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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 21.10.2020

Pronounced on: 17.11.2020

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W.P. (C) 4114/2020 & CM No. 14769/2020

DR. PRADEEP SHINDE & ORS.

..... Petitioners

Through: Mr. Akhil Sibal, Sr. Advocate
with Mr. Maanav Kumar, Ms.
Roshni Namboodiry, Ms. Nitya
Gupta, Ms. Sonali Malik and Ms.
Nupur, Advocates.

versus

JAWAHARLAL NEHRU UNIVERSITY THROUGH:

ITS VICE CHANCELLOR & ANR.

..... Respondents

Through: Ms. Monika Arora, Standing
Counsel with Ms. Ankita Shah,
Advocate for R-1.
Mr. Ajay Digpaul, CGSC and Mr.
Kamal R. Digpaul Advocate for
UOI.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. By way of the present petition the Petitioners seek quashing of Advertisement Nos. RC/60/2019 and RC/61/2019 both dated 19.08.2019 as well as the proceedings pursuant to the said Advertisements. A mandamus is also sought directing Respondent No.1 to advertise the vacant posts afresh in accordance with the applicable rules and post-based

roster as per judgment of the Supreme Court in ***R.K. Sabharwal & Ors. v. State of Punjab & Ors. (1995) 2 SCC 745*** and provisions of DOPT OM's issued pursuant thereto.

2. Petitioner No.1 is an Assistant Professor of Sociology at the Centre for Informal Sector & Labour Studies, School of Social Sciences in the University (hereinafter referred to as Centre I) and is concerned with the Advertisement No. RC/61/2019 while Petitioner No.2 who is an Assistant Professor at the Centre for Inner Asian Studies (Tibetan & Himalayan Studies), School of International Studies (hereinafter referred to as Centre II) is concerned with the Advertisement No. RC/60/2019. Petitioner Nos. 3 & 4 are Professors in the University and are not affected by the selection process pursuant to the impugned Advertisements, but have impleaded themselves as Petitioners only with the purpose of highlighting the alleged illegalities in filling up the reserved posts by the University. In short, the grievance of Petitioner No.1 is that post No.63 in the Advertisement issued in 2016 was advertised for post of Associate Professor in Centre I and was reserved for SC candidate while the same has now been converted to an ST post and is shown as post No. 135 in the impugned Advertisement. Petitioner No.2 is aggrieved by the fact that post No.50 being the post of Professor in the Advertisement RC/02/2016 was reserved for ST candidate and has been now converted to an Unreserved post and is shown as post No.60 in the impugned Advertisement. Thus, according to the Petitioners, the total number of SC/ST reserved posts advertised have significantly dropped in the impugned Advertisement creating a shortfall and a shift of roster points

due to exchange of points and de-reservation. This action is assailed on several grounds.

3. The first contention of Mr. Akhil Sibal learned senior counsel for the Petitioners is that the appointments to the teaching posts in the Universities have to follow the policy of “post-based reservation”, which mandates that specific teaching posts be designated/reserved for persons belonging to specific reserved categories such as SC, ST and OBC. The reservations shall not apply to the vacancies. Reliance for this proposition is placed on the judgment of the Constitution Bench of the Supreme Court in ***R.K. Sabharwal (supra)*** wherein the Court held that the cadre strength is always measured by the number of posts comprising the cadre and therefore right to be considered for appointment can only be claimed in respect of a post in the cadre. As a consequence, the percentage of reservation has to be worked out in relation to the number of posts and the ‘vacancy’ shall have no relevance in operating the percentages of reservations. Mr. Sibal also argues that the said judgment was implemented by the DOPT by issuing an OM dated 02.07.1997, which clearly states that the points at which reservation for different categories apply are fixed as per the roster. The roster is thus operated on the principle of replacement, wherein the roster itself pre-determines the nature and reservation status of each post. The post-based reservation system envisages that the number of posts filled by reservation for any category should be equal to the quota prescribed for the category.

4. It is next contended that subsequently another OM dated 06.11.2003 was issued by DOPT clearly stipulating that after the introduction of the post-based reservation system it is not permissible to

fill up the post reserved for SC by ST candidate or vice versa meaning thereby that it is not permitted in law to exchange reservations between the two reserved categories. Mr. Sibal also brings to the attention of the Court a Brochure dated 17.10.2016 on reservation for SC, ST and OBC, in service, which applies to teaching appointments as well. Para 1.9 of the Brochure re-emphasises the mandate of the DOPT OM dated 06.11.2003 that after implementation of the post-based reservation no exchange between the reserved categories is permissible. In a nutshell the argument is that once a particular post has been reserved for a specific category, it must retain the specific reservation character and cannot be interchanged or de-reserved and even assuming that the de-reservation is required to be carried out, in an exceptional circumstance, there is a very stringent and rigid procedure prescribed to do so and in the absence of the procedure being followed and establishing the necessity of the reservation, a post cannot be de-reserved. In the light of this it is contended that once the post of Associate Professor in Centre I in which Petitioner No.1 is working was reserved for SC, Petitioner No.1 had both the right and legitimate expectation that the post shall continue to be reserved and would be tenanted by an SC in the present Advertisement against which he has the right of consideration for promotion. To the same effect is the argument of Petitioner No.2.

5. Next contention of the Petitioners is that reservation of the teaching posts follows the “backlog rule” which mandates that once the specific post has been earmarked for a certain reserved category, even if it remains vacant in that year it would be considered a backlog vacancy and would continue to be so reserved in the next cycle of appointments. In

future advertisements and recruitments backlog vacancies are treated as a separate class and cannot be clubbed with fresh vacancies arising in that year of appointment. This applies to determining reservation ceilings in terms of percentages. It is argued that Article 16(4-B) of the Constitution of India stipulates that backlog vacancies are to be carried forward and treated as separate class from fresh vacancies and do not contribute to the reservation ceiling of 50%. This according to learned senior counsel has been incorporated and reiterated in various DOPT OM's. Reliance is particularly placed on the OM dated 06.11.2003 para 3 (A) (iv) as well as para 6.7 of the 2016 Brochure which reiterates that backlog vacancies of SCs, STs and OBCs have to be notified and filled separately.

