

CASE NO.:
Appeal (civil) 2866 of 1998

PETITIONER:
RAM PRASAD ETC.ETC.

RESPONDENT:
D.K.VIJAY AND ORS.ETC.ETC.

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 the special leave petitions. All the Civil Appeals arise out of the judgment of the Rajasthan High Court in a batch of writ petitions. There are three sets of appeals.

The Civil Appeals 2866/98, 2867/98, 2868/98, 3282/98, 4084/98 have been filed by the reserved candidates and arise out of (DB) CWPs. 2545/96, 2812/96, 3086/96, 2963/96 and 4918/97 respectively. Civil Appeal 3935/98 is filed by the general candidates and arises out of CWP. 3080/96. The State of Rajasthan has filed C.A. Nos. 3147-3150/98 and they arise out of CWPs. 3086, 6208 and 4918/97 respectively. The Civil Appeals arising out of SLPs 9185-88/99 have also been filed by the State of Rajasthan and arise out of CWPs. 2545/96, 2675/96, 4726/97 (646/97) and 2963/96. The High Court has disposed of all the writ petitions by a common judgment dated 2.4.1988. All the eight writ petitions were filed in the High Court by the general candidates. The D.B. CWPs. 2812/96, 3086/96, 6208/96 and 4918/97 were filed in the High Court by the general candidate officers of the Rajasthan Police Service (for short R.P.S.) seeking modification of the seniority list. Similarly, the D.B. Civil Writ Petitions Nos. 2543/96, 2675/96, 4726/96 (646/97) and 2963/96 were filed by the general candidate officers of the Rajasthan Administrative Service (for short 'R.A.S.') challenging the mode of implementation of Rules 8 and 33 of the Rajasthan Administrative Service Rules 1954. Decision of the High Court:

The High Court took up CWP. 2812/96 in the Police Service and CWP. 2545/96 in the Administrative Service as the main case. The writ petitions were partly allowed so far as the seniority of the reserved candidates at the promotional level was concerned, by following the judgment of this Court in Ajit Singh Januja Vs. State of Punjab (1996 (2) SCC 715) i.e. Ajit Singh No.1 dated 1.3.96. Promotions in excess of 28% quota were quashed. In regard

to the question whether the placement of Additional Superintendents of Police (senior scale) as Additional Superintendents (Selection scale) amounted to a promotion so as to give the reserved candidates the benefit of reservation by way of roster points the High Court held in favour of the reserved candidates that it amounted to a promotion and that reservation as per the roster points for promotion to the selection scale has to be given. The High Court in that context followed the decision of this Court in State of Rajasthan Vs. Fateh Singh Soni (1996(1) SCC 562) dated 12.12.95. The general candidates are aggrieved in this behalf and filed C.A. 3935/98.

The High Court has also followed Ajit Singh No.1 dated 1.3.96 and held that the reserved candidates on promotion at roster points cannot count their seniority from the date of such promotion and their senior general candidates at the lower level, on promotion become seniors to them. The reserved candidates have preferred appeals C.A.2866-2868/98 and 3282/98 and 4084/98 in regard to this part the judgment. No submissions were made before us on behalf of the reserved candidates that reservation should be in excess of 28% quota. Contentions in this Court:

The State of Rajasthan while accepting the principles laid down in Ajit Singh No.1, has, however, filed C.A.3147-3150/98 and the appeals arising out of SLPs. 9185-88/99 to contend that the seniority lists accepted in Fateh Singh Soni by this Court could not have been altered by the High Court, under the impugned judgment. The general candidates contend that Fateh Singh Soni requires reconsideration. They also contend that, in any event, Fateh Singh Soni's case was decided on 12.12.95 and at that time this Court was not dealing with the issue of seniority of the roster point promotees and hence after judgment in Ajit Singh No.1 dated 1.3.96, it becomes necessary for the High Court to modify the seniority lists as accepted in Fateh Singh Soni's case in implementation of Ajit Singh No.1. The reserved candidates contend that Ajit Singh No.1 is not correctly decided and Jagdish Lal Vs. State of Punjab (1997(6) SCC 538) is to be followed.

The State of Rajasthan made an additional plea that between 1.3.96 when Ajit Singh No.1 was decided on 1.4.97, certain further promotions of the reserved candidates had taken place and that the prospectivity of Ajit Singh No.1 may be postponed from 1.3.96 to 1.4.97 for the limited purpose of preventing reversions of the roster-point promotees who were promoted upto 1.4.97 though in respect of seniority, Ajit Singh No.1 could be given effect in respect of reserved candidates promoted at roster points before 1.4.97. The Rules:

It may be noted that the R.P.S. officers are governed by the Rajasthan Police Service Rules, 1954 and the Indian Police (Appointments by promotion, Regulations, 1955) issued in pursuance of Sub-rule (1) of Rule 9 of the Indian Police Services (Recruitment) Rules, 1954. The relevant Rules are Rule 8, 9, 28-A and 33 of the 1954 Rules. The above Rules are pari-materia with the Rajasthan Administrative Service Rules, 1954.

Rule 8 of the R.P.S. Rules, 1954 deals with 'Reservation of vacancies for the Scheduled Castes and Scheduled Tribes'. Rule 9 deals with the method of

determination of vacancies. Rules 27, 27A, 28 deal with criteria for selection and procedure for selection by seniority-cum-merit, eligibility being reckoned as on the first day of April of the year of selection. Rule 28-A refers to the 'Revised criteria, Eligibility and Procedure for promotion to Junior, Senior and other posts ex-cadred in the services. Rule 33 deals with 'seniority'. Rajasthan Rule is consistent with Ajit Singh: Today we have delivered judgment in IAs 1-3 in Civil Appeal Nos.3792-94/89 (Ajit Singh No.1) and that is called for convenience, Ajit Singh No.2.

