

PETITIONER:
NATIONAL FEDERATION OF S.B.I. & ORS. ETC.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 10/03/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SAHAI, R.M. (J)
SEN, S.C. (J)

CITATION:
1995 AIR 1457 1995 SCC (3) 532
JT 1995 (3) 336 1995 SCALE (2) 282

ACT:

HEADNOTE:

JUDGMENT:

B.P. JEEVAN REDDY, J.:

1. The precise nature and character of the concession provided to Scheduled Castes and Scheduled Tribes in the matter of promotions within Class-I in the service of the public sector banks falls for consideration in this batch of writ petitions. The writ petitions are filed by Associations of Scheduled Castes' and Scheduled Tribes' employees working in several public sector banks. The reliefs sought for in all these writ petitions are broadly identical. For the sake of convenience, we may refer to the reliefs sought for in Writ Petition (C) No.896 of 1990 filed by the National Federation of State Bank of India Scheduled Castes/Scheduled Tribes Employees. They are (a) to issue a writ of mandamus directing the respondent (State Bank of India) to implement the reservation policy by maintaining the roster system; (b) to direct the respondents (Union of India, State Bank of India and the Chairman of the Indian Banks Association) to fill up the backlog of unfilled vacancies since 1978 by applying the carry-forward rule in all grades and scales with consequential benefits; (c) to restrain the second respondent (State Bank of India) from making any promotion from Scale-I to Middle Management Scale-II and Middle Management Grade-III, upto Scale-VII, without following the principle of reservation; (d) to grant promotion to Scheduled Castes/Scheduled Tribes employees/officers with retrospective effect with consequential benefits of salaries and allowances; and (e) to carry out the aforesaid directions within a prescribed time-frame.

2. For a proper appreciation of the issues arising herein, it is necessary to refer to the orders issued by the Government of India on the subject of concessions to Scheduled Castes/Scheduled Tribes employees in the matter of promo-

tions within Class-I service (which are to be filled by promotion) from time to time. Though the question that ultimately falls for consideration lies in a short compass, a reference to those orders and to decisions of this Court on the subject has become necessary.

3. By Office Memorandum No. 1/10/ 61-Estt.(D) dated November 8, 1963 issued by the Ministry of Home Affairs, reservation at 12 1/2 per cent and five per cent of the vacancies was provided for Scheduled Castes and Scheduled Tribes candidates respectively in Class-III and Class-IV posts filled by promotion based on (i) selection or (ii) the results of competitive examinations limited to departmental candidates, in grades or services to which there was no direct recruitment. The Memorandum stated that there would be no reservation for Scheduled Castes/Scheduled Tribes in appointments made by promotion to a Class-II or to a higher service or post, irrespective of the method of appointment the aforesaid policy was revised and fresh orders issued in Office Memorandum No.1/12/67-Estt.(C) dated 11th July, 1968 issued by the Ministry of Home Affairs. This Memorandum provided for several matters of which it is necessary to notice only the provision made under "(B) promotion by selection method: (a) Class-I and II appointments". It provided that in promotion by selection inter alia from Class-II to the lowest rung category in Class-I, the procedure prescribed therein shall be followed, viz, (i) in the case of eligible Scheduled Caste and Scheduled Tribes candidates, the grading given to them shall be upgraded by one stage. This concession shall, however, be confined to only twenty five per cent of the total vacancies in a particular grade or post filled in a year; (ii) "Those Scheduled Castes/Scheduled Tribes employees who are senior enough in the zone of consideration so as to be within the number of vacancies for which the Select List has to be drawn, should be included in the Select list, if they are not considered unfit for promotion and should also be given one grading higher than the grading otherwise assignable to them on the basis of their record of service and their place in the Select List determined on the basis of this higher categorisation".

4. The orders in Memorandum dated July II, 1968 were supplemented by orders issued on March 26, 1970 which is the one which falls for our consideration. Having regard to its crucial relevance, it would be appropriate to set out the Office Memorandum dated March 26, 1970 in full:

"Ministry of Home Affairs O.M.No. 1/9/ 69-Est(SCT), Dated 26th March, 1970.
Subject:- Concessions to Scheduled Castes and Scheduled Tribes in posts filled by promotion - Class-I Services/Posts

The question of increasing the representation of Scheduled Castes and Scheduled Tribes employees in Class-I services/ Posts under the Government of India has been under the consideration for some time past. In this Ministry's O.M.No.1/12/ 67-Est(0) dated 11th July, 1968, certain concessions have been provided to Scheduled Castes and Scheduled Tribes, inter alia in the matter of promotion by selection to the lowest rung or category in 339

Class-I. It has now been decided that the following concessions and facilities will be

provided to Scheduled Castes and Scheduled Tribes officers for their promotions within Class-I also.

In promotion 'by selection to posts within Class-I, which carry an ultimate salary of Rs.2250/- in the revised scale of pay per month, or less, the Scheduled Castes/Scheduled Tribes officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select ha has to be drawn up, would be included in the list provided they are not considered unfit for promotion. Their position in the select list would however be the same as assigned to them by, the Departmental Promotion Committee on the basis of their record of service. They would not be given for this purpose, the grading higher than the grading otherwise assignable to them on the basis of their record of service.

