

**(1995) 10 SC CK 0015**

**Supreme Court of India**

**Case No:** Civil Appeal No. 9272 of 1995, (arising out of S.L.P. (C) No. 6468 of 1987) with C.A. No"s. 5044 of 1989, 4436 and 18 of 1990, W.P. (C) No"s. 1208 of 1987, 565 of 1993; C.A. No"s. 9273-77 of 1995 (arising out of S.L.P. (C) No"s. 1682 and 6924 of 1988,

Union of India and others etc.

APPELLANT

Vs

Virpal Singh Chauhan etc.

RESPONDENT

**Date of Decision:** Oct. 10, 1995

**Acts Referred:**

- Air Corporations Act, 1953 - Section 15, 34(1), 44, 45, 7
- Constitution of India, 1950 - Article 16(4), 335

**Citation:** AIR 1996 SC 448 : AIR 1995 SC 448 : (1996) 1 AWC 105 Supp : (1995) 7 JT 231 : (1995) 2 OLR 616 : (1995) 6 SCC 684 : (1995) 4 SCR 158 Supp : (1995) 3 UPLBEC 1983

**Hon'ble Judges:** S. C. Agrawal, J; B.P. Jeevan Reddy, J

**Bench:** Division Bench

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

B.P. Jeevan Reddy, J.

C.A. Nos. 9272-73 & 9277 of 1995 (arising out of S.L.P. (C) Nos. 6468 of 1987, 1682/88, and 8111/94), C.A. No. 2261/87, 5044/89, 4436/90, 18/90, W.P. (C) 1208/87 and 565/93. (Main Opinion)

Leave granted in Special Leave Petitions.

1. These appeals/writ petitions raise an important but difficult question concerning the nature of rule of reservation in promotions obtaining in the Railway service and the rule concerning the determination of seniority between general candidates and candidates belonging to reserved classes in the promoted category. The issue is best illustrated by taking the facts in the first of these matters, viz., Union of India and others etc. Vs. Virpal Singh Chauhan etc., arising from SLP (C) No. 6468 of 1987.

The appeal is preferred against the judgment of the Central Administrative Tribunal (Allahabad Bench) disposing of Original Application No. 647 of 1986 with certain directions. [It was originally filed as a writ petition in the Allahabad High Court which, on the Constitution of the Central Administrative Tribunal (Allahabad Bench), was transferred to the Tribunal] It was filed by, what may be called for the sake of convenience, employees not belonging to any of the reserved categories (hereinafter referred to as "general candidates" - which means open competition candidates). The Railway Administration as well as the employees belonging to reserved categories, i.e., Scheduled Castes and Scheduled Tribes were impleaded as respondents. The writ petition/original application came to be filed in the following circumstances :

Among the category of Guards in the Railway service, there are four categories, viz., Grade 'C', Grade 'B', Grade 'A' and Grade 'A' special. The initial recruitment is made to Grade 'C' and they have to ascend rung after rung to go upwards. The promotion from one grade to another in this category is by seniority-cum-suitability. In other words, they are "non-selection posts". The rule of reservation is applied not only at the initial stage of appointment to grade 'C' but at every stage of promotion. The percentage reserved for Scheduled Castes is fifteen percent and for Scheduled Tribes 7.5%, a total of 22.5 percent. To give effect to the rule of reservation, a forty-point roster was prepared in which certain points were reserved for Scheduled Castes and Scheduled Tribes respectively, commensurate with the percentage of reservation in their favour. For Scheduled Castes candidates, the places reserved in the roster were : 1, 8, 14, 22, 28 and 36 and in the case of Scheduled Tribes candidates, they were : 4, 17 and 31. Subsequently, a hundred-point roster has been prepared, again reflecting the aforesaid percentages.

2. In the year 1986, the position was that both the petitioners in the original application (general candidates) and the party-respondents in the said original application (members of Scheduled Castes and Scheduled Tribes) were in the grade of Guards Grade 'A' in the Northern Railway. On August 1, 1986, the Chief Controller, Tundla passed orders promoting certain general candidates on ad hoc basis to Grade 'A' special. Within less than three months, however, they were sought to be reverted and in their place, members of Scheduled Castes/Scheduled Tribes were sought to be promoted. Complaining that such a course of action is illegal, arbitrary and unconstitutional, the general candidates approached the High Court, which petition, as stated above, was transferred to the Tribunal. The general candidates asked for three reliefs, viz., (a) to restrain the Railway authorities from filling up the posts in the higher grades in the category of Guards by applying the rule of reservation; (b) to restrain the Railway Administration from acting upon the illegal seniority list prepared by them; and (c) to declare that the petitioners (general candidates) are entitled to be promoted and confirmed in Guard Grade 'A' special on the strength of their seniority earlier to the reserved category employees. Their contention, in short was (1) that once the quota prescribed for a reserved category

is satisfied, the rule of reservation - or the forty-point roster prepared to give effect to the said rule - cannot be applied or followed any longer and (2) that the forty-point roster is prepared only to give effect to the rule of reservation. It may provide for accelerated promotion but it cannot give seniority also to a reserved category candidate in the promoted category. According to them, the seniority in Guard Grade 'C' should govern and should be reflected in all subsequent grades notwithstanding the earlier promotion of the members of the reserved categories. Their case was that even if a reserved category member 'X' is promoted from Grade 'C' to Grade 'B' earlier than his senior 'Y' (general candidate), the position should be that when the general candidate also gets promoted later to Grade 'B' he should regain his seniority over 'X' in Grade 'B' which means that in Grade 'B', 'Y' again becomes senior to 'X'. They submitted that this should be the rule to be followed to ensure that command of Articles 14 and 16 of the Constitution of India prevails. They relied upon two decisions of the Allahabad High Court and another decision of Madhya Pradesh in support of their contention. They also relied upon certain circulars of the Railway Board in this behalf.

3. The case of the Railway Administration (Respondent Nos. 1 to 4 in the original application) was that the Administration is maintaining separate seniority lists for each of the grades in the category of Guards according to the policy in vogue. The ad hoc promotions of general candidates ordered on August 1, 1986 were irregular inasmuch as the seniors in the category of Grade 'A' Guards were ignored and juniors promoted by the Chief Controller, Tundla. The Chief Controller, Tundla was not competent to order the said ad hoc promotions. The promotions ordered later of Scheduled Castes/Scheduled Tribes candidates is strictly in accordance with the seniority position in Grade 'A' and is unobjectionable. The Administration submitted that seniority is determined on the basis of the date of promotion and since promotion effected applying the forty-point roster cannot be said to be an ad hoc promotion, a Scheduled Caste/Scheduled Tribe candidate promoted earlier to a particular grade becomes senior to another candidate, general or otherwise, who is promoted to that grade later. In short, according to them, the date of promotion to a particular grade determines the seniority in that grade.

