

CASE NO.:
Appeal (civil) 5324 of 1999

PETITIONER:
SUBE SINGH BAHMANI AND ORS.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 16/09/1999

BENCH:
A.S.ANAND CJI & K.VENKATASWAMI & G.B.PATTANAIK & S.P.KURDUKAR & M.JAGANNADHA RAO

JUDGMENT:
JUDGMENT

DELIVERED BY:
M.JAGANNADHA RAO, J.

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Leave granted in special leave petitions. These three appeals arise out of the dispute between general candidates and reserved candidates in Haryana in regard to their seniority. The appellants are the reserved candidates. In Haryana, it is important to note that the Government had issued a Circular on 9.2.79 that on promotion at the roster point, the reserved candidates would not count their seniority. This was reiterated by an elaborate Circular dated 10.1.97 recently issued after Ajit Singh [1996 (2) SCC 715] (hereinafter called Ajit Singh No.1) was decided by this Court on 1.3.1996. Before us, the learned senior counsel for the State of Haryana, Sri Rajeev Dhawan submitted that the said Circulars correctly reflect the legal position. Today, we have delivered judgment in IAs 1 to 3 filed by the State of Punjab in C.As.3792-94/89 (Ajit Singh's case). We shall describe it as Ajit Singh No.2. We agree that the above Circulars correctly reflect the legal position. There are three Civil appeals before us. The first of these appeals is Sube Singh Bahmani Vs. State of Haryana (Civil Appeal arising out of SLP(C) No. 16648/96). This appeal is filed against the judgment of the Punjab and Haryana High Court in C.W.P. 5533 of 1996 dated 10.7.96. The second one Gian Singh and Ors. Vs. State of Haryana (Civil appeal arising out of SLP(C) No.23107/96) is also against the judgment dated 10.7.96 in C.W.P. 5397/96. The appellants belong to the reserved category. The third Civil appeal arising out of SLP(C) 4945/97 Kamal Kanta and Anr. Vs. State of Haryana is filed against the judgment of the same High Court dated 16.1.97 in C.W.P. 4592/96. The appellants are again reserved candidates. We shall refer to the relevant rules in each of these three cases.

In Sube Singh Bahmani's case, the Rules are as follows. The posts belong to the Punjab Financial Commission Officers governed by (Group B) Service Rules, 1986 which consists of Superintendent and equivalent post in Class II. Below that, the post of Clerk, Assistant and

Deputy Superintendent which are Class III posts, are governed by the Punjab Financial Commission Class III Rules, 1957. In the former, Rule 9(3) provides that the promotion shall be based on seniority-cum-merit but that no person shall be entitled to claim promotion on the basis of seniority alone. Rule 11 states that seniority shall be determined on the basis of continuous length of service. In the latter, i.e. 1957 Rules, Rule 7(2) states that all appointments, whether by promotion or transfer shall be strictly by selection while Rule 11(c) states that seniority shall be determined in accordance with the seniority in the appointment from which they are promoted but in the case of Assistant, their seniority shall be determined in the order they are promoted, as such. Admittedly, there is roster to implement reservation for promotion at Class III Level from the post of Clerk to the post of Assistant and from the post of Assistant to the post of Deputy Superintendent. Beyond that there is no reservation in Class II or Class I post. In Gian Singh's case and in Kamal Kanta's case, the parties belong to the Haryana Civil Secretariat Service. The appellants are reserved candidates. The parties are governed by the Punjab Civil Secretariat (State Service, Class III) Rules, 1952 as adopted/amended in Haryana (vide notification dated 15.3.78 etc). Rule 6 deals with recruitment including by way of promotion to the posts of Assistant and Deputy Superintendents. Rule 6(3) requires promotion by way of 'selection'. Clause 9(c) states that seniority in respect of those who are promoted shall be determined according to the seniority in the appointments from which members are promoted. In the Class II service, i.e. Superintendents etc. they are governed by the Punjab Civil Secretariat (State Service Class II) Rules, 1963 (adopted by Haryana by notification dated 25.9.68). Rule 8 of the Rules deals with recruitment by promotion and Sub-clause (3) states that promotion shall be on the basis of seniority-cum-merit and no person shall be entitled to claim promotion on the basis of seniority alone. Rule 10(1) states that seniority shall be reckoned from the date of continuous appointment. There is roster promotion in Class III and not in Class II. At the level of Under Secretary and above, they are governed by the Haryana Secretariat Service(Group-A) Rules, 1979. Admittedly, there is a roster for reserved candidates so far as Class III posts are concerned but not to Class II or Class I posts. Under all these rules the seniority rule of continuous officiation is linked up with the promotion rule and cannot be delinked as explained in Ajit Singh No.2 and applied to the cases of the roster point promotees.