In order to improve the chances of Scheduled Castes/Scheduled Tribes officers for selection to the higher categories of posts in Class-I, it has further been decided that:

(i) Scheduled Castes/Scheduled Tribes officers in Class-I services posts should be provided with mom opportunities for institutional training and for attending seminars/symposia/conferences. Advantage could in this connection be taken of the training facilities available at the National Academy of Administration, Mussorie, National Police Academy, Mount Abu, Indian Institute of Public Administration, New Delhi, the Administrative Staff College, Hyderabad, etc. and

(ii) It should be the special responsibility of the immediate superior officers of die Scheduled Castes/ Scheduled Tribes officers in Class -I to give advice and guidance to the latter to improve the quality of their work. Ministries/Departments under whom Scheduled Castes/Scheduled Tribes ClassI officers mught be serving should ensure that these decisions are implemented with expedition. Ministries/Departments (or the Heads of Departments) under whom such officers mught be serving may specially watch the progress of these officers so that all appropriate steps are taken wherever necessary, to improve the efficiency of these officers for the purpose of their selection to higher posts.

4. The orders contained in paragraph-2 above take effect from the date of issue except in respect of selections already made prior to the issue of these orders.

5. Ministry of Finance, etc. art requested to bring the above decisions to the notice of all concerned.

6. In so far as persons serving in offices under the Comptroller and Auditor General of India are concerned, separate orders will issue in due course."

(Emphasis added)

5. It is necessary to notice the significant features of

this Office Memorandum. They are: (a) this Office Memorandum does not speak of reservation; it speaks of concessions and facilities being provided to Scheduled Castes/Scheduled Tribes; (b) whereas under the earlier Office Memorandum, a certain concession was provided to Scheduled Castes/Scheduled Tribes candidates in the matter of promotion by selection in the lowest rung or category in Class-I under this memorandum concessions and facilities were provided to Scheduled Castes/Scheduled Tribes officers for their promotions within Class-I also. However, these concessions

340

and facilities were limited to posts within Class-I which carry an ultimate salary of Rs.2250/- in the revised scale of pay per month or less. The nature and character of concession provided by this Office Memorandum is slightly different from the one provided by Office Memorandum dated July 11, 1968 for promotion to the lowest rung or category in Class-I; (c) The concession provided to Scheduled Castes/Scheduled Tribes officers is this-, those Scheduled Castes/Scheduled Tribes officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in the select list provided they are not considered unfit for promotion. (It is this formula, if we can call it one, which has given rise to controversy and varying interpretations and upon which we have to pronounce - which aspect we shall deal with a little later.); (d) the position of Scheduled Castes/Scheduled Tribes candidates so included in the select list would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. (e) for the aforesaid purpose, the Scheduled Castes/Scheduled Tribes candidates will not be given one grading higher than the grading otherwise assignable to them on the basis of their record of service.

6. The facilities provided in Para 3 of this Memorandum include special training, advice and guidance. It is not necessary to refer to them in detail. The said orders were to take effect from the date of issue of the said Memorandum but the promotions already made were to remain unaffected by it.

7. On December 23, 1974, Office Memorandum No. 1/10/74- Estt.(SCT) was issued from the Department of Personnel, Training and Administrative Reforms (addressed to all Ministries) on the subject of "concessions to Scheduled Castes and Scheduled Tribes in posts filled by promotion by selection - posts within Class I". This Memorandum merely reiterated the concession contained in the Memorandum dated March 26, 1970 and requested the Ministry of Finance and other ministries to bring the said decision to the notice of all concerned.

8. On December 31, 1977, the Ministry of Finance, Department of Economic Affairs (Banking Division), Government of India, addressed a letter to all the National Banks as well as to the State Bank of India and its subsidiary banks intimating them that the Ministry has since decided "to extend the scheme of reservation in promotions also". The letter stated that according to the Reserve Bank of India, it will be difficult to formulate a scheme uniformly applicable to all the banks though the basic policy of reservation can always be enunciated. The letter stated that Reserve Bank of India has already formulated a scheme on the subject applicable to its employees. While enclosing a copy of the Reserve Bank of India-scheme, the public sector banks were requested "to implement to

Government's orders suitably in your existing schemes of promotions with such procedural modifications as may be necessary". It is necessary to point out that this letter refers to "promotions in the various grades in the public banking system" generally whereas the Office Memorandum dated March 26, 1970 deals specifically with promotions within Class-I only. Further, this letter (dated December 31, 1977) does not refer

341

to or modify the orders issued in the earlier Memorandums referred to above, which means that those orders remained unaffected.

9. On May 30, 1981, the Ministry of Finance, Department of Economic Affairs (Banking Division), Government of India issued a letter No.F. 1/45/78-SGT(B) addressed to Chairman and Managing Directors of twenty Nationalised Banks as well as to the Chairman, State Bank of India and Managing Directors of seven subsidiary banks of State Bank of India on the subject of "reservation for Scheduled Castes/Scheduled Tribes in promotion". After inviting attention to the letter dated December 31, 1977, Office Memorandums dated March 26, 1970 and dated December 23, 1974, the letter stated: "(A)s per the Government orders, there is no reservation for Scheduled Castes and Scheduled Tribes in 'promotion by selection' within the officers cadre. But certain concessions and facilities are to be provided to the Scheduled Castes and Scheduled Tribes officers in order to improve their chances for selection to the higher categories of posts in the officers cadre in accordance with the orders contained in the aforesaid Office Memorandums of Ministry of Home Affairs. It has been decided that the concessions mentioned in Para-2 of MHA's O.M.dated 26-3-70 would be, available to the SC/ST officers in Public Sector Banks/Financial Institutions in 'Promotions by Selection' to posts within the officers cadre upto scale-III. The copies of MHA's O.M. dated 26-3-1970 and DP & AR O.M. dated 23-12-74 are enclosed herewith". The Banks were requested to implement the said directions.