4. The reserved candidates (respondents in the original application) supported the stand of the Administration. They submitted that the seniority list pertaining to Guards Grade 'C' is not relevant and cannot be followed in the matter of promotion to Grade 'A' special from Grade 'A'. For the purpose of promotion to Grade-A special, the seniority list pertaining to Grade 'A' should be followed and since in that grade, the Scheduled Castes/Scheduled Tribes candidates were seniors, they were entitled to be promoted to Grade 'A' Special earlier than their juniors in that seniority list. They submitted that the seniority in a grade should be determined according to the date of promotion/appointment to that grade and not in any other manner. They submitted that inasmuch as in the higher grades, the representation of Scheduled Castes/Scheduled Tribes members was quite inadequate, the Scheduled

Castes/Scheduled Tribes candidates obtained rapid promotions from one grade to another but it is neither contrary to the rules nor is it inconsistent with Articles 16 and 14. In fact, the very rule of reservation in promotions is meant to increase the representation of Scheduled Castes/Scheduled Tribes candidates in the higher echelons of services quickly. No exception can be taken to the said rule, they submitted.

5. Since the Tribunal has strongly relied upon two decisions of the Allahabad High Court and a decision of the Madhya Pradesh High Court, it would be appropriate to refer to their ratio briefly.

6. In Civil Writ Petition No. 1809 of 1972, J.C. Mallik v. Union of India, the Allahabad High Court held that the rule of reservation or the forty-point roster, as the case may be, cannot be followed and applied once the representation of Scheduled Castes/Scheduled Tribes in a particular grade, cadre or service, reaches the prescribed level of percentage. In other words, once the quota of 22 1/2% in favour of Scheduled Castes/Scheduled Tribes is satisfied, the rule of reservation/forty-point roster can no longer be followed and applied. It may be mentioned that this decision has since been referred with approval in the Constitution Bench decision in [R.K. Sabharwal and others Vs. State of Punjab and others](#) .

7. The other decision of the Allahabad High Court is in Second Appeal No. 2745 of 1983 arising from Suit No. 308 of 1981, M.P. Dwivedi v. Union of India and Ors. The learned District Judge, whose decision was under appeal in the said second appeal, had decreed the suit filed by the general candidates in the following words : "The defendants-appellants, their agents and servants are restrained by means of permanent injunction from filling up the posts of higher grade in the category of Guards by way of reservation in favour of Scheduled Castes and Scheduled Tribes candidates in excess of fixed by Railway Board. Their claim for declaration to the effect that they are entitled to be promoted to the higher grades in the category of Guards on the strength of their seniority list prepared by the defendant for Guards Grade-C on their initial grades is also decreed". When the matter came to the High Court, the learned Single Judge, who disposed of the second appeal, held :

After having considered the entire position I am of the opinion that in the present case promotion from grade 'A' to 'A' Special cannot be made on the basis of reservation so long as Guards belonging to Scheduled Castes or Scheduled Tribes class in grade 'A' Special are in excess of the percentage reserved for them. The position, however, will always remain fluctuating and will have to be reviewed by the authorities from time to time. But the right of Scheduled Castes and Scheduled Tribes candidates to promotion merely on the basis of their seniority-cum-suitability without any reference to reservation will not be barred. As and when percentage of Scheduled Castes and Scheduled Tribes Guards in grade Special goes down below the requisite percentage their right to promotion on the basis of reservation will revive. Subject to this modification the decree for injunction passed by the Court

below is confirmed and the appeals are dismissed.

8. The judgment of the Madhya Pradesh High Court is in G.C. Jain v. Divisional Rail Manager, Central Railway reported in (1986) 1 S.L.R. 598. The passage relied upon by the Tribunal reads thus :

Those SC & ST candidates who have come or been promoted due to reservation quota, having already jumped the queue, cannot be permitted to compete with general candidates for further promotion. They are a special class by themselves and they have only to go to the reserve quota for further promotion. If the reserve quota is already full in the next grade, the SC & ST candidates just below that grade in the reserve quota will have to wait till vacancy occurs in the higher grade in the reserve quota. However, we want to make it clear that this will not apply to such SC & ST candidates who on their own in competition with the general candidates have attained their present position and not due to reservation, they are entitled to compete further with the general candidates and they will not be affected for promotion in the general quota even if the reserved quota is full in the next higher grade.

9. On the basis of the aforesaid decisions and certain circulars of the Railway Board, which will be referred at a later stage, the Tribunal laid down the following principles in Para - 26 of its judgment. (We have split up the paragraph into several sub-paras to bring out the several principles distinctly) :

26. To clarify the position further we will enunciate the principles of determining seniority in situations as are under dispute here.

The basic seniority in grade 'C' will be the guiding seniority list for the cadre of guards.

Reservations in promotions would be made against posts in the grades and not against vacancies.

Persons who are promoted by virtue of the application of roster would be given accelerated promotion but not the seniority.

The seniority in a particular grade amongst the incumbents available for promotion to the next grade will be recast each time new incumbents enter from the lower grade on the basis of the initial grade 'C' seniority i.e. a senior grade 'C' Guard who gets promoted to grade 'B' or from grade 'B' to grade 'A' and so on will find his position amongst the incumbents of that grade on the basis of the original grade 'C' seniority.

Such persons as are superseded for any reasons other than on account of reservation will be excluded. A person superseded on account of a punishment or unfitness will count his seniority on the revised basis and not on original grade 'C' seniority.

The reserved community candidates who are senior not by virtue of reservations but by the position in grade 'C' selections which the grade 'C' seniority list will automatically take care of, will not wait for reservation percentage to be satisfied for their promotion. They will get promoted in their normal turn irrespective of the percentage of reserved community candidates in the higher grade. Others who get promoted as a result of reservation by jumping the queue will wait for their turn.

Reservation will again have to be applied on depletion of the reservation quota in the higher grade to make good the shortfalls.

10. The Tribunal directed that a fresh seniority list be drawn in the light of the principles enunciated by it in Para-26 and promotions made on that basis. The Tribunal rejected the contention of the general candidates that "no promotions at all be made for reserved community candidates because quota is full". Similarly, it rejected the contention of the general candidates (petitioners in the original application) that all promotions in the higher grades shall be made on the basis of the seniority list pertaining to Grade 'C' alone. It held that the seniority list will be separately prepared for each grade in accordance with the principles enunciated by it and that the list must be updated every time there is promotion to that category. It clarified that a reserved community candidate who gets promotion on his own merit and not on the basis of rule of reservation-cum- forty-point roster will be entitled to be promoted irrespective of the quota position. But those reserved community candidates who obtained promotion by jumping the queue on the basis of rule of reservation will get the promotion on the basis of the revised seniority list to be prepared in accordance with the directions contained in Para-26.