6. Elaborating the issue, it is argued by Mr. Sibal that Respondent No.1 has failed to follow the post-based roster as well as the backlog rule resulting in reduction of the number of reserved vacancies advertised in the impugned advertisement. It is submitted that the argument made by the Petitioners is clearly substantiated by a comparison between the statistical data relating to the total number of SC/ST posts existing in the University and the number advertised in the impugned Advertisements. To emphasis the point reliance is placed on the Academic Branch Statements dated 28.02.2017 and 20.02.2020, which are as follows:

TABLE 1- Vacancies in Reserved Posts, as of 28.02.2017

POST	SC RESERVED	ST RESERVED	COMBINED
Professor	20	15	
Associate	37	22	

Professor			
Total Posts	57	37	94

Common Statement of teaching position as on 20.02.2020

Name of the Posts	No. of Sanctioned posts	Details of Sanctioned strength as on 20.02.2020						Details of Existing strength of 20.02.2020								Vacant positions as on 20.02.2020					
		GEN	SC	ST	OBC	EWS	TOTAL	GEN	SC	ST	OBC	EWS	TOTAL	PWD	FEMALE	GEN	SC	ST	OBC	EWS	TOTAL
Professor	201	156	30	15	0	0	201	76	14	0	0	0	90	3	20	80	16	15	0	0	111
Assoc. Prof.	372	290	55	27	0	0	372	191	17	5	0	0	213	2	77	99	38	22	0	0	159
Asstt. Prof.	353	180	53	26	94	0	353	170	41	18	43	2	274	9	90	8	12	8	51	0	79
Total	926	626	138	68	94	0	926	437	72	23	43	2	577	14	187	187	66	45	51	0	349

7. The data reflected in the above statements is compared and contrasted with the advertised posts in the impugned advertisements, which is as follows:

POST/CADRE	RESERVATION CATEGORY	NO. OF SEATS	
Associate Professors	SC	22	33
	ST	11	
Professors	SC	16	24
	ST	8	
Total Reserved Seats	Combined SC & ST seats	57	

8. Relying on the 2017 roster, furnished to the Petitioners during the pendency of the present petition it is argued that once the said roster is compared with the 2019 roster it would reveal that the total number of SC/ST assigned roster posts in 2017 roster is 87 (29 for Professor & 58 for Associate Professor) while the total number of SC/ST assigned roster points in 2019 roster is 56 (23 for Professor & 33 for Associate Professor). Thus, around 30 backlog reserved SC/ST posts, according to the Petitioners, have been stripped of their reserved character.

9. Learned senior counsel for the Petitioners draws the attention of the Court to paras F, G and H of the counter affidavit and submits that Respondent No.1 has clearly admitted that it has applied the 50% limit to all available vacant posts and made no distinction between fresh and backlog vacancies. It is argued that the backlog rule has to be strictly followed and it is not in the discretion of Respondent No.1 to decide on the percentages of reservations or the applicability of the backlog rule. It is also argued that the Executive Council of the University in its Resolution No.5.18/EC on 20.02.1983, adopted into the Academic Rules & Regulations of Respondent No.1, had resolved that it shall implement the minimum prescribed percentages for the reserved post i.e. 15% for the SC and 7.5% for ST, which is a Constitutional mandate.

10. Mr. Sibal has also vehemently argued that Respondent No.1 has suppressed material facts and also made misrepresentations before the Court. He submits that in para (F) of the counter-affidavit it is stated that no post of SC and ST has been converted/de-reserved into unreserved post, though reservation roster points have changed in respect of some posts, due to interpolation. This stand is demonstrably false as is clear

from a comparison of the 2017 and 2019 rosters. In response to the order dated 10.07.2020 Respondent No.1 was directed to explain the manner in which the rosters were being applied before the judgment of the Allahabad High Court but the counter-affidavit is silent on the operation of the 2017 roster and deliberately refers only to the 2011 roster comparing it with the 2019 roster. The stand in the affidavit is that in 2011 roster, the roster points were earmarked in excess of the share of the SCs/STs, which is false and it was also misrepresented that the 2011 roster was replaced by 2019 roster. This stand blatantly conceals the existence of 2017 roster as also the fact that the 2019 roster was not brought into effect on 04.07.2019, as alleged, since the appointments made after 04.07.2019 are recorded and updated in 2017 roster. It is also argued that Respondent No.1 is misrepresenting that the Parliamentary Committee on SCs/STs had on 27.03.2016 criticized the excess reservations. In stark contrast, in fact the Committee observed that there was inadequate representation of the SCs/STs in the teaching faculty in the University and in this regard, attention is drawn to the relevant extract of the Parliamentary Committee from the excerpts appended to the writ petition.

11. Ms. Monika Arora learned counsel for the University, per contra, takes a stand that after publication of the Notification dated 07.03.2019 by Government of India being 'Central Educational Institutions (Reservation in Teachers' Cadres) Ordinance, 2019', Gazette Notification published by MHRD on 07.03.2019 and UGC letters dated 07.03.2019 and 08.03.2019, coupled with DOPT OM dated 31.01.2019 and MHRD Gazette Notification dated 12.07.2019, Respondent University, in order to

conduct the Recruitment process, carried out the recasting of existing reservation rosters by plotting and by including the already issued roster points and posts sanction/vacated. The reservation rosters points, as per the registers maintained by the University for the posts of Professors and Associate Professors have been issued in accordance with the principles laid down in the judgement of the Supreme Court in ***R.K. Sabharwal (supra)*** as well as the DOPT OM dated 02.07.1997, applying the post-based reservation policy.

12. It is further submitted that in order to comply with the mandate of the DOPT OM dated 31.01.2019, regarding reservation for OBCs and EWSs, recasting of reservation roster register was carried out and due to the interpolation with previous roster points, few reservation points have shifted. Reservation share, according to her is calculated with regard to total number of sanctioned posts in a cadre, but reservation points are issued having due regard to 50% ceiling of vacant posts. In fact, share of reserved category shall in practice will usually be equal to or less than what is prescribed and shall be completed only when the entire roster is rationalized.

