(6) According to the learned counsel for the petitioner the Tribunal did not consider the aforesaid instructions on the point. Similar instructions had been issued by the Haryana Government and a learned Single Judge of this Court in *Bhoop Singh Tikania v. Haryana Ware Housing Corporation* (2) held that roster points cannot be treated as seniority points. It was further contended that the apex Court while considering the similar matter in *Union of India and ors. v. Vir Pal Singh Chauhan and ors.* (3) held that the roster points are not to be treated as seniority has to be determined in accordance with the rules/instructions laying down the method of determining seniority. The official respondents supported the view point of the learned counsel for the petitioner.

(7) However, learned counsel for Respondent No. 6 argued that to give effect to the reservation, necessarily a roster has to be maintained identifying the vacancies which are to go to reserved category and the general category. If a reserved category candidate is appointed on a roster point reserved for such a category earlier than a general category candidate, who may be appointed on a later unreserved point, though on the same day, then irrespective of the merit determined by the Selecting body, the reserved category candidate would rank senior to the general category candidate. In support of his contention he has relied upon a judgment of the apex Court in *P.S. Ghalaut v. State of Haryana*(4).

(8) After hearing the learned counsel for the parties, we are of the view that there is substance in the argument of the learned

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(2) 1994 (4) R.S.J. 388

(3) 1996 (1) R.S.J. 405

(4) 1995 S.C.C. (L&S) 1270

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counsel for the petitioner. In *Vir Pal Singh Chauhan's* case (*supra*), the apex Court was considering the import and effect of the various instructions/letters issued by the Railway Board pertaining to reservation and how the seniority was to be determined of the reserved categories on their initial appointment and appointment by way of promotion. The Supreme Court considered the letter of the Railway Board dated 19th January, 1972, paragraph 3 of which reads as under :

“3. The seniority of candidates belonging to Scheduled Castes and Scheduled Tribes vis-a-vis others will continue to be determined as at present, i.e., according to the panel position in the case of categories where training is not provided and in accordance with the merit position in the examination where training is provided.”

(9) The Apex Court also referred to another Railway Board's letter dated 31st August, 1982 dealing with the subject “Reservation for Scheduled Castes and Scheduled Tribes in promotion in Group ‘D’ and ‘C’ (Class IV and Class III) on the basis of seniority-cum-suitability”. Para 4 of the said letter is as under :—

“Against the above background, the matter has been reviewed by the Board. It has been decided that posting of Scheduled Caste/Scheduled Tribe candidates on promotions in non-selection posts should also be done as per the reserved points on the roster subject, however subject to the condition that seniority of the Scheduled Caste/Scheduled Tribe candidates in comparison to other candidates will continue to be governed by the panel position in the case of categories where training is not provided and in accordance with the merit petition in the examination where training is provided.”

(10) After quoting the aforesaid extract of the letter dated 31 August, 1982 and noticing some other circulars in para 14 of the reported judgment, it was observed by the apex Court as under :—

“It is evident that this letter is speaking of the seniority position in the initial entry category/grade. It says that while posting shall be done as per roster points, seniority shall continue to be governed by the ranking given in the selection list/panel. This clearly brings out the departure being made from the normal principle that the date of entry in a category/grade determines the seniority.”

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(11) Another Railway Board's letter dated 20 October, 1960 was also considered by the apex Court and in paragraph 16 of the reported judgment, it was observed as under :—

“The Railway Board's letter dated 20 October, 1960 referred to in the judgment of the Madhya Pradesh High Court in G.C. Jain (*supra*) says, “seniority of SC/ST employees will be determined under the normal rules. The reservation roster is considered only a machinery to ensure the prescribed percentage of reservation for SC/ST employees and should not be related to the question of seniority and confirmation. If any of the SC/ST employee is confirmed in the post by virtue of roster, such confirmation will not give them any benefit in respect of seniority.” Again, the very same idea stated clearly.”