10. By letter dated November 7, 1983, (F.No. 10 1/1 1/83-SCT(B) from the Ministry of Finance, Department of Economic Affairs (Banking Division), Government of India the instructions issued in the letter dated May 30, 1981 were reiterated and the formula contained in Para 2 of the Office Memorandum dated March 26, 1970 was explained by giving an illustration. The illustration reads thus: "(T)o illustrate,

if 200 vacancies are to be filled in and 3 times the number of vacancies is considered as falling within the 'zone of consideration', then any SC/ST officer whose seniority falls within the first 200 will be eligible for promotion provided that he is not found unfit for promotion". By another letter dated March 25, 1987, the Ministry of Finance, Department of Economic Affairs (Banking Division), Government of India reiterated the aforesaid directions.

11. The last communication in the sequence is the Office Memorandum No.36012/6/83-Estt.(SCT) dated November 1, 1990 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Ministries and Departments of Government of India including the Ministry of Finance (Banking Division). This Office Memorandum is clarificatory in nature. It would be appropriate to read it here:

"OFFICE MEMORANDUM

Subject: Concessions to Scheduled
Castes/Scheduled Tribes in posts filled by

Government of India addressed to all the

The undersigned is directed to refer to the
O.M.No.1/9/69-Estt.(SCT) dated
342

26th March, 1970 as amended vide O.M. No.
1/10/74-Estt.(SCT) dated 23.12.1974 and O.M.
No.36012/12/88-Estt.(SCT) dated 21.9.1988 on
the above mentioned subject (copy enclosed).

2. Though in the O.M. cited above it has
been clearly mentioned that in promotion by
selection within Class I (now Group A) to
posts which carry an ultimate salary of
Rs.2000/- per month or less (since revised to
Rs.5700/-), the scheduled Castes/Scheduled
Tribes will be given a concession namely
"those Scheduled Castes/Scheduled Tribes who
are senior enough in the zone of consideration
for promotion so as to be within the number of
vacancies for which select list has to be draw

n

up, would be included in that list provided
they are not considered unfit for promotion",
doubts have been expressed in certain quarters
as to whether the concession given hereinabove
is a reservation or a concession.

3. It is hereby clarified that in Promotion
by selection within Group 'A' to posts which
carry an ultimate salary of Rs. 5700/- p.m.
there is no reservation. "

12. it would be appropriate at this stage to refer to the
letter dated May 9, 1980 from the Ministry of Finance, De-
partment of Economic Affairs (Banking Division), Government
of India, addressed to the Chairman, Indian Banks Associa-
tion, Bombay explaining the meaning of certain expressions
occurring in the Office Memorandums referred to above. They
are to the following effect: though according to the New
Officers Service Regulations, salary includes basic pay and
DA, so far as reservations are concerned, i.e., for the
purpose of reservation, "ultimate salary" is meant to
convey the basic pay only and does not include the variable
DA. It was for this purpose that promotions upto Scale-III
have been covered which carries the scale upto Rs.2250/-
which is exclusive of DA" With respect to the expressions
"zone of consideration" and 'not found unfit', the following
clarification was made:

"Clarifications have also been sought
regarding the term "Zone of consideration" and
"Not found unfit". Zone of consideration is
meant to cover all candidates who satisfy the
prescribed conditions which have been laid
down for being considered for promotion. This
would mean that this zone of consideration
would be similarly applicable to the general
as well as SC/ST candidates. As regards the
term "Not found unfit", it is clarified that
this term is meant to convey that there is
nothing adverse against the candidate."

13. It may be noted that the scale of Rs. 2250/- mentioned
in the Office Memorandum dated March 26, 1970 was later
revised to Rs.5700/-, as stated in Office Memorandum dated
November 1, 1990 referred to in the preceding para.

14. The Ministry of Personnel, Public Grievances and
Pensions (Department of Personnel and Training), Government
of India has been issuing a Brochure on the subject of

reservation for Scheduled Castes and Scheduled Tribes in services from time to time. This Brochure sets out the reservations, concessions and facilities provided to Scheduled Castes and Scheduled Tribes officers in Government service from time to time in a condensed form besides setting out the orders issued by the Government of India from time to time. Quite often, the courts have been referring to this Brochure while referring to the reservations concessions provided to the said categories. One such reference is in Bihar State Harijan Kalyan Parishad v. Union 343

of India (1985 (2) S.C.C.644). Para 9 of the Brochure, as extracted in the said judgment, reads thus:

"In promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs.2250 per month, or less, the Scheduled Caste/Scheduled Tribe officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion. Their position in the select list would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. They would not be given, for this purpose one grading higher than the grading otherwise assignable to them on the basis of their record of service. "

(What is extracted is obviously a portion of Para 9 and not the whole of Para 9. The decision does not also mention from which edition of the Brochure was it quoted.)

15. In 1987, the Government of India issued the seventh edition of the said Brochure in which Para 9.2, corresponding to the one quoted above, reads as follows:

"9.2 Promotion by selection method.

MHA OM No.1/9/69. Estt. (SCT) dated 26-3-70 and Deptt. of Personnel & A.R. O.M. No. 1/10/74- Estt.(SCT) dated 23-12-74.