11. The Indian Railway Establishment Manual, Volume-I, contains instructions regulating inter alia seniority of non-gazetted Railway servants. They are contained in Chapter-III. Para 306 says, "candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above". Para 309 reads : "SENIORITY ON PROMOTION. - Paragraph 306 above applies equally to seniority in promotion vacancies in one and the same category due allowance being made for delay, if any, in joining the new posts in the exigencies of service." Para 314 says that subject to Paragraph 302 to 306, "when the dates of appointment to the grade are the same, the date of entry into the grade next below it shall determine seniority". Para 319 deals with seniority on promotion to non-selection posts. This paragraph states that "promotion to non-selection posts shall be on the basis of seniority-cum-suitability, suitability being judged by the authority competent to fill the post, by oral and/or written test or a departmental examination or a trade test or by scrutiny of record of service as considered necessary." It further says that "a railway servant, once promoted in his turn after being found suitable against a vacancy, which is non- fortuitous, should be considered as senior in that grade to all others who are subsequently promoted after being found suitable."

12. So far as the rule of reservation is considered it has been applicable to Railway service by orders issued by the Railway Board from time to time pursuant to and in obedience to the policy decisions of the Ministry of Home Affairs. The decision of this Court in Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, refers to the several orders issued from time to time in this behalf. They are also found at pages 4 to 6 (Chapter-I) and pages 59 to 89 (Chapter-III) of the Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Railway Services (Third Edition 1985). We do not think it necessary to refer to them in this judgment since we are concerned herein not with the validity of the rule of reservation but with its nature and its effect upon the question of seniority. We shall, therefore, refer to the Railway Board's circulars alone relevant on this aspect. Here too, we will refer first to orders applicable to non-selection posts. Railway Board's letter dated 13th August, 1959 is of a general nature. It says that "as a general rule the seniormost candidate should be promoted to a higher non-selection post, subject to his suitability. Once promoted against a vacancy which is non-accidental, he should be considered as senior in the grade to all others who are subsequently promoted". [Printed at page 507 in Chapter-XII of the Brochure aforesaid. The Railway Board's letter dated August 31, 1982 (at page 512 - Chapter XII of the Brochure) deals with the subject "Reservation for Scheduled Castes and Scheduled Tribes in promotion in Group 'D' and 'C' (Clause IV and III, on the basis of seniority-cum-suitability". Para-4 of the letter reads:

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, 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 position in the examination where training is provided.

(Emphasis added)

13. 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.

14. Indeed, the Railway Board's letter dated January 19, 1972 (pages 194-195 - Chapter-VIII dealing with promotion to selection posts - of the Brochure) shows that even in the case of promotions made on the basis of merit, the same principle applies.

15. The Railway Board's letter dated October 20, 1960 referred to in the judgment of Madhya Pradesh High Court in G.C. Jain 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.

16. At page 503 of the Brochure, in Chapter-XXII, dealing with confirmation and seniority, Railway Board's letter dated February 11, 1972 is extracted, the relevant portion whereof reads:

Sub : Reservation for Scheduled Castes and Scheduled Tribes - Application of roster both at the time of initial recruitment and confirmation.

Reference Board's letter No. E (SCT) 62CM15/7 dated 20th April 1963 which provides that the reservation roster is to be applied only at the time of initial recruitment and that confirmation should be made in the order of seniority which in the case of non-trained categories is determined on the basis of the position in the panel supplied by the Railway Service Commission and in the case of trainee categories on the basis of the merit position in the examination.

2. The Board after careful consideration have decided that in the posts filled by direct recruitment on or after the date of issue of this letter, reservation may be made for Scheduled Castes and Scheduled Tribes both at the time of initial appointment on temporary basis as well as at the time of confirmation. In posts filled by promotion, however, no reservation is admissible at the stage of confirmation of promotees and the existing procedure of confirming employees in order of their panel position may continue.

(Emphasis added)

17. Again at page 508, extracts of Railway Board's letter dated January 19, 1972 are set out, which read :

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.

And finally at page 512, the circular/letter of the Railway Board dated August 31, 1982 is set out, which has already been extracted hereinbefore.

18. Pausing here for a moment, we must explain what does panel mean and signify in the case of promotions. Though we enquired repeatedly, this aspect could not be clarified by the learned Additional Solicitor General. In particular, we wanted to

know whether a panel is prepared only in the case of selection posts or is it also prepared in the case of non-selection posts. The several instructions in Indian Railway Establishment Manual are also not helpful on this aspect. We are, there-lore, left to interpret the expression ourselves. Having regard to the fact ; that in all the above circulars/letters, the expression "panel" has been used to denote a merit list or select list, as it may be called, we think it reasonable to understand as a panel which is prepared in the case of selection posts only. In the case of non-selection posts, there is no question of such a panel. In their case, the senior is promoted automatically unless he is found to be unsuitable to hold the promotion post. No panel, i.e., merit list or select list is called for in the case of non-selection posts. May be, ultimately, a list of persons to be promoted is prepared but that is neither a merit list, nor a select list.

19. Sri Altaf Ahmed, learned Additional Solicitor General questioned the correctness and validity of the principles enunciated by the Tribunal in para-26 of its judgment. He submitted that according to the Indian Railway Establishment Manual, seniority is determined by the date of promotion/appointment to the concerned grade and that the said principle cannot be altered or departed from in the name of ensuring equality. Once the rule of reservation is applied in the matter of promotions and it is remembered that in the higher echelons of administration, representation of Scheduled Castes/Scheduled Tribes has been inadequate all these years, there is nothing surprising if the members of Scheduled Castes/Scheduled Tribes get promotions sooner and earlier than the general candidates. This is the natural consequence of applying the rule of reservation in promotions - and not an unintended one. The said consequence cannot, therefore, be a basis for evolving a rule which partially off-sets the very purpose and meaning of the rule of reservation. Sri Altaf Ahmed further submitted that effecting promotions in accordance with the rosier vacancies are not and cannot be called "fortuitous promotion". They are regular vacancies and promotion to them is a regular promotion. He relied upon the decision of the Central Administrative Tribunal in Durga Charan Haldar v. Union of India (Original Application No. 854 of 1990) wherein it has been held that the date of promotion, effected following the forty-point roster/hundred-point roster, is determinative of seniority. He submitted that the decision of the Central Administrative Tribunal (Patna Bench) to the contrary is the subject matter of appeal in this batch. The Patna Tribunal has followed the decision of the Allahabad Tribunal in Virpal Singh Chauhan.