13. Ms. Arora emphatically argues that neither any post of SC or ST has been converted by exchange nor any de-reserved into unreserved post as alleged by the Petitioner and reiterates that there is merely a shift in points. This change, according to Ms. Arora has not caused any loss in required reservations of SCs and STs. It is further submitted that on scrutiny of the roster points issued for post of Professor and Associate Professor, as per the previously existing rosters, which were reflected in Advertisement Nos. RC/02/2016 and RC/57/2017, it was noticed that

these points were issued with a view to adjust or make up for the shortfall of SCs/STs, taking into account the cadre strength. This approach led to a situation wherein roster points were in excess of the share of reservation issued. In addition, the reservation registers were grouped in certain schools/special centres in the University, which resulted in excess reservation to SCs/STs. The registers were divided into four groups of schools/special centres making a total of 12 reservation registers of Professor, Associate Professor and Assistant Professor. This was critically analyzed and evaluated by Parliamentary Committee on SCs/STs in its visit to the University on 27.04.2016 and it was directed to merge all the four groups of reservation registers for all the three cadres.

14. It is argued that the University has acted in accordance with the mandate of the provisions of Article 16(4) and 16(6) of the Constitution of India as well as the DOPT OM dated 31.01.2019, by incorporating reservation percentages as prescribed for SCs, STs, OBCs and EWSs in MHRD Gazette Notification dated 12.07.2019 viz. SCs 15%, STs 7.5%, OBCs 27% and EWSs 10% on total available vacant posts. The records clearly reflect that the Executive Council in its meeting held on 11.04.2007 had decided to implement reservations at 15% for SCs and 7.5% for STs, as per guidelines of the UGC for Associate Professors and Professors. It was further resolved to implement 27% reservation for OBCs at the level of Assistant Professor, as recommended by the MHRD vide letter dated 09.10.06 and UGC letter dated 24.01.2007. However, it was actually implemented after adoption of UGC Regulations, 2010 by the University, in 2011 and the first advertisement with SC/ST

reservation for Professors/Associate Professors was released in November, 2011.

15. In so far as vacancies for the years 2016/2017 were concerned, recruitment process was put on hold due to communication received from UGC vide letter dated 05.03.2018 regarding implementation of the reservation policy of Government of India for recasting of reservation roster department wise, subject wise, instead of cadre wise, in compliance of the judgement of the Allahabad High Court in ***Vivekanand Tiwari v. Union of India, 2017 SCC OnLine All 2729***. University also received a letter dated 19.07.2018 from UGC to postpone the recruitment process, if it was underway.

16. It is submitted that in the meantime University received the new UGC Regulations, 2018 and advertised all the vacancies afresh in 2019, after cancelling the faculty positions advertised in the earlier two years. The stand is that after recast of the reservation register there were no shortfalls for SCs and only 7 shortfalls for STs at Professor level and 1 shortfall each for both SCs and STs at Assistant Professor level. The shortfall also extends to 16 for SCs and 11 for STs at Associate Professor level and all efforts shall be made to adjust the shortfall in future recruitments, subject to applicable Rules.

17. Ms. Arora further sought to explain that Chapter-IV of the Brochure of Reservation, 2016 lays down the principles to be followed for determination of the number of posts reserved for SCs, STs and OBCs in a cadre having more than 13 posts. The posts have to be determined by multiplying the cadre strength by the percentage of reservation prescribed for respective categories. Drawing the attention of the Court to an

explanatory note filed during the pendency of the petition, Ms. Arora argues that as on 28.02.2017 the vacancy position for SCs and STs works out to 92 in the cadre of Professor and Associate Professor. Along with the explanatory note Respondent has placed on record documents showing statement of fresh teaching positions between 2010-2020 as well as details of previous vacancies, fresh vacancies, roster point issued and post filled from 2011 onwards. It is argued on the basis of the documents that the share of SCs/STs in the cadre of Professor and Associate Professor works out to 129 @ 22.5% of the total sanctioned 573 posts. Out of these 45 posts have been filled and 57 advertised in the impugned advertisements. The remaining 27 posts shall be filled in future from vacant posts for which 31 posts are available at present in the University.

18. It is also the stand of the Respondent that the 'backlog vacancies' as defined in Note-2 of Chapter-5 of DOPT Brochure, 2016 are those vacancies which were earmarked reserved for that category in an earlier recruitment year but remained unfilled in the earlier recruitment attempt on account of non-availability of suitable candidates belonging to that category and are still lying unfilled. In the years 2016-2017 despite advertising 91 vacancies for SCs/STs, interviews were held for 18 posts and none was found suitable. Thus, only these 18 vacancies can be termed as backlog vacancies as defined in the Brochure, 2016. The recruitment process could not be completed on account of the judgement of the Allahabad High Court dated 07.04.2017 directing the Central Universities to apply department-wise rosters. The Respondent followed directives of UGC issued vide letter dated 19.07.2018 and postponed the recruitment process.

19. Counsel for the Respondent argues that the allegations of the Petitioners that the roster points of post no. 135 and post no. 60 in the impugned Advertisements have been stripped of their reservation character is misconceived. On account of recasting of the roster as per the UGC and MHRD OM's as well as interpolations of EWS due to the DOPT OM dated 31.01.2019 the points have shifted to other schools/centres. The reservation rosters/registers are only an aid to ensure that the reserved classes get the quotas reserved for them and no one can claim a right to a particular roster point *per se*. The percentage of reservations is no doubt fixed and every effort is made to abide by the same assuring adequate representation, It is also argued para 6.8 of the 2016 Brochure on reservations prescribes that vacancies reserved for SCs, STs and OBCs which could not be filled up will be carried forward as backlog vacancies for subsequent recruitment years and all efforts shall be made by the University to do so in the coming recruitment years with respect to the vacancies which have not been advertised in the impugned advertisements. It is denied that there has been any exchange of reservation points from SC to ST or vice versa, as alleged by the Petitioners.

