

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 24.03.2017

CWP No.12307 of 2013 (O&M)

Mani Ram

...Petitioner

Vs.

The Chief Manager, State Bank of Patiala,
The Mall Road, Patiala & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Peeush Gagneja, Advocate, for the petitioner.

Mr. H.N.Mehtani, Advocate, for the respondents.

RAJIV NARAIN RAINA, J.

By way of this petition, directions are sought by Mani Ram against the State Bank of Patiala (presently merged with State Bank of India) to promote him as per Rules to Middle Management Grade Scale-III from December, 2009 and to Senior Management Grade Scale-IV from 2013, since junior employees have already been promoted to higher ranks.

Government of India issued instructions on 02.07.1997 in implementation of the Supreme Court judgment in R.K.Sabharwal & others Vs. State of Punjab & others, AIR 1995 SC 1371; (1995) 2 SCC 745. There was a paradigm shift in the law announced shifting from 'vacancy based rosters' to 'post based rosters' in furtherance to the policy of reservation of Scheduled Castes in promotion to higher posts. The law in *R.K.Sabharwal's* case was declared on 10.02.1995 but was made prospective in application on the interpretation of the roster system introduced for the first time by the Supreme Court to balance the interests of the general category and reserved category candidates containing principles for preparing rosters equitably by

balancing the interests of reserved category and general candidates. The Supreme Court had held that vacancy based rosters can operate only till such time as the representation of persons belonging to the reserved categories in a cadre, reaches the prescribed percentage of reservation. Thereafter, the rosters wither away and can thereafter be made to operate only against vacancies released by retirement, resignation, promotions etc. of the persons belonging to either the general or the reserved categories are to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation to maintain the balance of which side creates the vacancy. The Supreme Court also held that persons belonging to the reserved categories, who are appointed on the basis of merit and not on account of rule of reservation, are not to be counted towards the quota meant for reservation and their vacancies stand vacated to accommodate the lower in merit from their respective category. Meaning thereby, the more meritorious reserved category candidate can supersede general category candidate, who secures lesser merit in the selection process, dependent on the structure of the rules of service and whether the higher post is a selection post or a non-selection post. The principles underlying promotion to selection and non-selection posts were explained by the Supreme Court a few months after *R.K. Sabharwal's* case in Union of India & others Vs. Virpal Singh Chauhan, AIR 1996 SC 448; (1995) 6 SCC 684.

It is not disputed that Office Memorandum dated 02.07.1997 applies to the State Bank of Patiala conveyed vide letter dated 17.12.1997. The Office Memorandum contains by way of illustration a Model Roster to be followed in recruitments and promotions in different groups of service.

In R.S.Garg Vs. State of U.P., 2006 (4) RSJ 195, the Supreme Court explained that posts reserved for reserved category candidates cannot

exceed the prescribed quota and percentage of reservation. In the event of conflict between the two the former shall prevail.

In order to apply the law to the facts of the case, some of those which are necessary are narrated. The petitioner joined the respondent – Bank as Clerk -cum- Cashier on 07.07.1981. He was promoted as Special Assistant. He appeared for promotion test from Clerical to Official Cadre under Group-A for the relevant period 01.01.1998 to 31.12.2000 under the category of Scheduled Castes candidates of which he was a member. As per the Government of India guidelines and as per roster system, 15% reservation shall be given to Scheduled Castes candidates. The claim in the writ petition for availing benefit of roster system relates back to the promotion test from Clerical Cadre to Officer Cadre Group-A. Therefore, it is one of the objections of the Bank that the petition brought in the year 2013 suffers from inordinate delay and laches and is liable to be dismissed on that score.

The Bank in its written statement contest the case maintaining that after recasting the roster according to 200 point roster, it was observed that under Group-A, the representation of the Scheduled Caste category was in excess by 72 points than required, while representation of General and Scheduled Tribes categories was short by 101 and 33 points respectively for the promotions to be accorded in the year 1999. In the year 2000, in terms of Model Roster of Government of India, there were 77 surplus officers in JMGS-I promoted under Group-A i.e. more than required reservation for Scheduled Castes candidates. Accordingly, the Bank had provided requisite 15% reservation to the Scheduled Caste category and no further reservation in promotion was permissible for the year 2000. Prior thereto, in the year 1998 also the representation of Scheduled Castes category candidates was 87

more than required upper reservation under Group-A and, therefore, reliance is placed on *R.S.Garg's* case (supra) that in the event of conflict, the percentage of reservation shall prevail. For these reasons, the claim of the petitioner cannot be accommodated, said the Bank and rightly so, as it will result in violation of the percentage of reservation. This excess was a result of operating the vacancy based roster and the kind of situation which was confronted in litigation that started from Joginder Singh Sethi & others Vs. Punjab Government & others, 1982 (2) SLR 307, leading to Full Bench judgment of this Court in Jaswant Singh Vs. Secretary to Government of Punjab, Education Department, 1989 (4) SLR 257 and ultimately the transformation of law in Ajit Singh Janjua & others Vs. State of Punjab & others, AIR 1996 SC 1189; JT 1996 (2) SC 727 (Ajit Singh-1) and Ajit Singh Janjua & others Vs. State of Punjab & others, (1999) 7 SCC 209 (Ajit Singh-2) cases, holding, inter alia, that roster point is not seniority point and accelerated promotions on reserve roster points will not be accompanied by accelerated seniority for promotion to higher posts and the principle of catch up would apply.