9.2 (a) Promotions by selection within NO. Group A (Class I).

In promotions by selection to posts within Group A (Class I) which carry an ultimate salary of Rs. 2,000/- per month, or less, (Rs.2,250 per month or less in the revised scale) there is no reservation, but the Scheduled Castes and Scheduled Tribes Officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has been drawn up, would be included in that list provided they are not considered unfit for promotion. Their position in the select list would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. They would not be given for this purpose, one grading higher than the grading otherwise assignable to them on the basis of their record of service. In order to improve the chances of Scheduled Castes and Scheduled Tribes officers for selection to the higher categories of posts in Group A (Class 1).

(i) Scheduled Castes/Scheduled Tribes officers in Group A (Class 1) Services/posts should be provided with more opportunities for institutional training and for attending seminars/symposia/ conferences. Advantage would also be taken of the training facilities available at the Lal Bahadur Shastri National Academy of Administration, Mussoorie, National Police Academy, Hyderabad, Indian Institute of Public Administration, New Delhi, the Administrative Staff College, Hyderabad etc. and

(ii) It would be the special responsibility of the immediate superior

344

officers of the Scheduled Castes/Scheduled Tribes officers in Class I to give advice and guidance to the latter to improve the quality of their work."

(Emphasis added)

16. The only difference between Para 9.2 as quoted in Bihar State Harijan Kalyan Parishad and the one contained in the seventh edition of the Brochure is the addition of the words "there is no reservation" underlined by us, which are not found in the version quoted in the said decision- A good amount of controversy is raised with respect to this addition. In our opinion, the said controversy is not real and is born of an insufficient appreciation of the manner in which the Brochure is prepared by the Government of India. As stated above, the Brochure out the gist, the substance and the purport of the various orders issued from time to time. If only one looks to the original Office Memorandum instead of concentrating upon the Brochure, the entire controversy turns out to be unreal. Insofar as promotions within Class-I are concerned we are referring to promotions within Class- I alone for the reason that we are concerned in this case with only those promotions - it is admitted by Sri Rajinder Sachar, learned counsel for the petitioners as well as the learned counsel for the Union of India and the Banks that there are no other orders except those referred to above; in particular, it is admitted, there is no order applying the rule of reservation to the said promotions (within Class-1). In such a situation, the appropriate course would be to refer to the Office Memorandums issued by the Government of India particularly the Office Memorandum dated March 26, 1970 - rather than to the Brochure. As we shall explain later, sub-paras (1) and (2) of Para 9 of the Brochure represent the gist of Office Memorandums referred to above and are in no manner different or inconsistent.

17. We may now turn to the meaning and nature of the "concession" contained in the Office Memorandum dated March 26, 1970. We have already set out the significant features of the said concession contained in Para 2 of Office Memorandum in Para 5 of this judgment. We shall now explain what exactly does the formula mentioned under (c) in Paragraph 5 of our judgment mean? For the sake of convenience, we shall repeat the formula. In promotions by selection to posts within Class-I the Scheduled Castes/Scheduled Tribes officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up would be included in the list provided they are not considered unfit for promotion". It is unnecessary to reiterate that the said Office Memorandum does not provide for reservation as contemplated by Article 16(4) of the

Constitution of India; it only provides for a concession which the State can always provide under Article 16 as explained in Indira Sawhney & Ors. etc. etc. v. Union of India & Ors. (1992 Suppl. (111) S.C.C.217). The concession is evidently designed and intended to help the Scheduled Castes/Scheduled Tribes officers obtain promotions which they may not otherwise get. Towards that purpose, it is provided that those Scheduled Castes/ Scheduled Tribes officers who are Senior

345

enough in the zone of consideration so as to be within the number of vacancies available shall be included in the select list provided they are not considered unfit for promotion. 'The said formula has been explained with reference to an illustration in the letter dated November 7, 1983, referred to above. Be that as it may, we shall elaborate and explain it. Take a case where twenty vacancies arise which have to be filled by promotion by selection; according to the relevant rules, thrice the number of vacancies are to be considered - in other words, a list of sixty eligible candidates has to be prepared who alone will be considered for promotion to the said twenty posts, which list is but another name for "the zone of consideration" referred to in the Office Memorandum; (ordinarily, this list is prepared on the basis of seniority-cum-eligibility); if any Scheduled Castes/Scheduled Tribes officer happen to fall within Serial No. 1 to 20 in the said list*, they shall be included in the select list without further ado, i.e., without subjecting them to the process of selection and without comparing their merit and grading with the merit and grading of the other officers within the zone of consideration. But for the said concession, it may be noted, these Scheduled Castes/Scheduled Tribes officers may not get selected even though they may fall within Serial No. 1 to 20 in the zone of consideration for the reason that the candidates below Serial No.20 may have a better record of service and grading than them. Since the promotion is on the basis of selection, the more meritorious (the officer having better grading) will get selected notwithstanding-

* We shall refer to the said list containing 60 officers - S.Nos. 1 to 60 - as the zone of consideration.