20. Mr. Sibal Learned Senior Counsel for the Petitioners arguing in rejoinder submits that the falsity of the stand of the University is apparent from the fact that varying stands have been taken in the different pleadings filed by the University and each of the stands is self-contradictory and self-destructive. The attempt is only to misrepresent and misguide the Court. He reiterates the stand of the Petitioners that in the impugned Advertisements University has not treated the backlog

reserved SC/ST vacancies as a distinct group from the fresh vacancies and all vacancies have not been carried forward. An attempt has been made in the additional affidavit to justify the illegality and it is claimed by the University that of the 91 backlog vacancies which were reserved as SCs/STs posts and advertised in 2016-2017, only 18 are backlog because interviews were held only for these posts. Reliance is placed by the Respondent on para 4.4, Note 2 of Chapter-IV of the DOPT Brochure. Through this interpretation Respondent No. 1 seeks to create two sub-categories of the backlog posts viz one for which the interviews were held and the other for which no interviews were held. This is a self created classification of Respondent No. 1 and has no basis in law. As per the 2016 Brochure backlog ST/SC vacancies are those which are earmarked reserved and advertised in the previous year but not filled. These vacancies must stay reserved for the same category and carried forward until filled in the subsequent recruitment year. Neither the Brochure nor any other Government directive makes this artificial distinction between posts for which interviews are held and those for which no interviews are held.

21. Mr. Sibal further argues that the Advertisement No. RC/02/2016 was a special recruitment drive only with respect to backlog vacancies. The 91 reserved posts advertised through this advertisement were the backlog vacancies carried forward from previous years which is evident from a bare reading of the advertisement. These vacancies had been reserved between the years 2012-2015 and do not lose their status as 'backlog' only because no interviews were held for them. Elaborating the argument, it is pointed out that para 13 of the Parliamentary Committee

Report dated 27.04.2016 indicated four reasons why the vacant posts had remained unfilled being; no candidate had applied; candidates applying did not meet essential qualifications; candidates did not make up to the prescribed API score and that the Selection Committees had not recommended for appointment. Nowhere does this Report provide for a distinction between these categories as far as their reservation status is concerned. The interpretation given by Respondent No. 1 would lead to a situation where a University would be able to de-reserve all backlog reserved posts simply by not holding interviews and this would be contrary to the rigorous de-reservation procedure outlined in Chapter-7 of 2016 Brochure.

22. It is contended that in the additional affidavit Respondent No. 1 has made a blatantly false statement. It is correct that in JNU previously there existed 12 rosters which were recast into one roster per cadre (three rosters) in 2019, as per DOPT OM dated 31.01.2019. However, the claim that serial numbers of roster points were renumbered due to recasting is false in the light of the 2017 rosters, which was shared with the Petitioners during the pendency of the Petition. The 2017 roster would show that the change to one roster per cadre took place when the 2017 rosters were prepared and not in 2019. This is also evident from the ECs Resolution dated 22.11.2016 and 03.01.2017. University has tried to mislead the Courts by claiming that Petitioner No. 3 who was in-charge of maintaining the rosters in 2011 had reserved 80 posts out of 169 for SCs/STs which are 47% and far in excess of 22.5%. This according to Mr. Sibal is an incorrect claim on account of the fact that in a post-based reservation system, the number of posts to be reserved for a category

must be calculated by applying the prescribed percentages to the total number of posts and not vacancies. 80 posts were below and not above 22.5% of the sanctioned posts in the two cadres, let alone 15%. According to Mr. Sibal the correct application of reservation percentages is depicted in the table formulated by the Petitioners and which is as follows:-

	2011		2012		2014	
Cadre	Total Sanctioned Posts	Posts to be earmarked/reserved for SC/ST (22.5% limit)	Total Sanctioned Posts	Posts to be earmarked/reserved for SC/ST (22.5% limit)	Total Sanctioned Posts	Posts to be earmarked/reserved for SC/ST (22.5% limit)
Assoc. Prof.	283	61	314	65	364	78
Prof.	156	30	173	36	198	39
Total	439	91	487	101	562	117

23. In a nutshell, the contention is that University has neglected in earmarking reservations by not treating the current vacancies and the backlog reserved vacancies as distinct and separate groups. No attempt has been made to allocate specific reservations to vacant posts to make up the shortfall. To illustrate it is argued that assuming there were 20 current vacancies arising in the year 2020 with a shortfall in the SC category being 10 while there being no shortfall in the ST/OBC categories. Due to the 50% limit on current vacancies only 10 could be reserved. All 10 such posts would have to be allocated in the SC category. It is argued that Clause 4.5 of the 2016 Brochure has a clear illustration to this effect. It is

argued that assuming without conceding that there was an excess of SC/ST in 2011 rosters, the same would have found mention in some document of the University. However, to the contrary, no such excess is either mentioned or sought to be rectified while recasting the 2017 roster. In fact, the Parliamentary Committee Report in 2016 records no excess and instead states that the representation in the teaching faculty is inadequate.

24. With regard to the argument of the University that several roster points, issued in the years 2016 and 2017, issued to SCs/STs, had to be reviewed to include OBCs, it is argued by Mr. Sibal that this is an admission that roster points reserved for SCs/STs have been exchanged or dereserved and issued to OBCs. This is legally impermissible. Secondly, the reliance of the University on the DOPT OM dated 31.01.2019 and Notification dated 12.07.2019 to support its illegal action is misconceived. Neither of these documents require or permit the University to exchange SC/ST roster points with EWS. Rather, the DOPT OM requires that when a new reservation category has to be accommodated into the roster it will assume its position as an unreserved post and not replace the existing reserved posts.