All these three appeals will therefore be governed by our decision on Points 1 to 3 in Ajit Singh No.II in regard to seniority and our decision on Point 4 in that case in regard to the prospectivity of R.K.Sabharwal [1995 (2) SCC 745] and Ajit Singh No.1 [1996 (2) SCC 715]. The respective cut off dates of each of these decisions as explained in Ajit Singh No.2 will apply. We shall now take up the special factual points arising in these three cases. (A) Sube Singh Bahmani (Civil Appeal arising out of SLP(C)No.16648/96:

There is one important aspect of the case which deserves notice. It is the claim of the sole appellant, Sube Singh Bahmani that he has been promoted as Dy.Superintendent(see p.192) on 15.5.86 subject to the result of Chander Pal vs. State of Haryana since disposed

of by judgment reported in [1997 (10) SCC 474]. He contends that he has also been promoted as Superintendent on 6.1.88 and that respondents 2, 3, 4, 5, 6 have been promoted as Deputy Superintendents on 16.11.88, 20.9.89, 11.8.92, 8.11.95 and 8.12.95, much after his further promotion as Superintendent on 6.1.1988 and that the other respondents have not even reached the level of Deputy Superintendents by that date.

But as per the counter filed by the State of Haryana in this Court dated 14.1.97 (see p.209 of paper book), it is clear that on account of some dispute raised by other reserved candidates (like Sri Ravi Prakash), the date 6.1.88 of promotion of the appellant as Superintendent has been altered by the government as 10.4.89 (vide Govt. Order dated 19.2.90)(p.145). That, in our view, makes all the difference. That will mean that the 2nd respondent (Darshan Singh) (1st writ petitioner) (general candidate) has reached the level of Dy.Superintendent on 16.11.88 before Sube Singh Bahmani was promoted as Superintendent on 10.4.89. It is true, the fact that Sube Singh Bahmani was promoted as Superintendent before 1.3.96 would require his not being reverted. But Darshan Singh, the 2nd respondent has become Dy.Superintendent on 16.11.88, long before Ajit Singh No.1 and as stated by us in Ajit Singh No.II, it does not matter whether the general candidate reaches the level of Dy. Superintendent before or after Ajit Singh No.1. Darshan Singh has to be considered senior to Sube Singh Bahmani at the level of Dy.Superintendent. Of course, so far as respondents Nos. 3 to 6 and other respondents (general candidates) are concerned, we are of the view that they can have no claim against Sube Singh Bahmani as none of them reached the level of Dy.Superintendent before 10.4.89. Thus, if 2nd respondent, Darshan Singh (general candidate), in spite of his seniority at the level of Dy.Superintendent was not considered for promotion as Superintendent when Sube Singh Bahmani was promoted as Superintendent, it will be necessary to consider his case vis-a-vis Sube Singh Bahmani for fixing up their inter-se seniority at the level of Superintendent. We direct accordingly. However, this appeal will succeed as against other private respondents (i.e. other than respondent 2), subject of course, to the principle relating to prospectivity of Sabharwal and Ajit Singh No.1, as explained in Ajit Singh No. II, and the respective cut off dates as stated therein will apply.

This Appeal is disposed of accordingly. .pa (B) Gian Singh's case : Civil Appeal arising out of CWP. 5397/96 (SLP 23107/96) The three appellants are reserved candidates. The respondents 6 to 9 are also reserved candidates. All 7 of them were impleaded as respondents 2 to 8 in the writ petition. The respondents 2 to 4 were the writ petitioners (general candidates). The writ petition was allowed following Ajit Singh No.I. In order to appreciate the factual issues arising in the case, we have to note the following relevant dates. We have analysed the various dates of appointments/promotions as disclosed from PP. 60, 77, 108-109 of the paper book and the printed Tabular statement filed in the case. It will be sufficient to note the following dates. (It is convenient to adopt the array of parties as in the CWP).

Writ petitioners: General clerk Asst. Deputy Supdt.
Dy./Under candidates Supdt. Secry (as on 1996) .ls1

(1)Balwant Kr.Gupta 1.3.58 -- 6.5.85 -- 6.9.91 Under Secretary (WP 1) (R2 in CA)

(2)S.B.Bhatia 19.1.59 -- 13.3.87 -- 18.6.93 Under Secretary (WP 2)(R3 in CA)

(3)R.D. Gupta, Supdt. 7.4.60 -- 30.4.90 3.4.91 --

(WP3)(R4 in CA)

(4)H.C.Chhabra, Supdt. 4.11.60 -- 7.1.91 8.7.91 -- (WP4)(R5 in CA)

Respondents in W.P.:

Reserved candidates

(1)Sagar Mal,Dy.Secy. 16.11.60 -- -- -- 23.1.87 (R2 in WP)(R6 in CA)