20. Sri Rajeev Dhawan, learned Counsel appearing for the respondents-general candidates, put forward the following submissions while opposing the contentions of the learned Additional Solicitor General :

(i) Article 16(4) of the Constitution enables the State to define the extent and nature of the benefits to be extended to the backward classes. It is not as if there is only one particular method of providing reservations under the said clause.

(ii) The purpose behind Article 16(4) is to ensure adequate representation to backward classes in the administrative apparatus of the State. The purpose of Article 16(4) is only to ensure adequate representation and not to confer additional benefits - other than those which logically flow from the rule of reservation. As soon as adequate representation is achieved, the rule of reservation must be kept in abeyance and if there is a roster the application of the roaster must be stopped.

(iii) A harmonious construction of Clauses (4) and (1) of Article 16 both of which are indeed facets of the very same principle of equality -implies that while the members of reserved categories will be entitled to equal treatment in all matters relating to service conditions, they cannot claim accelerated seniority in addition to accelerated promotion. If this principle is not recognised, it would result in the reserved category members stealing an additional march over the general candidates which defeats the guarantee of equality extended by Article 16(1) to general candidates. In other words, giving accelerated seniority in addition to accelerated promotion amounts to conferring double benefit upon the members of reserved category and is violative of rule of equality in Article 16(1).

(iv) The command of Article 335 of the Constitution shall also have to be kept in mind in this behalf. Accelerated promotion-cum-accelerated seniority is destructive of the efficiency of administration inasmuch as by this means the higher echelons of administration come to be occupied almost entirely by members of reserved categories - at any rate, far beyond the percentage of reservation prescribed for them.

(v) The decisions of this Court clearly establish the distinction between promotion and seniority. It would be too simplistic to say that seniority automatically follows the promotion.

(vi) A candidate belonging to reserved category appointed/promoted on the basis of rule of reservation should not be held entitled to compete for a general vacancy in the roster. They should be confined to reserved vacancies alone. Non-observance of this rule has resulted in a situation where in the higher grades of Railway Guards the representation of Scheduled Castes/Scheduled Tribes has risen upto seventy percent (in the case of Guard Super Grade) and forty percent (in the case of Guard Grade 'A' Special) instead of 22.5 percent. This anomaly cannot be allowed to occur.

21. Sri K.B. Rohtagi, learned Counsel appearing for the respondents in Civil Appeal No. 2261 of 1987 (for Guards belonging to Scheduled Castes/Scheduled Tribes categories) supported the contentions of the learned Additional Solicitor General.

22. Clause (4) of Article 16 of the Constitution enables the State to make "any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State." In *Indra Sawhney v. Union of India*, [1992] Suppl. 3 S.C.C. 217, it has been held by the majority (in the opinion delivered by one of us,

B.P. Jeevan Reddy, J.):

The question then arises whether Clause (4) of Article 16 is exhaustive of the topic of reservations in favour of backward classes. Before we answer this question it is well to examine the meaning and content of the expression 'reservation'. Its meaning has to be ascertained having regard to the context in which it occurs. The relevant words are, any provision for the reservation of appointments or posts'. The question is whether the said words contemplate only one form of provision namely reservation simpliciter, or do they take in other forms of special provisions like preferences, concessions and exemptions. In our opinion, reservation is the highest form of special provision, while preference, concession and exemption are lesser forms. The constitutional scheme and context of Article 16(4) induces us to take the view that larger concept of reservations takes within its sweep all supplemental and ancillary provisions as also lesser types of special provisions like exemptions, concessions and relaxations, consistent no doubt with the requirement of maintenance of efficiency of administration - the admonition of Article 335. The several concessions, exemptions and other measures issued by the Railway Administration and noticed in Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, are instances of supplementary, incidental and ancillary provisions made with a view to make the main provision of reservation effective i.e., to ensure that the members of the reserved class fully avail of the provision for reservation in their favour. The other type of measure is the one in State of Kerala and Another Vs. N.M. Thomas and Others. There was no provision for reservation in favour of Scheduled Castes/Scheduled Tribes in the matter of promotion to the category of Upper Division Clerks. Certain tests were required to be passed before a Lower Division Clerk could be promoted as Upper Division Clerk. A large number of Lower Division Clerks belonging to SC/ST were not able to pass those tests, with the result they were stagnating in the category of LDCs. Rule 13-AA was accordingly made empowering the Government to grant exemption to members SC/ST from passing those tests and the government did exempt them, not absolutely, but only for a limited period. This provision for exemption was a lesser form of special treatment than reservation. There is no reason why such a special provision should not be held to be included within the larger concept of reservation.

23. This statement of law makes it clear that there is no uniform or prescribed method of providing reservation. The extent and nature of reservation is a matter for the State to decide having regard to the facts and requirements of each case. Such a situation was indeed dealt with in National Federation of S.B.I. and Others, etc. Vs. Union of India and Others, rendered by one of us, B.P. Jeevan Reddy, J. on behalf of the Bench which included R.M. Sahai and S.C. Sen JJ. In the case of service under Public Sector Banking Institutions, while reservation in promotions was provided in the case of promotion from Class-IV to Class-III, Class-III to Class-II and from Class- II to Class-I, no such reservation was provided so far as promotions

within Class-I were concerned. Only a Concession (set out in the judgment) was provided in favour of Scheduled Castes/Scheduled Tribes candidates with a view to enable them to obtain promotions within Class-I which they may not have obtained otherwise. It was held by this Court that such a concession can also be provided under Article 16(4). In short, it is open to the State, if it is so advised, to say that while the rule of reservation shall be applied and the roster followed in the matter of promotions to or within a particular service, class or category, the candidate promoted earlier by virtue of rule of reservation/roster shall not be entitled to seniority over his senior in the feeder category and that as and when a general candidate who was senior to him in the feeder category is promoted, such general candidate will regain his seniority over the reserved candidate notwithstanding that he is prompted subsequent to the reserved candidate. There is no unconstitutionality involved in this. It is permissible for the State to so provide. The only question is whether it is so provided in the instant case?