25. I have heard the learned senior counsel for the Petitioners and learned counsel for the Respondents.

26. Before examining and testing the propositions argued by both sides it would be relevant to allude to the law of reservation pertaining to SC/ST/OBCs as it has developed over the years through departmental OMs and judicial pronouncements. Prior to the enunciation of law by the Supreme Court in *R.K. Sabharwal (supra)* the reservation rosters were

vacancy-based rosters. Application of reservation on this premise was challenged before several courts. The Constitution Bench of the Supreme Court in *R.K. Sabharwal (supra)* held that reservation of jobs for SC/ST/OBC should apply to posts and not to vacancies and further held that the vacancy-based roster could operate only till such time as representation of persons belonging to the reserved category, in a cadre, reaches the prescribed percentages of reservation. Thereafter, rosters cannot operate and vacancies released by retirement, resignation, promotion etc of the persons belonging to general and reserved categories are to be filled by appointment of persons from respective categories so that prescribed percentage of reservation is maintained. The Court further held that when a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserved points, it has to be taken that the posts shown at the reserved points are to be filled from members of reserved categories only. For making any provision for reservation in the posts for making appointments, it is incumbent on the Government under Article 16(4) of the Constitution of India to reach a conclusion that the said Classes for which reservation is made, is not adequately represented in the Service(s). The Court also delineated the difference between 'posts' and 'vacancies'. The word 'posts' means an appointment, job, office or employment; a position to which a person is appointed, while a 'vacancy' means an unoccupied post or office. It was observed that the cadre strength is always measured by the number of posts comprising the cadre and the right to be considered for appointment has only to be claimed in respect to a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to number

of posts which form the cadre strength and concept of 'vacancy' has no relevance in operating the percentage of reservation. Relevant paras from the judgment are as follows:-

“5. 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/Schedule 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 up to 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/promotees 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.

6. The expressions ‘posts’ and ‘vacancies’, often used in the executive instructions providing for reservations, are rather problematical. The word ‘post’ means an appointment, job, office or employment. A position to which a person is appointed. ‘Vacancy’ means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a ‘post’ in existence to enable the ‘vacancy’ to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of

posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation.

7. When all the roster points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Castes/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong. Jeevan Reddy, J. speaking for the majority in Indra Sawhney v. Union of India [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 : AIR 1993 SC 477] observed as under: (SCC p. 737, para 814)

“Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes and Other Backward Classes is 50% which means that out of the 1000 posts 500 must be held by the members of these classes i.e. 270 by Other Backward Classes, 150 by Scheduled Castes and 80 by Scheduled Tribes. At a given point of time, let us say, the number of members of OBCs in the unit/service/category is only 50, a shortfall of 220. Similarly the number of members of Scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all Backward Classes reaches 500, i.e., till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age-barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of

the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit as the case may be.”

10. We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100-point roster, 14 posts at various roster points are filled from amongst the Scheduled Caste/Scheduled Tribe candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by 31-12-1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner.

11. We, therefore, find considerable force in the second point raised by the learned counsel for the petitioners. We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively.”

27. With a view to implement the judgment and bring the policy of reservation in line with the law laid down by the Supreme Court, the DOPT issued an OM dated 02.07.1997 and the existing 200-point, 40-point and 120-point rosters which were vacancy-based were replaced by post-based rosters. All Ministries/Departments and concerned Authorities were required to prepare their respective rosters based on the principle laid down in Annexure-I to the OM and illustrated in model roster annexed therein as Annexure-II, III and IV. Relevant part of the OM dated 02.07.1997 is as follows:-

“4. The principles for preparing the rosters elaborated upon in the Explanatory Notes are briefly recapitulated below:

- a) Since reservation for OBCs does not apply in promotions, there shall be separate rosters for direct recruitment and for promotions;*
- b) The number of points in the roster shall be equal to the number of posts in the cadre. In case there is any increase or decrease in the cadre strength in future, the rosters shall be expanded/contracted correspondingly;*
- c) Cadre, for the purpose of a roster, shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. Thus, in a cadre of, say, 200 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotion, two rosters – one for direct recruitment and one for promotion (when reservation*

in promotion applies) - each comprising 100 points shall be drawn up on the lines of the respective rosters;

5. At the stage of initial operation of a roster, it will be necessary to adjust the existing Appointments in the roster. This will also help in identifying the excesses/shortages, if any, in the respective categories in the cadre. This may be done starting from the earliest appointment and making an appropriate remark "utilised by SC/ST/OBC/Gen.", as the case may be, against each point in the rosters as explained in the explanatory notes appended to the model rosters. In making these adjustments, appointments of candidates belonging to SCs/STs/OBCs which were made on merit (and not due to reservation) are not to be counted towards reservation so far as direct recruitment is concerned. In other words, they are to be treated as general category appointments.

6. Excess, if any, would be adjusted through future appointments and the existing appointments would not be disturbed.

7. All Ministries/Departments are requested to initiate immediate action to prepare rosters and operate them according to these guidelines."

28. Thus, after the issue of the said OM pursuant to the judgment of the Supreme Court, the methodology of preparing rosters changed to post-based instead of vacancy-based. While the rosters were being so operated, clarifications were sought by certain Departments as to whether it was possible to fill up a post reserved for ST by a SC candidate or vice-versa, by applying principle of exchange of reservation, which was possible when vacancy-based rosters were applied. To resolve this issue, the DOPT issued OM dated 6.11.2003 and clarified that after the

introduction of post-based reservation, it is not permissible to fill up a post reserved for ST by a SC candidate or vice-versa by exchange of reservation. The reasoning behind the clarification was that basic principle of post-based reservation is that number of posts filled by reservation by any category in a cadre should be equal to the quota prescribed for that category. If exchange of reservation is permitted, number of employees of one reserved category appointed by reservation will go beyond reservation prescribed for that category defeating the spirit of post-based reservation. The OM further laid down the procedure that was required to be followed if sufficient number of SC/ST/OBC candidates, fit for appointment against reserved vacancies are not available. Since the present case concerns direct recruitment, relevant part of the OM relating to direct recruitment is as follows:-

“A. In cases of Direct Recruitment:

(i) Where sufficient number of candidates belonging to SC/ST/OBC are not available to fill up the vacancies reserved for them in direct recruitment, the vacancies shall not be filled by candidates not belonging to these communities. In other words, there is a ban on de-reservation of vacancies reserved for SCs, STs and OBCs in direct recruitment.