ing his position in the zone of consideration. It appears quite obvious that candidates belonging to Scheduled Castes/Scheduled Tribes were not getting selected by following the normal procedure of selection and hence, the said concession was provided. According to it, it is enough if a Scheduled Castes/Scheduled Tribes candidate comes within Serial No.1 to 20 in the zone of consideration in the illustration given above. He would be automatically included in the select list, even though his grading on the basis of his record and performance may be far inferior to the grading of the other officers below Serial No.20 in the zone of consideration provided, of course, such Scheduled Castes'/ Scheduled Tribes' officer is not found unfit for promotion. So far as Scheduled Castes/Scheduled Tribes candidates below Serial No.20 in the zone of consideration are concerned, they will, of course, be not entitled to any such concession and, therefore, have to compete with other candidates within the zone of consideration. It is equally clear that the O.C. candidates between Serial No. 1 to 20 in the zone of consideration will not be entitled to the aforesaid concession; they will have to compete with all others in the zone of consideration (S.No. 1 to 60) for selection to the said vacancies. This, in short, is the concession. Since

it is only a concession and not a reservations the several letters of the Ministry of Finance referred to above, viz., letters dated May 30, 1981, November 7, 1983, March 25, 1987 and the clarificatory Office Memorandum dated November 1, 1990 repeatedly say that while there is no reservation for Scheduled Castes and Scheduled Tribes in this behalf (i.e., in die matter of promotion by selection to posts within Class-I) a concession is provided to them. It is because
346

of this circumstance again that Para 9.2 in the seventh edition of the Brochure on the subject of reservation for Scheduled Castes and Scheduled Tribes in services says that while there is no reservation, the Scheduled Castes/Scheduled Tribes candidates are entitled to the concession mentioned therein.

18. Sri Rajinder Sachhar, learned counsel for the petitioners placed strong reliance upon the decision in Bihar State Harijan Kalyan Parishad. Learned counsel submitted that the said decision clearly lays down that the rule of reservation does apply to the promotions concerned herein by virtue of Para 9 of the Brochure. According to the learned counsel, Para 9 of the Brochure and the Memorandums aforesaid must be understood in the following manner: the Government of India has prepared, published and communicated to all the departments including Public Sector Banks the forty-point roster; the places reserved for Scheduled Castes/Scheduled Tribes are clearly specified in the said roster; the said Memorandums and Para 9 of the Brochure must be understood in the context of and in the light of the said roster; if so understood, it means that all the Scheduled Castes/Scheduled Tribes candidates who are within the zone of consideration should automatically be appointed to the posts reserved for them. The learned counsel pointed out that if the respondents' contention is accepted, it may happen that all the available vacancies are filled up by Scheduled Castes/Scheduled Tribes candidates, thus resulting in 100% reservation. In the illustration given hereinabove, he submitted, it may happen in a given case that the Scheduled Castes/Schedule Tribes candidates arc at Serial No. 1 to 2 - or at any rate, in a large number; then they will take away all the available twenty vacancies or such large number. This too would not be consistent with the principle underlying clauses (1) and (4) of Article 16 of the Constitution of India. As against this, stated the learned counsel, the interpretation placed by him is not only reasonable but consistent with the general reservation policy of the Government of India and serves to ensure the vacancies reserved for Scheduled Castes/Scheduled Tribes to them, even though in competition with open category candidates they may lag behind. In the original Office Memorandum dated March 26, 1970, he pointed out, there are no words to the effect "there is no reservation" which are found in Para 9.2 as printed in the seventh edition of the Brochure. The introduction of the said words in the seventh edition and in the letters dated May 30, 1981, November 7, 1983, March 25, 1987 and the clarificatory O.M. dated November 1, 1990 is unwarranted and unauthorised. Learned counsel submitted further that the original Memorandum issued by the Ministry of Home Affairs must be followed and cannot be amended or altered by the Ministry of Finance while purporting to communicate the same to Public Sector Banks for implementation.

19. We are unable to agree with the learned counsel. It is admitted on all hands that so far as promotions within Class-I are concerned - with which alone the Memorandum

dated March 26, 1970 deals - there are no orders of the Government of India applying the rule of reservation. We have referred hereinbefore to the earlier Memorandum dated July 11, 1968 (which in turn refers to an yet earlier Memorandum dated November 8, 1963). Those earlier Memorandums provide for reser-

347

vation in Classes-II, III and IV but not for promotion to Class-I and not at any rate to promotions within Class-I. Nor does the Memorandum dated March 26, 1970 provide for such reservation. The idea is self evident. While the rule of reservation is made applicable to the lower categories, viz., Classes-II, III and IV (to the extent specified in the said Memorandums), no such reservation was thought advisable in the matter of promotions within Class-I. Instead of reservation, a concession was Provided, the concession explained hereinabove. It is this fact which has been reiterated, affirmed and clarified in the subsequent letters of the Finance Ministry. It is thus clear that the letters of the Ministry of Finance dated May 30, 1981 and the subsequent ones do not amend or modify the Office Memorandum dated March 26, 1970 but merely explain it. They make explicit what is implicit in it. So is the rendering of Para 9.2 in the seventh edition in the Brochure. What all they say is that the rule of reservation does not apply to promotions within Class-I (i.e., promotions to be made on the basis of selection to posts which carry an ultimate salary of Rs.2250/- per month or less in the revised scale) but a concession in terms of Para 2 of the Memorandum dated March 26, 1970 is provided in that behalf It cannot, therefore, be said that either the letters of the Ministry of Finance or the rendering of Para 9.2 in the seventh edition of the Brochure is inconsistent with the Memorandum dated March 26, 1970 or that they are contrary to the orders of the Government.