24. It is the common case of the parties before us that the rule of reservation in the Railway services - to be more precise to the category of Railway Guards, whether in the matter of initial appointment or in the matter of promotion, from one grade to another, is provided by the circulars/letters of the Railway Board. These circulars/letters have been issued by the Railway Board in exercise of the power conferred upon it by Rule 123 of the statutory rules framed by the President of India. We have referred to the circulars/letters of the Railway Board hereinbefore. In the circular/letter dated August 31, 1982 which deals with the subject of "Reservation for Scheduled Castes and Scheduled Tribes in promotion in Group 'D' and 'C' (Class IV and III) on the basis of seniority-cum-suitability" it is specifically ordered that while "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", such promotion shall be "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 position in the examination where training is provided". So far as the several grades among Railway Guards are concerned, the relevant service conditions do not provide for any training followed by examination on promotion from one grade to another. Hence, the seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position. We have discussed hereinbefore the meaning of the expression "panel" and held that in case of non-selection posts, no "panel" is prepared or is necessary to be prepared. If so, the question arises, what did the circular/letter dated August 31, 1982 mean when it spoke of seniority being governed by the panel position? In our opinion, it should mean the panel prepared by the selecting authority at the time of selection for Grade 'C'. It is the seniority in this panel which must be reflected in each of the higher grades. This means that while the rule of reservation

gives accelerated promotion, it does not give the accelerated - or what may be called, the consequential - seniority. There is, however, one situation where this rule may not have any practical relevance. In a given case, it may happen that by the time the senior general candidate gets promoted to the higher grade, the junior reserved category candidate (who was promoted to the said higher grade earlier) may get promoted to yet higher grade. In other words, by the time the senior general category candidate enters, say, Grade 'B', his junior Scheduled Caste/Scheduled Tribe candidate is promoted to Grade 'A'. It is obvious that in such a case, the rule evolved in the aforesaid circulars does not avail the senior general candidate for there can be no question of any seniority as between, say, a person in 'B' grade and a person in 'A' grade.

25. Now let us see how does the above principle operate 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 assume 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 senior-most in Grade 'C'. The senior-most 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).

26. We are of the opinion that the aforesaid circulars/letters 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-1 of the Indian Railway Establishment Manual including those contained in Paras 306, 309 and 319 et al. Accordingly, we agree with the conclusion of the Tribunal in the order under appeal (Virpal Singh Chauhan) though we may not agree with all the reasons given by the Tribunal. In other words, we may not agree with the view expressed by the Tribunal that a harmonious reading of Clauses (1) and (4) of Article 16 should mean that a reserved category candidate promoted earlier than his senior-general category candidate in the feeder category shall necessarily be junior in the promoted category to such general category candidate. No such principle may be said to be implicit in the said clauses. But inasmuch the Railway Board's circulars concerned herein do provide specifically for such a situation and since they cannot be said to be violative of the constitutional provisions, they must prevail and have to be given effect to. It is not brought to our notice that the said instructions are inconsistent in any manner with any of the statutory provisions or statutory rules relevant in this behalf.

27. So far as the other question considered by the Tribunal (viz., that once the representation of the reserved categories in a given unit of appointment reaches the prescribed percentage, the rule of reservation or the roster based on it cannot be given effect to), the Constitution Bench decision of this Court in R.K. Sabharwal v. State of Punjab, settles the issue. In this decision, it has been held that where the total number of posts in a cadre reserved for reserved candidates are filled by operation of a roster, the object of rule of reservation must be deemed to have been achieved and that thereafter there would be no justification to operate the roster. Para-5 of the said judgment brings out the reasons for the said rule and the rule itself:

We see considerable force in the second contention raised by the learned Counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of 'running account' is to make sure that the Scheduled Castes/Scheduled Tribes and Backward Classes get their percentage of reserved posts. The concept of 'running account' in the impugned instructions has to be so interpreted that it does not result in excessive reservation. 16% of the posts....' are reserved for members of the Scheduled Castes and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Castes. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of

100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The 'running account' is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotes occupy the posts meant for them in the roster. The operation of the roster and the 'running account' must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example, the Scheduled Caste persons holding the posts at roster points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation.

28. The Constitution Bench has, however, made it clear that the rule enunciated by them shall operate only prospectively [vide Para 11]. It has further been held in the said decision that the "percentage of reservation has to be worked out in relation to the number of posts which from the cadre-strength (and that) the concept of 'vacancy' has no relevance in operating the percentage of reservation". (As a matter of fact, it is stated that this batch of cases were also posted for hearing before the Constitution Bench along with R.K. Sabharwal batch of cases but these cases were de-linked on the ground that they raise certain other issues which did not arise in R.K. Sabharwal.) Be that as it may, as a result of the decision in R.K. Sabharwal and the views/findings recorded by us hereinabove, the following position emerges:

(i) Once the number of posts reserved for being filled by reserved category candidates in a cadre, category or grade (unit for application of rule of reservation) are filled by the operation of roster, the object of rule of reservation should be deemed to have been achieved and thereafter the roster cannot be followed except to the extent indicated in Para-5 of R.K. Sabharwal. While determining the said number, the candidates belonging to the reserved category but selected/promoted on their own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

(ii) The percentage of reservation has to be worked out in relation to number of posts in a particular cadre, class, category or grade (unit for the purpose of applying the rule of reservation) and not with respect to vacancies.

(iii) So far as Railway Guards in Railway service are concerned - that is the only category we are concerned herewith - the seniority position in the promoted category as between reserved candidates and general candidates shall be the same as their inter se seniority position in Grade 'C' at any given point of time provided that at that given point of time, both the general candidate and the reserved category candidates are in the same grade. This rule operates whether the general candidate is included in the same batch of promotees or in a subsequent batch. (This is for the reason that the circulars/letters aforesaid do not make or recognise any such distinction.) In other words, even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category.

29. If the above three rules are observed and followed, there may not remain much room for grievance on the part of the general candidates. While in the very scheme of things, it is not possible to give retrospective effect to these rules - a fact recognised in R.K. Sabharwal - the above rules, operated conjointly, should go a long way in maintaining a balance between the demands of merit and social justice.

30. Sri Rajeev Dhawan, learned Counsel for the general candidates, pointed out, what according to him, are the inequitable and anomalous situations which would follow, if the candidate appointed/promoted on the basis of rule of reservation is not confined to reserved posts alone and is allowed to compete for general posts as well. In such a situation, he submits, the reserved candidate will enjoy yet another - third - advantage. Whenever, it is convenient to him, he will claim to be considered for a reserved post and where it is more convenient to him, he will claim to be considered for a general post, whereas a general candidate is restricted to general posts alone. In our opinion, however, the plea of the learned Counsel cannot simply be accepted; his submission flies in the face of the established law on the subject.