(ii) If sufficient number of suitable SC/ST/OBC candidates are not available to fill up vacancies reserved for them in the first attempt of recruitment, a second attempt shall be made for recruiting suitable candidates belonging to the concerned category in the same recruitment year or as early as possible before the next recruitment to fill up these vacancies. If the required number of SC/ST/OBC candidates are not even then available, the vacancies which could not be filled up shall remain unfilled until the next recruitment

year. These vacancies will be treated as “backlog vacancies.”

(iii) In the subsequent recruitment year when recruitment is made for the vacancies of that year (called the current vacancies), the backlog vacancies of SCs, STs and OBCs will also be announced for recruitment. While doing so it may be kept in view that the vacancies of the particular recruitment year i.e. the current vacancies and the backlog vacancies of OBCs will be treated as one group and backlog vacancies of SCs and STs as a separate and distinct group. Thus, there will be two distinct groups of vacancies. One group will contain the current vacancies and the backlog vacancies of OBCs, and the another group will contain backlog vacancies of SCs and STs. While in respect of vacancies in the first group instructions that not more than 50% of the vacancies can be reserved in a year will apply, all the backlog vacancies reserved for SCs and STs will be filled up by the candidates belonging to concerned category without any restriction whatsoever as they belong to distinct group of backlog vacancies of SCs and STs.

(iv) If vacancies reserved for SCs/STs/OBCs cannot be filled up and are carried forward as backlog vacancies and remain unfilled in the following recruitment year also, they will be carried forward as backlog vacancies for subsequent recruitment year(s) as long as these are not filled by candidates of the category for which these are reserved.

(v) There may be rare and exceptional cases in Group ‘A’ services, where posts cannot be allowed to remain vacant in public interest. In such situations, the administrative Ministry/Department under which the recruitment is being made shall make a proposal for dereservation giving full justification for such action, and consult the National Commission for Scheduled Castes and Scheduled Tribes in case of posts reserved for SCs/STs and the National Commission for Backward Classes in case of posts reserved

for OBCs and obtain the comments of concerned Commission on each proposal. After obtaining the comments of the concerned Commission, the administrative Ministry/Department shall place the proposal for dereservation alongwith the Commission's comments before a Committee comprising the Secretaries in the Department of Personnel and Training, in the Ministry of Social Justice and Empowerment and in the Ministry/Department under which the recruitment is being made for consideration and recommendation. The recommendation of the Committee shall be placed before the Minister in charge of the Department of Personnel and Training for a final decision. If dereservation of the vacancies is approved, these can be filled by the candidate of other communities."

29. This principle was reiterated in the Brochure dated 17.10.2016 on reservation for SCs/STs and OBCs in service and to the extent it applies to teaching appointments is as under:-

"1.9 Reservation till 1.7.1997 was computed on the basis of number of vacancies filled. The Supreme Court in the case of R.K. Sabharwal Vs. State of Punjab held that the reservation should be determined on the basis of number of posts in the cadre and not on the basis of vacancies. Accordingly post based reservation was introduced w.e.f. 2.7.1997. The basic principle of post based reservation is that the number of posts filled by reservation by any category in a cadre should be equal to the quota prescribed for that category. Prior to introduction of post based reservation, there was a provision of exchange of reservation between SCs and STs. After implementation of the post based reservation such exchange is no more permissible."

30. Another issue that arose in the context of reservation was with regard to 'backlog vacancies'. Article 16(4-B) of the Constitution of India

incorporated by Constitution (Eighty-First Amendment) Act, 2000 stipulates that backlog vacancies which are carried forward are not to be considered with fresh vacancies and do not contribute to the reservation ceiling of 50%. Article 16(4-B) is extracted hereunder for ready reference:-

“Article 16(4-B). Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under Clause (4) or Clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year”.

31. The Brochure further elucidates that current vacancies of a given year will be treated as one group while backlog vacancies of SCs/STs a separate and distinct group. Para 6.8 is as under:-

“6.8 Vacancies reserved for SCs/STs/OBCs which could not be filled up and are carried forward as backlog vacancies and remain unfilled in the following recruitment year also, will be carried forward as backlog vacancies for subsequent recruitment year(s) as long as these are not filled by candidates of the category for which these are reserved.”

32. The 2016 reservation Brochure in para 6.5 mandates that there shall be no de-reservation in SC/ST/OBC posts as under:-

“6.5 Where sufficient number of candidates belonging to SC/ST/OBC are not available to fill up the vacancies reserved for them in direct recruitment, the vacancies should not be filled by candidates not belonging to these

communities. In other words, there is a ban on de-reservation of vacancies reserved for SCs, STs and OBCs in direct recruitment.”

33. The broad principles that thus emerge from a collective reading of the judgment in ***R.K. Sabharwal (supra)***, the OM and the Brochure 2016, are that in direct recruitment post-based reservation rosters have to be followed and when a post is reserved and earmarked for a reserved category, based on prescribed percentages for SC/ST i.e 15% and 7.5% respectively, only persons belonging to the said category can be appointed. When the post is vacated the said vacancy shall be filled by a person belonging to the reserved category for which it was earmarked. This procedure is set in motion after the Cadre reaches the saturation level of 15% and 7.5%. There will be no exchange of reservations between SC and ST categories. Backlog vacancies of the reserved categories shall form a separate group when carried forward from the vacancies arising in the current year and shall not form a part of the 50% ceiling towards prescribed percentages of reservation.