It is important to note that in Rajasthan, there is a general Amendment dated 1.4.97 made to the R.P.S. and R.A.S. Rules of 1954 which directs that roster-point promotees shall not be given such seniority. That amendment reads as follows:

"After the existing last proviso of rule as mentioned in column 3 against each of the Service Rules, as mentioned in column 2 of the Schedule appended hereto, the following new proviso at the next serial number shall be added, namely:

"That if a candidate belonging to the Scheduled Caste/Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/O.B.C. candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste/Scheduled Tribe in the immediate higher category."

The above circulars are consistent with what has been laid down in regard to seniority of reserved candidates in Ajit Singh No.1 and Ajit Singh No.2.

Fateh Singh Soni correctly decided: The contention of Sri Gopal Subramaniam for the general candidates that appointment from senior scale to selection scale is not a promotion and that Fateh Singh Soni requires reconsideration in view of the judgments in Union of India Vs. S.S. Ranade (1995(4) SCC 462) and Lalit Mohan Deb Vs. Union of India (1973(3) SCC 862), cannot be accepted. We are unable to agree. We find that both these cases have been referred to and explained in Fateh Singh Soni's case. Therefore, the reserved candidates are entitled to be promoted to the selection scale by way of the roster points. But, this has to be done in the manner mentioned in R.K. Sabbarwal Vs. State of Punjab (1995(2) SCC 745). The appeal of the general candidates has to fail. Seniority is to be decided as per Ajit Singh No.1 and Ajit Singh No.2: So far as the seniority of the roster point promotions is concerned, the reserved candidates have contended that upon promotion at the roster points, the promotees can reckon seniority and that senior general candidates who later got promoted cannot be treated as seniors at the promotional stage. But in view of what has been decided in our separate judgment in Ajit Singh No.II today, the above contention cannot be accepted. Thus, there are no merits in the appeals filed by the reserved candidates.

On behalf of the State of Rajasthan, learned Additional Solicitor General, Sri Altaf Ahmad contended that

the seniority settled by Fateh Singh Soni could not have been disturbed by the High Court. We are unable to agree. Fateh Singh Soni was decided on 12.12.95 while Ajit Singh No.1 was decided on 1.3.96. In Soni's case, the question of the seniority of roster points promotees vis-a-vis senior general candidates was not in issue. Here, the seniority lists prepared in accordance with Fateh Singh Soni have to be modified in the light of Ajit Singh No.1. The High Court was, therefore, right in applying Ajit Singh No.1 and giving direction to implement that judgment. In our view, the question of seniority of the roster point promotees will be on the basis of what was decided in Ajit Singh No.1 and under Points 1 to 3 in Ajit Singh No.2. Prospectivity of Sabharwal and Ajit Singh No.1 We first make it clear that so far as the 'prospectivity' of Sabharwal is concerned, the decision in Point 4 in Ajit Singh No.2 will apply. There is no change in the cut off date so far as Sabharwal is concerned. So far as prospectivity of Ajit Singh No.1 is concerned, our decision in Ajit Singh No.2 will apply in principle but with a slight modification of the cut off date.

It was argued for the State of Rajasthan that on the peculiar factual situation concerning the R.P.S. and R.A.S. officers, the judgment of this Court in Ajit Singh Januja Vs. State of Punjab (1996(2) SCC 715) (called Ajit Singh No.1), could not be implemented forthwith and hence a few more promotions of the reserved candidates took place upto 1.4.97. It was pointed out that as per Ajit Singh No.1 those reserved candidates who were promoted before 1.3.96 were not to be reverted, though their seniority in the promoted cadre, even if made before 1.3.96 would be governed by Ajit Singh No.1. It was submitted that this concession of non-reversion could be extended to those reserved candidates who were promoted before 1.4.97.

In view of the peculiar facts of these cases, we are inclined to accede to this contention. The result is that officers from the reserved category who were promoted at the roster points before 1.4.97 shall not be reverted but their seniority in the promoted category shall be governed by the principles enumerated under Points 1 to 3 in Ajit Singh No.1 and Ajit Singh No.II. The prospectivity of Sabharwal as explained under Point 4 in Ajit Singh No.II is not disturbed. So far as prospectivity of Ajit Singh No.1 is concerned, the principles in Ajit Singh No.II in Point 4 will apply but subject to postponement of 1.3.96 to 1.4.97.

In other words, we agree that there is no need to revert those reserved category officers, if they were promoted even beyond 1.3.96 but before 1.4.97. To give an example - in the case of two rosters from Level 1 to Level 2 and Level 2 to Level 3, if the reserved candidate was promoted before 1.4.97 to Level 4, such reserved candidate need not be reverted. If by the date of promotion of the reserved candidate before 1.4.97 from Level 3, the senior general candidate at Level 2 has reached Level 3, he has to be considered as senior at Level 3 to the reserved candidate because the latter was still at Level 3 on that date. But if such a general candidate's seniority was ignored and the reserved candidate was treated as senior at level 3 and promoted to Level 4, this has to be rectified after 1.3.96 by following Ajit Singh No.1 as explained in Ajit Singh No.II. In other words, if a reserved candidate was promoted

to Level 4 before 1.4.97, without considering the case of the senior general candidate who had reached Level 3 before such promotion, such reserved candidate need not be reverted but the said promotion to Level 4 is to be reviewed and seniority at Level 3 and Level 4 (as and when the general candidate is promoted to Level 4) is to be refixed. .pa

Thus, we reject the main contentions of the general candidates and the reserved candidates but accede to the request of the State of Rajasthan to the extent indicated above. All the appeals are, therefore, dismissed subject to the above concession.

JUDIS