20. Now coming to the decision in Bihar State Harijan Kalyan Parishad the attack therein was upon two letters, one issued by the Ministry of Steel and Mines dated April 8, 1982 addressed to the Chairman of the Steel Authority of India Limited and the other dated August 19, 1982 from the Steel Authority of India Limited to the Chief Personnel Manager, Bokaro Steel Plant respectively. It was contended that the said letters were inconsistent with and contrary to Para 9 of the Brochure. The judgment starts the discussion by saying:

"the Government of India, Ministry of Finance, Bureau of Public Enterprises, issued a directive to the Chief Executives of all Public Sector Enterprises on the subject of reservation for Scheduled Castes and Scheduled Tribes in appointments in public enterprises. While 15 per cent and 7 1/2 per cent of posts are generally to be reserved for Scheduled Castes and Scheduled Tribes respectively, in the case of promotion of members of the Scheduled Castes and Scheduled Tribes to posts, promotion to which are by the selection method a special procedure is devised by Para 9 of the directive. "

After setting out Para 9, the judgment proceeds to say:

"(A) close perusal of the directive and in particular paragraph 9 which deals with "concessions to employees of Scheduled Castes and Scheduled Tribes in promotions by selection method" makes it abundantly clear

that the rule of reservation also applicable to promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs.2250 per month or less, but that the procedure is slightly different than in the case of other posts. While the rule of reservation applies to promotions by selection to posts within Group 'A' carrying a salary of Rs.2250 per month or less, it is prescribed that only those officers belonging to the Sched-

348

uled Castes and Scheduled Tribes will be considered for promotion, who are senior enough to be within the zone of consideration. Thereafter a Select List depending upon the number of vacancies would be drawn up in which would also be included those officers belonging to the Scheduled Castes and Scheduled Tribes who are not considered unfit for promotion, Their position in the Select list would be that assigned to them by the Departmental Promotion Committee on the basis of the record of service. In other words, their inclusion in the Select List would not give them seniority, merely by virtue of their belonging to the Scheduled Castes and Scheduled Tribes over other officers placed above them in the Select list by th

e

Departmental Promotion Committee. This appears to us to be the only possible interpretation of paragraph 9 of the directive."

21. Though the judgment does not give the reference number or date of the directive referred to by it (i.e., the one issued by the Government of India, Ministry of Finance, Bureau of Enterprises to the Chief Executives of all Public Sector Enterprises on the subject of reservation for Scheduled Castes and Scheduled Tribes) the reference evidently is to the Office Memorandum No.6/16/81-BPE/GM-1(SCT Cell) dated January 18, 1982 addressed to all Ministries/departments of Government of India and Chief Executives of all Public Enterprises, a copy of which is supplied to us in the paper book furnished by the petitioners. The subject of the Memorandum is "reservation for Scheduled Castes and Scheduled Tribes in appointments in public enterprises - issue of revised draft directives". The Memorandum says that several orders/instructions have been issued on the said subject previously but that "it has now been found necessary that a consolidated directive should be issued incorporating all the provisions contained in the supplementary directives and also the provisions contained in the orders issued from time to time by Department of Personnel and Administrative Reforms. Accordingly, it says, "a comprehensive revised Draft Presidential Directives on the subject have been drawn up and enclosed". The enclosure to the said letter is entitled "Concessions to employees of Scheduled Castes and Scheduled tribes in promotions by selection method". It opens with the heading "Group A and B appointments" and under it the sub-heading is "A.Promotion within Group A". The first: sub-para reads thus:

"In promotions by selection to posts within Group 'A' which carry an ultimate salary of

Rs.2250/- per month or less, the Scheduled Caste/Scheduled Tribe Officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion. Their position in the select list, would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. They would not be given, for this purpose one grading higher than the grading otherwise assignable to them on the basis of their record of service."

22.The: second sub-part sets out the special training and facilities extended to Scheduled Castes/Scheduled Tribes office as to improve their efficiency. It is thus clear that what is mentioned under subheading "A.Promotions within Group 'A'" is nothing but Part 9 of the Brochure, which is quoted in the judgment in Bihar State Harijan Kalyan Parishad. We

349

may also mention that the said enclosure contains several other matters under subheadings, "9AA. Promotions through limited departmental competitive examination", "9B. Promotions by selection from Group 'C' to Group 'B', within Group 'B' and from Group 'B' to the lowest rung or category in Group 'A...' and "9BB. Promotions by selection in Group 'C' and 'D' appointments". So far as promotions within Group 'A' are concerned, the said enclosure (Paragraph 9A) - referred to as the directive in the judgment - does not say that the rule of reservation 'is applicable to such promotions. It only speaks of the concession which is but a repetition of the concession contained in the Office Memorandum dated March 26, 1970. In other words, the directive referred to in the judgment - or for that matter Para 9 set out therein - does not provide for reservation in the matter of promotions within Class-I. It only provides for the concession aforementioned. It appears that the attention of the learned Judges was also not invited to the Office Memorandum dated March 26, 1970 or to the other Office Memorandums and letters specifically. Be that as it may what is relevant is that neither the Presidential Directive referred to in Bihar State Harijan Kalyan Parishad nor the Office Memorandums referred to above nor for that matter Para 9 of the Brochure provide for reservation in the matter of promotions within Class-I. We must, therefore, say with great respect that the assumption made in the judgment in Bihar State Harijan Kalyan Parishad that the rule of reservation applies to promotions within Class-I does not appear to be correct. We may also mention that Paras 9.1 and 9.2, as set out in the Brochure (seventh edition), do not say anything different. Para 9.2 insofar as is relevant has already been set out in Para 15, We may now set out Para 9.1 in full:

"9.1 Promotion through limited departmental competitive examinations

As indicated in para 2.1 (iii)(a), there is a reservation of 15 percent and 7 1/2 per cent of vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made on the basis of competitive examination limited to departmental candidates, in Groups B, C and D (Class 11, III and IV posts, in

grades or services in which the element of direct recruitment, if any, does not exceed 66-2/3 per cent. (Detailed instructions for filling such reserved vacancies are given in Appendix 13).