34. Another facet of reservation which is important and relevant in the present case is with respect to de-reservation. The status of an SC/ST backlog post can be changed to an unreserved post by a formal process of de-reservation, which is regulated by an elaborate and rigorous process, stipulated in 2016 reservation Brochure. Para 7.2 on the subject prescribes that there is a general ban on de-reservation of reserved posts in case of direct recruitment except in very rare and exceptional cases where a vacancy in a Group ‘A’ Service cannot remain vacant in public

interest. This is based on the mandate in para 3(A)(v) of DOPT OM dated 06.11.2003. Para 3(A)(v) is as follows:-

“(v) There may be rare and exceptional cases in Group ‘A’ services, where posts cannot be allowed to remain vacant in public interest. In such situations, the administrative Ministry/Department under which the recruitment is being made shall make a proposal for dereservation giving full justification for such action, and consult the National Commission for Scheduled Castes and Scheduled Tribes in case of posts reserved for SCs/STs and the National Commission for Backward Classes in case of posts reserved for OBCs and obtain the comments of concerned Commission on each proposal. After obtaining the comments of the concerned Commission, the administrative Ministry/Department shall place the proposal for dereservation alongwith the Commission’s comments before a Committee comprising the Secretaries in the Department of Personnel and Training, in the Ministry of Social Justice and Empowerment and in the Ministry/Department under which the recruitment is being made for consideration and recommendation. The recommendation of the Committee shall be placed before the Minister in charge of the Department of Personnel and Training for a final decision. If dereservation of the vacancies is approved, these can be filled by the candidate of other communities.”

35. As the present case concerns a teaching Institution, it shall be important to refer to the reservations rosters as they applied to the teaching Institutions. Ministry of Human Resource Development (MHRD), Department of Secondary and Higher Education, Government of India, issued an Order on 06.12.2005, referring to Article 46 of the Constitution and exercising powers vested under Section 20(1) of the University Grants Commission Act, 1956 directed UGC to ensure

effective implementation of reservation policy in Central Universities and Deemed Universities receiving aid from the public funds in view of the policy of the Central Government that in these institutions, the percentage of reservation in admissions and recruitments in teaching and non-teaching posts is to be 15% for SCs and 7.5% for STs.

36. To implement the said direction of the Government UGC framed Guidelines and the same were circulated under a covering letter dated 25.08.2006. Relevant would it be to refer to para 6(a) of the Guidelines providing that reservation would be made applicable to all teaching posts in the Universities, Deemed Universities, Colleges and other Grant-in-Aid Institutions and Centres referred to in the Guidelines. Para 6(c) dealt with the grouping of posts for reservation specially when more than one University functions under a single Act or where several colleges function under one University. It was mentioned that practice of creating Department-wise cadres which tend to create single posts or cadres with artificially reduced number of posts, to avoid reservation, was strictly forbidden. Para 6(c) is as under:-

“6(c). In the cases of reservations referred to in clause (a) above, the Instructions issued by the Central Government for grouping of posts shall be resorted to wherever applicable, especially when more than one University functions under a single Act, or several colleges function under one University grouping of posts are mandatory if the posts concerned are transferable on an inter-university or inter-college levels. The practice of creating department-wise cadres, which tends to create single posts or cadres with artificially reduced number of posts in order to avoid reservation, is strictly forbidden.”

37. Para 8 prescribed the procedure to be followed in matters of reservation for teaching and non-teaching staff in line with the judgment in ***R.K. Sabharwal (supra)*** and is as under:-

“8. Procedure to be followed in matters of reservation for teaching as well as non-teaching staff:

(a).....

(v) The Roster, 40-point or 100-point as the case may be, shall be applied to the total number of posts in cadre only, (R.K. Sabharwal v. State of Punjab, ((1995) 2 SCC 745 : AIR 1995 SC 1371); cadre is best indicated by seniority list governing the members with same pay-scales:

(vi).....”

38. In 2016, a writ petition being Writ A No.43260/2016 was filed before the Allahabad High Court by Petitioners who claimed to be eligible as Assistant Lecturers in Hindi and Physiotherapy, seeking quashing of the Rolling Advertisement for teaching equivalent post as well as Clause 6(c) and Clause 8(a)(v) of UGC Guidelines dated 25.08.2006. The core question to be determined in the petition was whether the reservation in teaching posts in any University is to be applied treating the University as a ‘unit’ or the Department / Subject as a ‘unit’. The Allahabad High Court relied on the judgment of the Division Bench of the said High Court in ***Dr Vishwajeet Singh and others v. State of U.P. and others 2009 (3) AWC 2929*** wherein the Court framed the following issues:-

“(i) Whether 467 vacancies, which were available because of retirement, resignation and death up to 30.6.2003, could have been included and reserved for Scheduled Castes,

Schedule Tribes, Other Backward Classes only along with 371 carry forward vacancies in advertisement No. 37 of 2003?

(ii) Whether 467 vacancies were rightly reserved only for Scheduled Castes, Schedule Tribes, Other Backward Classes without they having been earlier advertised or offered to General Category candidates?

(iii) What is a unit for applying the Rules of Reservation according to 1994 Act and the roster framed thereunder?

(iv) Whether the reservation is to be applied by consolidating all the vacancies of the Lecturers in different degree colleges/postgraduate colleges?

(v) Whether in case, each college is treated to be a separate unit, the reservation is to be applied by clubbing all the sanctioned posts of Lecturers in a college or the reservation and roster are to be applied subject-wise?

(vi) Whether advertisement No. 37 is in accordance with 1994 Act and whether the number of carry forward vacancies i.e. 371 have been correctly determined?

(vii) What is the minimum number of posts in a cadre for applicability of roster issued under sub section (5) of Section 3 of 1994 Act?"

39. Issues (iii) and (v) were answered as follows:-

"From the above mentioned discussions, it is amply clear that it is now well settled by various pronouncements of the apex Court that in a State University, the provisions of U.P. Public Services (Reservation of Scheduled Castes, Schedule Tribes And Other Backward Classes) Act, 1994 have to be applied not by clubbing all the posts of Lecturers, Readers or Professors but reservation has to be applied subject-wise. Although all the post of lecturers in a university are in a common pay scale but that cannot be basis for clubbing of the posts of Lecturers and applying the reservation and

roster on all the posts together rather the reservation has to be applied subject-wise. The question to be answered is as to whether, while applying the reservation in the post of Lecturers in post graduate colleges and degree colleges affiliated to different universities governed by the provisions of U.P. State Universities Act, 1973, the same principle of applying the reservation i.e. subject-wise, college-wise are to be adopted or as contended by learned Additional Advocate General and counsel appearing for the U.P. Higher Education Services Commission, reservation has to be applied by clubbing all the posts of lecturers together.