(2)Chanan Ram,Dy.Secy.14.5.65 -- -- -- 5.3.90 (R3 in WP)(R7 in CA)

(3)Baldev Singh, 8.12.59 -- -- -- 11.2.91 Deputy Secretary (R4 in WP)(R8 in CA)

(4)Gian Singh, 15.6.71 30.10.73 17.6.83 11.2.85 7.3.91 Under Secretary (R5 in WP) (Appt. 1 in CA)

(5)Sammatt Singh, -do- 9.8.71 -- -- -- (R6 in WP)(R9 in CA)

(6)Sadhu Singh, Supdt. 9.8.71 2.5.77 21.3.90 3.4.91 -- (R7 in WP) (appt 2 in CA)

(7)B.L.Grover, Supdt. 12.8.71 28.7.77 23.11.90 8.7.91 -- (R7 in WP) (Appt. 3 in CA)

(It appears from CC.133/97, that the general candidates were further promoted as Under-Secretary on 19.2.97 before the reserved candidates Sadhu Singh and B.L. Grover were so promoted). The paper book further discloses that when the reserved candidate Gian Singh was promoted as Assistant under the roster, he moved over 33 clerks (general) and when he was promoted as Dy. Superintendent again as per roster, he moved over 157 Assistants(general); similarly Sadhu Singh moved over 13 clerks(general) and 158 Assistants(general); likewise B.L.Grover moved over 7 clerks(general) and 163 Assistants (general) at these stages and that is how they reached the level of Dy. Superintendent. It will be noticed that when Gian Singh(reserved) became Superintendent on 11.2.85, none of the general candidates(writ petitioners) reached the level of Dy.Supdt. before that date. Thus writ petitioners (general candidates) can have no claim against Gian Singh. Obviously, other reserved candidates who were senior to Gian singh viz. Sagar Mal, Chanan Ram and Baldev Singh who were Dy.Superintendents must have become Superintendents even before Gian Singh i.e. before 11.2.85 and thus writ petitioners (general candidates) can have no claim even against them.

However, so far as the reserved candidates Sadhu Singh

and B.L.Grover are concerned, by the time they were promoted as Superintendents on 3.4.91 and 8.7.91, all the 4 writ petitioners became Dy. Superintendents. Sammat Singh appears to be in like position. Writ petitioners 1 to 4 reached the level of Dy.Superintendent on 6.5.85, 13.3.87, 30.4.90 and 7.1.91. The four writ petitioners have, therefore, a rightful claim for seniority over Sadhu Singh, B.L.Grover and Sammat Singh at the level of Dy.superintendent. In that event, even if the above reserved candidates have been earlier promoted as Dy.Superintendents, they have to be treated as juniors to the 4 writ petitioners at that level. True, promotions made before 1.3.96 when Ajit Singh No.1 was decided will stand and there will be no reversions. But the seniority of the general candidates at the level of Dy.Superintendents is to be fixed as stated above. If the seniority of these four general candidates has not been taken into account when the reserved candidates were promoted as Superintendents and above, the same has to be reviewed. The promotion to and the seniority at the level of Superintendent and Under Secretary between the 4 writ petitioners (general candidates) and Sadhu Singh, B.L.Grover and Sammat Singh has, therefore, to be reviewed because their case is not like the case of Gian Singh. Ajit Singh No.II will have to be implemented. Points 1 to 3 as decided there will govern seniority and Point 4 there will govern the prospectivity of Sabharwal and the prospectivity of Ajit Singh No.1. The respective cut off dates have to be adhered to. This appeal is disposed of accordingly.

(C) Kamal Kanta's case (Civil Appeal arising out of SLP(C) No.4945/97): The facts of the case are that the two appellants, Ms. Kamal Kanta and Sri Girdhari Lal are reserved candidates while respondents 2 to 8 are general candidates. The writ petition was filed by the general candidates Shyam Sunder and others and was allowed by the High Court. The promotions from the post of Clerk to Assistant and Assistant to Dy. Superintendent were by way of a roster so far as the appellants were concerned. The two appellants were promoted as Dy. Superintendents on 23.6.95 and 23.11.95 respectively while respondents 2 to 5, (general candidates) who were senior to them as Assistants, were all promoted as Dy.Superintendents on 8.2.96. Now Ms.Kamal Kanta was promoted as Superintendent on 18.3.96(p.58) subject to Chander Pal (later decided as 1997 (10) SCC 474) but by that date the respondents 2 to 5 were also promoted as Dy.Superintendents. Respondents 2 to 5 have to be treated as seniors to her at the level of Dy.Superintendent. No doubt, Ms.Kamal Kanta was promoted as Superintendent on 18.3.96 and the respondents 2 to 5 were promoted later as Superintendents on 27.6.96, 27.6.96 (see p.65), 8.10.96(p.67) and 11.12.96 respectively. She will not be reverted. But the seniority at the level of Deputy Superintendents has to be refixed and if the case of the senior general candidates at the level of Deputy Superintendent was not taken into account while promoting the reserved candidate as Superintendent, the said promotion will have to be reviewed and seniority has to be refixed at the level of Superintendent also. Seniority is to be fixed as per what is stated in Points 1 to 3 of Ajit Singh No.1 and 'prospectivity' of Sabharwal and Ajit Singh No.1 as stated in Point 4 of Ajit Singh No.II will be followed. The respective cut off dates of Sabbarwal and Ajit Singh No.1 have to be adhered to.