The result was that in the year 1999, there was 72 excess points filled from amongst the reserved category and 77 excess in the year 2000 under Group-A. This had created an imbalance which only time could heal since reversions could not be done to ferry up the general category to their positions but for rule of reservation.

Transition to Junior Management Grade Scale-I was on a selection post albeit an appointment by promotion since eligible candidates had to qualify written examination and appear for personal interview which test might alter seniority positions by dint of superior merit determined by the agency. The petitioner failed to secure position in the final merit list of

selected candidates each and every time he appeared for the test, and I am told for four times, hence he was not promoted. The further scheme for promotion by an adjustment to Middle Management Grade-III is evidently misconceived and baseless since the stepping stone has not been achieved and foothold not found. There can be no doubt that excess reservation in 1999 and 2000 was due to change in mechanism of the roster system. The petitioner cannot, therefore, complain of lack of opportunity to advance his career since he was given a fair chance to compete amongst equals against unreserved seats on panel position, but his name did not fall within the zone of promotion based selection.

In the written statement, the Bank has articulately explained the two roster systems i.e. vacancy based and post based, and they are worth quotation:-

“Mechanism of vacancy based roster:

Say if there are 200 vacancies identified under Group-A for promotion to JMGS-I cadre, than as per vacancy based roster the reservation for SC category candidates will be 30 (15% of 200) and for ST category candidates will be 15 (7.5% of 200) irrespective of present strength of SC/ST category candidates. There is no effect of present cadre strength.

Mechanism of post based roster:

The post based roster considers the total strength of the employees in particular cadre. Say if in the year 2014, there were 200 vacancies under Group-A for promotions to JMGS-I cadre, and previously the strength of JMGS-I cadre officers promoted under Group-A is 400, out of which the representation of SC candidates is 40 and that of ST category candidates is 45. The reservation in post based roster for said 200 vacancies will be as under:

For SC category candidates: $50 (15\% \text{ of } 600 = 90 \text{ minus present number of SC candidates i.e. } 90-40)$

For ST category candidates: $\text{Nil } (7.5\% \text{ of } 600 = 45 \text{ minus present number of SC candidates i.e. } 45-45)"$

Thus, the Bank committed no error in declining the appeal vide letter dated 11.08.2011. The petitioner had no case made out for promotion from Clerical Cadre to Officer Cadre in the relevant years i.e. 1999 and 2000 and I find no reason to differ with the impugned letter (Annex P-7). The onward march to still higher cadres is a far cry and has to be rejected.

There is still another important fact, which deserves attention is as is contained in Para.8 of the written statement with Bank pleading that in the year 1999, there were total 62 number of posts under Group-A for promotion to JMGS-I. The result of 31 posts was declared and a proposal for de-reservation of 31 posts (under ST category) was under consideration at Government of India level, but the same was rejected vide Government of India letter dated 23.01.1998. These 31 posts were included in the next promotion exercise i.e. in the year 2000. In the year 2000, there were 27 vacancies under General category and 6 under Scheduled Tribes category, as per the roster of JMGS-I promoted under Group-A, the representation of SC category was in excess by 77 points, hence no seats were reserved for SC category candidates. What was wrong with this arithmetic? I find nothing illegal. There has been no violation of rights in this case under Article 16 4A and 16 4B of the Constitution justifying interference.

Not only is there lack of merit in this petition, but the objection of the Bank that the petition suffers from delay and laches appears to be correct. A claim based arising for its cause of action in for the years 1999 & 2000 and the same was litigated for the first time by the petitioner in CWP

No.4589 of 2012 disposed of on 30.03.2012 on the statement of the counsel for the petitioner that he would be satisfied if a direction is issued to the respondent-Bank to decide his legal notice. The Court granted the prayer and directed the Bank to decide the claim within eight weeks. That order gave birth to the present proceedings. The claim for promotion has been brought after an inordinate delay of 12 years, which is a rather stale claim. There is no sufficient explanation for the delay and even applying the rule in P.S.Sadasivaswamy Vs. State of Tamil Nadu, AIR 1974 SC 2271 this petition call for dismissal. I would, thus, dismiss this petition on merits as well as on maintainability. The approach is inordinately belated and to say the least, even after availing four chances for selection based promotion, the petitioner failed to qualify any of them and can have only himself to blame.

For all the reasons recorded above, this petition fails and is dismissed.

24.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>