In promotions through departmental competitive examinations, Scheduled Castes/Scheduled Tribes candidates who have not acquired the general qualifying standard should also be considered for promotion provided they are not found unfit for such promotion. The qualifying standard in such examination should be relaxed in favour of Scheduled Castes and Scheduled Tribes candidates in keeping with the above criterion.

For determining the number of vacancies to be reserved for Scheduled Castes and Scheduled Tribes in such promotions, a separate roster on the lines of the roster prescribed in Annexure I to O.M. No. III 1/69.Est.(SCT) dated 22-4-1970 (in which points 1, 8, 14, 22, 28 and 36 are reserved for Scheduled Castes and points 4, 17 and 31 are reserved for Scheduled Tribes) should be followed."

23. For the above reasons, we must say, with all the respect at our command that the decision in Bihar State Harijan Kalyan Parishad cannot be said to lay down the law correctly insofar as it pur-

350

ports to hold that the rule of reservation applies in the matter of promotions within Class-I.

24. It is brought to our notice that a review petition was filed against the aforesaid decision, which was disposed of on January 21, 1987. The order in review reads:

"This miscellaneous petition is consequence of a misunderstanding of our judgment dated 1st March, 1985 by the authorities. We wish to clarify the position by stating that the Scheduled Castes/Scheduled Tribes officers who are senior enough to be within the zone of consideration for promotion should be included in the Select List against the vacancies available to the members of Scheduled Castes/Scheduled Tribes according to the roster, provided they are not considered unfit for promotion. Paragraph 2 of the Presidential Directive should be strictly adhered to and effect shall be given on the basis of scales of pay that obtained prior to 1975 as mentioned in that paragraph. The officers promoted as a consequence of our order will be entitled to be paid a salary and allowances from the respective dates with effect from which they should have been promoted. We are grateful to Shri G. Ramaswamy, learned Additional Solicitor General for his assistance."

25. This order also proceeds on the assumption that the procedure prescribed by Para 9 of the Brochure should be followed only with respect to vacancies reserved for Scheduled Castes/Scheduled Tribes. For the reasons mentioned hereinbefore, this order cannot also be accepted as laying down the correct interpretation of the, aforesaid Memorandums or the Presidential directive.

26. It Reliance was next placed upon the subsequent decision of this Court in Syndicate Bank Scheduled Castes/Scheduled

Tribes Employees Association v. Union of India & Ors. (1990 Suppl.S.C.C.350), a decision rendered by N.M.Kasliwal and S.C.Agrawal,JJ. on August 10, 1990. Following the decision in Bihar State Harijan Kalyan Parishad, it was held in this decision that in the matter of promotions within Class-I (Group-A) posts, rule of reservation applies though subject to the procedure prescribed in Para 9 of the Brochure. The operative portion of the judgment reads thus:

"It is further decided that though Group 'A' posts are selection posts still the reservation policy is applicable to such posts and the respondents are directed to compute the backlog of unfilled reserved quota available to SC./ST officers in the promotional posts with effect from January 1, 1978 the date of introduction of reservation policy in the respondent Bank. The respondents are further directed to grant promotion to the SC/ST employees of the Syndicate Bank with all consequential benefits of salary and allowances from the respective dates w.e.f which they should have been promoted after applying the roster system in their favour. We grant three months time to carry out these directions."

27. It appears that a review petition was moved by the respondents in the said writ petition relying particularly upon the words "there is no reservation" occurring in Para 9.2(a) of the Brochure,. Reliance was also placed by the respondents on a decision of this Court in All India Bank of Baroda Scheduled Castes and Scheduled Tribes Employees Association v. Union of India & Ors. (Writ Petition No. 1594 of 1987 decided on August 18, 1988) in 351

which it was held that promotions by selection within Class-I, to be effected on the basis of selection, shall be effected in accordance with the rules contained in Para 9.2 of the Brochure. The review petition was dismissed on April 1, 1991 holding that the decision dated August 10, 1990 was based upon the material placed before them. It was observed that the failure of the parties to bring a particular fact to the notice of the court furnishes no ground for review. The precise reason for dismissing the review is to be found in the following observation:

"We may, however, make it clear that in the present case we were only concerned with Scheduled Castes and Scheduled Tribes employees of the Syndicate Bank and the policy of reservation with regard to such employees. We have decided the matter on the basis of the material made available to us at the time of arguments and on the basis of contentions made by counsel representing the respective parties

The case as such was decided on the peculiar facts and circumstances of the case and in case such controversy arises in future of Scheduled Castes and Scheduled Tribes employees of other banks, in our view the parties will be free to get the controversy decided by a proper forum by placing their respective stands. With the above observations we dismiss the Review Petition filed by the Union of India and the Bank."