31. Sri Dhawan then pointed out that Rule 3 stated above is not sufficient to do justice to the general candidates and that in practice, it has resulted in denial of just rights to general candidates. He elaborates his submission thus : a reserved category candidate may get promoted from Grade 'C' to Grade 'B' earlier than his senior general category candidate (senior with reference to the select list/panel prepared at the time of selection to Grade 'C') by operation of rule of reservation/roster. The general candidate who is senior to him in the said select

list/panel may get promoted to Grade 'B' later but what may happen, meanwhile, is that the reserved category candidate is further promoted to Grade 'A'. In other words, by the time the senior general category candidate gets promoted to grade 'B', the reserved category candidate is no longer there in Grade 'B' - he has ascended to Grade 'A'. In such a situation, there will be no occasion for applying the aforesaid Rule 3 as between these two candidates. Sri Dhawan submits that this is precisely what has happened in the case of Railway Guards. Even the Railway Administration has admitted this situation in their counter, he says, though they have ascribed it to inadequate representation of the reserved categories in the higher grades. Sri Dhawan says that, in practice, the candidates belonging to reserved categories got rapid promotions, leaving their erstwhile senior general candidates in the category in which they were originally appointed. May be that Sri Dhawan's complaint is true - we have already dealt with the possibility and consequence of such a situation - but his grievance, in effect, is not against Rule 3 aforesaid but against the very rule of reservation being applied in promotions. It may be recalled that in *Indra Sawhney*, eight of the nine learned Judges constituting the Bench opined that Article 16(4) does not permit or warrant reservation in the matter of promotions. This was precisely for the reason that such a rule results in several untoward and inequitous results. The Bench, however, permitted the existing rules in that behalf to operate for a period of five years from the date of judgment based as those rules were on an earlier Constitution Bench decision in *State of Bihar and Another Vs. Umesh Jha*. It is another matter that since then a constitutional amendment has been brought in permitting reservation in promotions to the extent of Scheduled Castes and Scheduled Tribes only, we need express no opinion on the aside amendment.

32. Sri Dhawan points out yet another anomaly. Where a candidate belonging to Scheduled Caste gets selected on his own merit, i.e., in the general category, he will be treated as a general candidate and on that account he suffers prejudice vis-a-vis another reserved category candidate who could not be selected on his own merit (i.e. in the general category) and was selected only because of and under the rule of reservation. For illustrating his submission, learned Counsel says, take an instance where out of forty candidates selected, a Scheduled Caste candidate selected on merit stands at Sl. No. 18 in the select list, whereas another Scheduled Caste candidate selected under and only because of the reserved quota stands at Sl. No. 33. But when the occasion for appointment arises, the Scheduled Caste candidate at Sl. No. 33 will be appointed against the first roster-point, whereas the Scheduled Caste candidate at S. No. 18, being a general candidate has to wait for his turn. This, the learned Counsel says, amounts, in effect, to punishing the Scheduled Caste candidate at Sl. No. 18 for his merit. Because he was meritorious, he was selected in general category and is treated as a general candidate. He suffers all the disadvantages any other general candidate suffers while another Scheduled Caste candidate, far less meritorious than him and who was selected only by virtue of rule

of reservation, steals a march over him in the matter of initial appointment and in promotion after promotion thereafter. This is undoubtedly a piquant situation and may have to be appropriately rectified as and when the occasion arises. It is not pointed out that any such situation has arisen in the appeals before us. It is probable that many such situations may arise which cannot be foretold now. According to the general category candidates concerned herein, of course, the rule of reservation/roster has already given rise to many distortions. According to them, the representation of the reserved categories in Guard Grade 'A' Special has reached forty percent as against the prescribed 22.5 percent. It is not possible for us to say, on the material before us, how and why the said situation has come about. It may be partly because the rule now enunciated in R.K. Sabharwal was not there and was not being followed. It may also be that such a result has been brought about by a combined operation of the factors mentioned in (i) and (ii) above. The fact remains that the situation - assuming that it is what is described by the general candidates - cannot be rectified with retrospective effect now. The Constitution Bench in R.K. Subharwal too has directed that the rule enunciated therein shall have only prospective operation. So far as the present appeals are concerned, it is sufficient to direct that the Railway authorities shall hereinafter follow Rules (i), (ii) and (iii) [stated in Para No. 28] with effect from the date of judgment in R.K. Sabharwal i.e., February 10, 1995.

33. Learned counsel have sought to bring to our notice individual facts of some of the appeals before us but we do not propose to enter into those facts or make any pronouncement thereon. The proper course, in our considered opinion, is to send all these matters back to the Tribunal to work out the rights of individuals concerned applying the three principles aforesaid. These appeals are accordingly disposed of in the above terms and matters remanded to the respective Tribunals. Writ Petitions are dismissed. No costs.

#### SELECTION POSTS

Civil Appeal No. 9276 of 1995 arising out of SLP (C) No. 18370 of 1993 :

34. Delay condoned. Leave granted.

35. This appeal arises from the judgment of Central Administrative Tribunal (Madras Bench) allowing Original Application No. 869 of 1991 filed by the respondent, Sri D. Williams. The relevant facts drawn from the counter filed on behalf of the Railway Board and its officials before the Tribunal, are the following :

36. The cadre of Station Master is divided into five grades. The grades and inter se percentage is as follows :

37. The posts of Assistant Station Masters in the scale of Rs. 1200-2040 are filled by direct recruitment through Railway Recruitment Boards to the extent of fifty percent. The balance fifty percent is filled by promotion of departmental employees. The higher grades in the said cadre are filled by promotion from the immediately lower grade. Twenty five percent of the posts in the scale of Rs. 1600-2660 are, however, filled by direct recruitment of Traffic Apprentices.

38. The first respondent, Sri Williams (petitioner in the original application before the Tribunal) was promoted to the post of Deputy Station Superintendent/Traffic Inspector in the scale of Rs. 2000-3200 on December 30, 1989. Actually, he was initially appointed as a Signaller in the scale of Rs. 60-150. Over the years, he earned promotions one after the other. In the scale of Rs. 130-240, he was senior to Respondent Nos. 4 to 10 in the original application (they are not impleaded as respondents in this appeal), all of whom belong to Scheduled Castes/Scheduled Tribes. Because of rule of reservation and the manner in which it was implemented, the said Scheduled Castes/Scheduled Tribes candidates were promoted to the higher categories sooner. They came to be promoted to the post of Deputy Station Superintendent/Traffic Inspector in the scale of Rs. 2000-3200 far earlier to Sri Williams, i.e., on January 1, 1984 or earlier. On that basis, the said Scheduled Castes/Scheduled Tribes candidates were being treated as seniors to Sri Williams who is, of course, a general candidate.

39. The post of Station Superintendent/Traffic Inspector in the scale of Rs. 2375-3500 are controlled by and dealt with at Head Quarter's level. They are filled on "All Railway" basis by a process of selection (which comprises of viva-voce only) from among the Deputy Station Superintendents/Traffic Inspectors in the scale of Rs. 2000-3200.