(12) The apex Court, after observing as above, explained as to what is meant by the panel position used in the circulars. In paragraph 25 of the reported judgment, it was observed as under :—

“Now let us see how does the above principle operates in practice. Selection is made for direct recruitment to Grade 'C' Guards. A panel is prepared by the selecting authority on the basis of and in the order of merit. Appointments have to be made from out of this list/panel. But appointment orders will not be issued in the order in which the candidates are arranged in this select list/panel; they will be issued following the roster. Suppose the forty-point roster is being operated afresh, then the first vacancy in the roster would go to a Scheduled Caste candidate though he may be down below in the select list/panel. The candidate at Sl. No. 1 in the said select list a general candidate will be appointed in the second vacancy. But once appointed, the general candidate (at Sl. No. 1 in the select list) will rank senior to the Scheduled Caste candidate though he (general candidate) is appointed subsequent to the Scheduled Caste candidate. Now take the case of promotions (based on seniority-cum-suitability, i.e., non-selection posts) to Grade 'B'. Roster applies even to promotions to Grade 'B'. Again assumed that the forty-point roster is opening now in Grade 'B'. The first vacancy has again got to go to a Scheduled Caste candidate though he may not be the seniormost in Grade 'C'. The seniormost

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candidate in Grade 'C' (the general candidate, who was at Sl. No. 1 in the select list/panel and who regained his seniority on appointment to Grade 'C' as aforesaid) will be promoted in the next vacancy. But once promoted, the general candidate again becomes senior to the Scheduled Caste candidate though promoted subsequent to the Scheduled Caste candidate. And so on and so forth. It is in this manner that the rule of reservation (and the roster) merely enables a reserved category candidate to obtain an appointment or promotion, as the case may be which he may not have obtained otherwise or would not have obtained at the time he is now getting; but it does not give him the seniority. In this sense, the rule confers a limited benefit a qualified benefit. We have already stated that such a rule of reservation does not fall foul of Article 16(4)."

(13) The Supreme Court also laid down that the circulars/ letters issued by the Railway Board providing for reservation in favour of Scheduled Castes/Scheduled Tribes candidates, rosters and their operation and on the subject of seniority as between general candidates and reserved category candidates, being in the nature of special rules prevail over the general instructions contained in Volume I of the Indian Railway Establishment Manual.

(14) It will be apparent from the observations of the Apex Court, culled out above, that if there are any instructions laying down as to how the seniority of a reserved category candidate is to be determined vis-a-vis a general category candidate, then we are to follow these instructions. In paragraph 26 of the reported judgment of the apex Court (*supra*) (which has already been quoted above), it is evident that the Supreme Court was laying down on the basis of the circular that if a scheduled caste candidate is directly appointed on roster point No. 1, though he may be down below in the select list/panel, and a general category candidate, who may be at Sr. No. 1 in the select list and is appointed at roster Point No. 2, yet the general category candidate would rank senior to the reserved category candidate irrespective of the fact that the Scheduled Castes candidate was appointed at Roster point No. 1. In other words, roster points in the roster do not determine the *inter se* seniority and it is the position in the merit list/select-list/panel that would determine the seniority.

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(15) Applying the aforesaid ratio to the facts of the present case, we may observe here that Union of India had also issued a letter dated 24th May, 1974 (reproduced above), which is contained in the brochure issued by the Department of Personnel and Administrative Reforms. This letter is similar to the letters/instructions issued by the Railway Board to which reference had been made by the apex Court in *Vir Pal Singh Chauhan's case* (supra). A reading of the letter dated 24th May, 1974 (supra) clearly shows that it was never intended that roster points would be considered as seniority points; rather the letter specifically lays down that the roster is not for determining the order of actual appointment or for the purpose of determining seniority. In view of the aforesaid letter and the law laid down by the apex Court, we are of the view that the Central Administrative Tribunal, (Chandigarh Bench) was not correct in law in observing that the "question of *inter se* seniority being determined on the basis of the so-called merit list prepared by the Selection Committee does not come into picture at all." This determination was very much required as to whether the roster points are to be treated as seniority points or not. A Learned Single Judge of this Court in *Bhoop Singh Tikania's case* (supra) had, while considering the similar instructions of the Haryana Government where it was laid down that the roster points are not the seniority points, held that seniority will have to be determined in accordance with the rules and not as per the roster points. The Judgment of the apex Court in *P.S. Ghalaut's case* (supra) relied upon the learned counsel for the private-respondent will have no application to the facts of the present case as in that case there were no instructions laying down that the roster points will not be seniority points as it was in *Vir Pal Singh Chauhan's case* (supra) to which detailed reference has already been made above. As observed above, in the present case, there are definite instructions dated 24th May, 1974 laying down that roster points are not seniority points.

(16) For the foregoing reasons, we allow this writ petition, set aside the order of the Tribunal and hold that the seniority of the petitioner vis-a-vis Respondent No. 6 would be fixed according to the rules and not as per the roster points.