28.What we have said with respect to the decision in Bihar

Stale Harijan Kalyan Parishad applies equally to the judgment in Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association. Another circumstance. The present writ petitions were filed evidently inspired by the decision in Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association rendered on August 10, 1990. When the first of these writ petitions (Writ Petition (C) No.896 of 1990) came up before a Bench on November 26, 1990 it was directed that the writ petition be posted immediately after the disposal of Review Petition Nos.592 of 1990 and 608 of 1990 (review petitions referred to hereinabove). After the review petitions were disposed of on April 1, 1991, Writ Petition No.896 of 1990 along with other transferred writ petitions were posted before a Bench comprising T.K.Thommen, J. and one of us (R.M.Sahai, J.) when it was directed that these matters be placed before a Bench of which Hon'ble Mr. Justice N.M.Kasliwal or Hon'ble Mr. Justice S.C.Agrawal are members. The matters were accordingly posted before a Bench comprising S.C.Agrawal and Sujata V.Manohar, JJ. on January 18, 1995. After hearing the parties, the Bench directed these matters to be listed before a Bench of three Judges,, It is pursuant to the said direction that these matters were posted before us.

29. It is true that we have arrived at a conclusion which is different from the one adopted in Bihar State Harijan Kalyan parishad and in Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association but on have no alternative in view of the clear language of the Office Memorandum dated March 26, 1970, the Presidential directive referred to in Bihar State Harijan Kalyan Parishad as also Paragraph 9 of the Brochure (whichever edition one looks to). It may be that according to our interpretation, the members of Scheduled Castes/Scheduled Tribes may stand to gain in some cases, in the sense that they may get more number of promotions than they would have been en-352

titled to had the rule of reservation been applied to promotions within Class-I, while in some other cases they may stand to lose. But that cannot be a factor determining the interpretation of the relevant orders. It also appears that a view different from the view taken in Bihar State Harijan Kalyan Parishad was taken in the order dated August 19, 1988 in Writ Petition No. 1594 of 1987 (All Indian Bank of Baroda SC/ST Employees Association v. Union of India & Ors.), wherein it was held, no doubt on the basis of a concession made by the learned counsel for the writ petitioners, that "the promotion by selection method of officers within Group 'A' (Class-I) in the Bank of Baroda shall be done in accordance with the rules contained in Paragraph 9.2 in Chapter 9 of the Brochure". This order does not refer to rule of reservation.

30. We may reiterate that both according to Sri Rajinder Sachhar as well as learned counsel for the respondents, there is no specific order, rule or Memmorandum applying the rule of reservation in favour of Scheduled Castes/Scheduled Tribes in the matter of promotions within Class-I service. In the absence of such reservation, the forty-point roster prepared by the Government of India cannot be applied or followed, for the simple reason that the roster is prepared merely in implementation of and to carry out the rule of reservation. There can be no roster in the absence of rule of reservation. If the rule of reservation is not made applicable to a particular appointment or promotion, there can be no question of following the forty-point roster therefor. The forty-point roster itself does not provides

reservation. It merely specifies places for reserved categories in accordance with and consistent with the rule of reservation already made.

31. For the above reasons, we hold that in the matter of promotion by selection to posts within Class-I which carry an ultimate salary of Rs.2250/- in the revised scale of pay per month or less, there is no reservation in favour of Scheduled Castes/ Scheduled Tribes but they are entitled to the concession contained in Para 2 of the Office Memorandum dated March 26, 1970 issued by the Ministry of Home Affairs. The concession is that those Scheduled Castes/Scheduled Tribes officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up will be included in the select list provided they are not considered unfit for promotion. (This rule has been explained in the body of the judgment by giving an illustration, which it is not necessary to repeat here.) The position of such candidates included in the select list would, however, be the same as is assigned to them by the Departmental Promotion Committee on the basis of their record of service. The said candidates would not be entitled, for the purpose of the said selection, one grading higher than the grading otherwise assignable to them on the basis of their record of service. This is also the purport of Para 9 of the Brochure insofar as it deals with promotions within Class-I.

32. So far as Prayer (b) in Writ Petition No.896 of 1990 is concerned, we must say that it is not possible to accede to it. The prayer is to direct the respondents in the writ petition to fill up the backlog of unfilled vacancies since 1978 by applying the carry-forward rule in all grades and scales with consequential benefits. Firstly,
353

none of the relevant Memorandums and orders referred to above provide for carry forward rule. In the absence of such a rule, each year has to be treated as the unit for applying the rule of reservation or concession, as the case may be. In any event, so far as the concession concerned herein is concerned, it can be applied and followed only when a selection takes place. In the absence of a rule to that effect, the said concession cannot be given effect to retrospectively. These writ petitions were filed only in 1990 or thereafter. In such a case, there can be no question of relating back the relief to 1978. So far as Prayer (c) is concerned, it is equally beside the point in the light of what we have decided herein, viz., that the special provision made in the matter of promotions with Class-I is not in the nature of reservation but a concession. The only declaration and direction that can be granted in these matters is that the respondents shall apply, implement and follow the concession contained in Para 2 of the Office Memorandum dated March 26, 1970 aforesaid in the matter of promotions in Class-I to be made hereafter. Of course, so far as promotions to Classes-II, III and IV and promotions from Class-II to the lowest rung or category in Class-I are concerned, the orders in Office Memorandum dated July 11, 1968 shall be followed.

33. The writ petitions and transfer petitions are disposed of in the above terms. There shall be no orders as to costs.

34. No arguments were addressed in the Interlocutory Applications. No orders are called for therein.

354