40. Eleven vacancies arose in the scale of Rs. 2375-3500. According to rules, three candidates have to be considered for every vacancy. Accordingly, a list of thirty three senior-most candidates in the scale of Rs. 2000-3200 was prepared on the basis of their respective dates of entry in the said grade. They were 'alerted' to be ready to appear for the interview by a letter dated July 12, 1991. All the thirty three senior-most employees so alerted belong to Scheduled Castes/Scheduled Tribes. Sri Williams was not among the thirty three. It is then that Sri Williams approached the Tribunal praying for setting aside the alert notice dated July 12, 1991, to revise the seniority list of all the grades in the Station Masters' category protecting the seniority of general candidates and for a further declaration that rule of reservation cannot be applied against vacancies. He sought a further declaration that the said rule of reservation is confined to recruitment to the scale of Rs. 1200-2040 alone i.e., to the lowest grade in the cadre - and not to higher grades.

41. The Tribunal allowed the original application filed by Sri Williams following its earlier decision in Original Application No. 85 of 1989. The Tribunal declared that for the purpose of promotion under the general quota, seniority of the Scheduled

Castes/Scheduled Tribes candidates should not be determined on the basis of the date of their actual promotion but on the basis of the date on which they would have been promoted in due course if the rule of reservation were not applied. The Tribunal, however, declared that the seniority in the grade of Rs. 1600-2660 shall not be disturbed because the applicant had not approached the Tribunal in time to challenge the seniority in that scale. The relief granted by the Tribunal is in the following terms :

In the result, we allow the application and pass the following orders :-

We direct the respondents to revise the seniority of the applicants and respondents in the scale of Rs. 2000-3200 taking into account for the applicant his date of actual promotion and for the respondents 4 to 10 the date on which they would have been granted promotion in that grade but for the preferential treatment based on reservation. Promotion shall be made according to a selection based on the revised list.

42. The learned Additional Solicitor General appearing for the appellants (Union of India and the Railways) challenged the correctness of the decision of the Tribunal on the ground that it has evolved a principle of seniority not recognised by any rule or circular order of the Railway Board and is unsustainable in any event. He submitted, relying upon the decision in Karam Chand Vs. Haryana State Electricity Board and Others, that the date of promotion to a particular grade or category determines the seniority in that grade or category. Inasmuch as the said thirty three candidates were alerted (called for) on the basis of their seniority for interview (for selection to eleven posts in the grade of Rs. 2375-3500) no valid grievance can be made by any one to such a course.

43. Sri S. Murlidhar, learned Counsel for Sri D. Williams submits that this is a demonstrable case of injustice being done to general candidates by applying not only the rule of reservation at every stage of promotion but also because the rule of seniority enunciated by the Railway Board in its several circulars was not being followed by the concerned authorities. He submits that it is for the Railways to explain how the situation has come about where all the thirty three candidates being considered for eleven vacancies happen to belong exclusively to Scheduled Castes/Scheduled Tribes categories. He submits that Sri Williams was admittedly a senior to Respondent Nos. 4 to 10 (in the original application, i.e., Scheduled Castes/Scheduled Tribes candidates) in the grade of Rs. 130-240 but then the said Scheduled Castes/Scheduled Tribes candidates obtained rapid and preferential promotion to next higher grades, viz., Rs. 330-560, Rs. 425-640, Rs. 455-700, Rs. 1600-2660 and then to the grade of Rs. 2000-3200. They reached the grade of Rs. 2000-3200 more than five years earlier to Sri Williams who was their senior in the lower category of Rs. 130-240. The result of faulty implementation of rule of reservation and rule of seniority is that all the top grades have come to be occupied exclusively by the reserved category members, a situation, which he characterises

as a total negation of the Rule of Equality underlying Articles 16(1) 16(4) and 14. He emphasises the fact that the Railways have not explained in their counter as to how the above situation has come about except stating baldly that since the Scheduled Castes/Scheduled Tribes candidates were seniors to Sri Williams in the grade of Rs. 2000-3200, they were rightly alerted for interview.

44. It is true that this case presents a rather poignant turn of events. Of the thirty three candidates being considered for eleven vacancies, all are Scheduled Castes/Scheduled Tribes candidates. Not a single candidate among them belongs to general category. The learned Counsel for the respondent is justified in complaining that appellants have failed to explain how such a situation has come about. Not only the juniors are stealing a march over their seniors but the march is so rapid that not only erstwhile compatriots are left far behind but even the persons who were in the higher categories at the time of entry of Scheduled Castes/Scheduled Tribes candidates in the service have also been left behind. Such a configuration could not certainly have been intended by the framers of the Constitution or the framers of the rules of reservation. In the absence of any explanation from the authorities, the best we can do is to ascribe it as faulty implementation of the rule of reservation. In other words, not only have the Railways not observed the principle that the reservation must be vis-a-vis posts and not vis-a-vis vacancies but they had also not kept in mind the rule of seniority in the promotion posts enunciated in the Railway Board's circulars referred to supra. Yet another principle which the authorities appeared to have not observed in practice is that once the percentage reserved for a particular reserved category is satisfied in that service category or grade (unit of appointment) the rule of reservation and the roster should no longer be followed. Because of the breach of these three rules, it appears, the unusual situation complained of by the general candidates has come to pass. The learned Counsel for general candidates is right that such a situation is bound to lead to acute heart-burning among the general candidates which is not conducive to the efficiency of administration. Be that as it may, the question is can the said situation be rectified. Probably not, until we direct all the promotions to be reviewed and re-done. This may not be advisable at this distance of time. The enormity of the exercise should deter any one from launching upon such a course. It is evidently for this reason that the Constitution Bench has directed in R.K. Sabharwal that the rule affirmed by them should be applied only prospectively. There is yet another circumstance : the Scheduled Castes/Scheduled Tribes candidates cannot be barred from competing for general posts. We are constrained to remark that it is the application of rule of reservation in the matter of promotions - which entitles a reserved category candidate to avail of the benefit of reservation any number of times which is mainly responsible for such a situation.

45. While referring to the Railway Board's circulars/letters in civil appeals No. 9272/95 (arising from SLP (C) No. 6468 of 1987 and batch), we had referred to the Railway Boards circular/letter dated January 19, 1972 dealing with promotion to

selection posts. (Para-3 of the said letter is in the same terms as Para-4 of the Railway Board's circular/letter dated August 31, 1982 referred to supra). The said Para-3 reads : "(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." But inasmuch as the post of Station Superintendent/T.I. in the scale of Rs. 2375-3500 is a selection post, the panel referred to in the said circulars/letters would mean the panel prepared at the time of making selections for promotion to the said post (Rs. 2375-3500) - and not the panel/select list prepared at the time of entry into the initial grade, viz., Assistant Station Master (Rs. 1200-2040). It also means that members in one panel take precedence over the members in the next panel. The application of the rule of seniority referred to in the said circular/letter - and other circulars/letters referred to supra most, of which do not make any distinction between selection and non-selection posts -has to be subject to the said limitation.