In the result, we hold that the promotion and seniority of Kamal Kanta as Superintendent be reviewed vis-a-vis respondents 2 to 5 as stated above. (The paper book reveals that a provisional list was prepared on 28.3.97 and a show cause notice dated 31.3.97 had been issued). We, however, make it clear that on the above facts, respondents 6 to 8 (general candidates) can have no claim against Kamal Kanta in as much as they did not get promotion as Dy. Superintendents before Ms. Kamal Kanta was promoted as Superintendent. The appeal is disposed of accordingly. We direct accordingly. All the three appeals are disposed of accordingly.

(D) CC.133/97 and IA.3/97 in SLP(C) No.23107/96 The CC.133/97 is filed by reserved candidates for taking action for contempt of the order of this Court dated 9.12.96 in Gian Singh's case (to which they are parties) while the State of Haryana has filed IA.3/97 for clarification as it feels that there are two conflicting orders of this Court, one dated 9.12.96 and the other one is Chandra Pal [1997 (10) SCC 474] dated 4.12.1996. The petitioners in C.C.133/97 are the reserved candidates Sadhu Singh and B.L. Grover. They are, as already noted in Gian Singh's case, petitioners 2 and 3 in the SLP(C) No. 23107/96. We have held in the appeal arising out of SLP(C)23107/96 of Gian Singh that the general candidates (Writ petitioners Balwant Kumar Gupta, S.B. Bhatia, R.D. Gupta and Hari Chand Chhabra) have a valid claim of seniority against these two reserved candidates i.e. Sadhu Singh and B.L. Grover, though not against the other reserved candidate, Gian Singh. We have also directed that though Sadhu Singh and B.L. Grover might have been promoted as Superintendents earlier on the basis of their actual dates of promotion as Deputy Superintendent, that was not correct and a review of seniority has to take place in respect of promotion and seniority to the level of Superintendents. All that is protected is that there are to be no reversions. But seniority has been re-fixed at the level of Deputy Superintendent on the basis of Ajit Singh No.II, as stated above. It is obvious that the promotion to and seniority in the category of Superintendent and above will also have to be re-fixed as between the four writ petitioners and Sadhu Singh and B.L.Grover. Their case is not like that of Gian Singh. This aspect has been considered above while dealing with the case of Gian Singh (C.A. arising out of SLP(C).23107/96)

The petitioners Sadhu Singh and B.L. Grover have, however, submitted in the CC.133 of 1997 that the status quo order dated 9.12.96 in Gian Singh's SLP(C) No.23107/96 has been violated by promoting the general candidates on 19.2.97 to the level of Under Secretary. On the other hand, the State of Haryana in its IA.3/99 points out that there is conflict between the status quo order dated 4.12.96 passed in Gian Singh and the direction given in Chandra Pal on 4.12.96. Our judgment in Ajit Singh No.2 delivered today lays down the manner in which seniority has to be decided. Chander Pal dated 4.12.96 has also been explained but the 'prospectivity' of Sabharwal and Ajit Singh No.1 will be as stated in detail by us under Point 4 in Ajit Singh No.II. There can be no difficulty in implementing the same.

Coming to the status quo order dated 9.12.96, it does not present any difficulty because while it continues status quo, it also states that any promotion given shall be

subject to the result of the SLP.23107/96. It reads as follows:

"Status quo to continue. However, any promotion given to any one shall be subject to the result of this Special Leave petition."

Now that the Civil Appeal arising out of SLP(C) 23107/96 in Gian Singh's case (to which Sadhu Singh and B.L. Grover are parties) is disposed of after re-fixing seniority at level of Deputy Superintendent and by directing a review of the promotions made to the post of Superintendent and Under Secretary, as per Ajit Singh NO.2, there can be no difficulty in the way of the State. We do not also think that any contempt has been committed when the promotion orders were passed on 19.2.97 for that was done bona fide in implementation of the order of this Court dated 4.12.96. The C.P.133/97 and the IA.3/97 are disposed of accordingly.

All the matters are disposed of as stated above. There will be no order as to costs.