46. It may be noticed that of the five grades in the Station Masters' category, two are non-selection posts while the remaining three are selection posts. While in the case of non-selection posts the rule enunciated in the main opinion Virpal Singh Chauhan would be applicable, in the case of selection posts, the rule explained herein has to be followed. We may clarify that Rules (i) and (ii) in Para 28 of Virpal Singh Chauhan apply to both selection and non-selection posts. Rule (iii) also applies to both but subject to the above rider. As explained in the main opinion, while there is no question of a "panel" being prepared at the time of promotion to non-selection posts, a panel has to be prepared for promotion to selection posts.

47. This appeal is accordingly allowed and the matter remanded to the Tribunal with a direction to dispose of the original application afresh in the light of the principles enunciated herein. No costs.

CIVIL APPEAL NO. 9275 OF 1995 ARISING OUT OF SLP (C) NO. 4102 OF 1994 :

48. Delay condoned. Leave granted.

49. The respondent [petitioner before the Central Administrative Tribunal (Allahabad Bench)], Sri Mohd. Sabir, joined the Railways as an Office Clerk on December 20, 1957. He was promoted as head Clerk and then as an Assistant Superintendent. His promotion to the post of Assistant Superintendent was on March 12, 1985. The next promotion is to the post of Superintendent. He approached the Tribunal complaining that when two vacancies arose in the category of Superintendents, the Railway Authorities called certain Scheduled Castes/Scheduled Tribes candidates for interview in preference to him though they are far juniors to him. He gave three instances, vi/., (1) Sri A.P. Pramanik, who joined the service twenty years after him and who was promoted as Assistant Superintendent only on February 22, 1988. (2)

Sri Kamal Kishore, who was initially appointed as Class IV employee but who is being treated as senior to the petitioner and (3) Sri Amrendra Kumar Das, who was appointed as an Office Clerk twenty two years after his appointment and who came to be promoted as Assistant Superintendent on February 25, 1986. The grievance of Sri Mohd. Sabir is this : the total sanctioned strength of the category of Superintendents (Grade Rs. 2000-3200 RPS) is thirteen. There are three vacancies. Of the remaining ten, only two are general candidates and the remaining eight belong to Scheduled Castes. Inspite of the same, the candidates now being considered for promotion are again Scheduled Castes candidates which is likely to result in an almost total reservation in the said category in favour of the Scheduled Castes/Scheduled Tribes candidates. The case of the appellants (respondents in the original application) is that they are considering the senior most candidates for the vacancies arising in the category of Superintendents and, therefore, no objection can be taken with the said course by any one.

50. The Tribunal has allowed the original application in the following terms :

It appears that some mathematical mistake occurred on the part of the department in making the promotion and deciding the seniority. According to learned Counsel in view of Virpal Singh Chauhan's case these candidates are to be reverted. Whether they are to be reverted or not that is the matter for the respondents to decide all such observations which have been made in Virpal Singh case, but the respondents are directed to promote the members of the general community to the extent they are entitled to by adhering to the seniority. Accordingly, since the matter is not decided finally by the Hon'ble Supreme Court, however those persons who have already been promoted, it is for the respondents to make arrangement either for the excadre post for them otherwise if they are now interested, keep them for the post of Supdt. and will adjust the seniority list accordingly in accordance with Virpal Singh 's case. Let all these be done within the period of three months from the date of communication of this order. No order as to the costs.

51. This appeal is liable to be dismissed applying the principle enunciated in R.K. Sabhurwal. It is evident that out of the cadre-strength of thirteen, there were three vacancies on the date of filing of the original application before the Tribunal and of the remaining ten posts, only two were occupied by the general candidates and the remaining eight were occupied by the members of Scheduled Castes. Since the representation of Scheduled Castes is already far beyond their quota, no further Scheduled Castes candidates could have been considered for the remaining three vacancies. This means that the Scheduled Castes candidates can be considered only as and along with general candidates but not as members belonging to a reserved category. The appeal is accordingly dismissed with the aforesaid clarification.

CIVIL APPEAL NO. 9274 OF 1995 ARISING OUT OF SLP (C) NO. 6924 OF 1988 :

52. Delay condoned. Leave granted.

53. This matter pertains to promotion to the posts of Office Superintendents Grade-I, Office Superintendent Grade-II and Head Clerk. The original application was filed by three candidates belonging to general category. Their grievance was that the representation of Scheduled Castes/Scheduled Tribes candidates has already exceeded the percentage reserved for them and inspite of that the Scheduled Castes candidates are again being considered for the vacancies arising in the said categories. By way of illustration, they pointed out, the sanctioned strength of the category of Head Clerks is six. Four are filled up and there are two vacancies. Out of the four posts already filled up, two are held by general category candidates and two by the members of Scheduled Castes. The claim of the original petitioners (respondents in this appeal), which has been upheld by the Calcutta Tribunal, is that the remaining two vacancies should go only to general candidates. Similar direction has been made with respect to other two categories as well. The Tribunal further directed that the rule of reservation must be applied with reference to posts and not with reference to vacancies. The main contention of the Union of India and the Railway Authorities in this appeal is that the rule of reservation in favour of Scheduled Castes/Scheduled Tribes should be applied to vacancies and not to total number of posts in the cadre. It is submitted that the Tribunal was in error in holding that the rule of reservation should be so applied as to ensure that the posts held by Scheduled Castes/Scheduled Tribes do not exceed that prescribed percentage. It is submitted that this was never the intention of the Constitution or the rule of reservation.

54. The only contention urged by the appellants herein is concluded against the appellants by the decision of this Court in R.K. Sabharwal, referred to hereinbefore. Following the said decision this appeal is dismissed with the clarification that the members of Scheduled Castes/Scheduled Tribes can also compete as general candidates. The appellant shall follow and apply the said decision. No costs.

Before parting with these appeals, we feel obliged to reiterate the principle affirmed in Indra Sawhney that providing reservation in promotion is not warranted by Article 16(4). The facts of these cases illustrate and demonstrate the correctness of the said holding. They also bring home the intractable problems that arise from such provision - problems that defy solutions. No more need we say on this aspect. The decision in Indra Sawhney speaks for itself.