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The apex Court by its pronouncements in the cases of Dr. Suresh Chandra Verma, Dr. Dina Nath Shukla and State of U.P. v. M.C. Chattopadhyaya (supra) has laid down that the posts of Lecturers in a University cannot be clubbed together for the purpose of applying reservation and roster and the reservation and roster in the post of Lecturers have to be applied subject-wise. Thus, each subject of study has been treated to be a unit for applying the rules of reservation. As noticed above, the petitioners have advocated for applying the same principle regarding reservation, which has been accepted in a University, whereas learned Advocate General appearing for the respondents have made two alternative submissions firstly; different posts in different colleges in each subject are to be clubbed together and thereafter reservation has to be applied in the manner as mentioned in the affidavit of Principal Secretary, Higher Education, quoted above and in alternative if a college is treated to be a unit, all the posts of Lecturers in a college have to be clubbed together and reservation has to be applied as is being applied in the Secondary institutions governed by the provisions of U.P. Secondary Education Services Selection Board Act, 1982. For coming to a correct conclusion, it has to be first found out as to whether concept of Faculty, department and

subject is also present in Degree colleges or post graduate colleges as it exists in a University.

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A person, who acquires a qualification for appointment in one particular subject has right to participate in the selection only against the said subject. Not applying the reservation subject-wise, will lead to uncertainty and violation of the rights under Articles 14 and 16 of the Constitution of India. The Division Bench of our Court in the case of Dr. Dina Nath Shukla v. State of U.P., reported in 1996 ALJ 1579 have laid down in paragraph 8, quoted above, that subject wise reservation if not applied, uncertainty and serious consequences including violation of Article 16 of the Constitution of India shall be the result. Thus, the submission that provisions of 1994 Act shall be frustrated by accepting the submission of learned counsel for the petitioner, cannot be accepted. 1994 Act is fully applicable in the post of lectures in a college and its full effect shall be given but while applying the reservation, college-wise subject-wise unit is to be followed in view of the law laid down by the apex court in the above mentioned judgments.

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As noticed above, the Lecturer in different subjects required to possess different qualifications as provided by the Statute of the University and the posts are not interchangeable. Different subjects in a college are in a different disciplines and post in a college is created subject-wise. Thus, it is held that neither all the posts of one subject in different colleges can be clubbed together for applying the rules of reservation nor all the post of Lecturers in one college can be grouped together for applying the reservation. The reservation according to 1994 Act and roster thereunder, is to be applied college-wise and subject-wise.”

40. Having relied on the said judgment, the Court concluded that for teaching posts of the University, reservation is to be applied Department-wise or Subject-wise treating it as a 'unit' and not the University as a 'unit'. The reasoning for arriving at the conclusion as mentioned in para 63 of the judgment is that if the University is taken as a 'unit' for every level of teaching and applying the roster, it would result into some Departments/Subjects having all reserved candidates and some having only unreserved candidates. This would violate Articles 14 and 16 of the Constitution. Clauses 6(c) and 8(a)(v) of the UGC Guidelines were held to be unsustainable and were quashed along with the impugned Advertisement applying the said Guidelines.

41. The judgment of the Allahabad High Court led to the UGC issuing an OM dated 05.03.2018 amending the 2006 Guidelines to bring it in line with the judgment and Clause 6(c) and Clause 8(a)(v) were amended to read as under:-

“(i) Clause 6 (c):

In case of reservation for SC/ST, all the Universities, Deemed to be Universities, Colleges and other Grant-in-Aid Institutions and Centres shall prepare the roster system keeping the Department / Subject as a unit for all levels of teachers as applicable.

(ii) Clause 8 (a) (v):

The roster, department-wise, shall be applied to the total number of posts in each of the categories [(e.g.) Professor, Associate Professor, Assistant Professor] within the Department/Subject.”

42. On 19.07.2018, UGC informed all the concerned Universities that the judgment of the Allahabad High Court was challenged in the Supreme Court and upheld by the Court. It directed the Universities to postpone the recruitment process if already underway till further orders.

43. Subsequent thereto the Government of India Notified on 07.03.2019 'the Central Educational Institutions (Reservations in Teachers' Cadres) Ordinance, 2019'. The UGC vide letter dated 08.03.2019 thereafter advised all Central Universities to start recruitment immediately. Finally, on 09.07.2019 'the Central Educational Institutions (Reservations in Teachers' Cadres) Act, 2019' was published and Section 3(2) is as under:-

“3(2) For the purpose of reservation of posts, a Central Educational Institution shall be regarded as one unit.”

44. In exercise of power conferred under Section 3(1) of the said Act, MHRD issued a Notification specifying that there shall be reservation of posts in direct recruitment out of the sanctioned strength in teachers' cadre in Central Educational Institutions in the manner specified in DOPT OM dated 31.01.2019 namely, 15% for SCs, 7.5% for STs, 27% for Socially and Educationally Backward Classes and 10% for EWS.

45. Having traced the law on the reservation for the SC/ST categories relating to appointments through direct recruitment, I may now examine the rival contentions of the parties herein. Broadly summarised, contentions of the Petitioners are that there has been a drastic reduction in the total number of teaching posts / vacancies reserved for SCs/STs and the number of vacancies advertised in the impugned Advertisement are far below the prescribed percentages of reservation; post-based roster

system has not been followed in accordance with the judgment in the case of *R.K. Sabharwal (supra)* and the DOPT OMs dated 02.07.1997, 06.11.2003 and the 2016 reservation Brochure; 'Backlog' rule has not been followed as per law in as much as the carry forward vacancies have not been treated as a separate group but treated as one homogenous group with current vacancies thereby stripping backlog reserved SC/ST posts of their reserved status as also treating them to constitute the 50% ceiling on reservation; in an attempt to include EWS roster points through interpolation as per the provisions of DOPT OM dated 31.01.2019, Respondent No.1 has changed the existing SC/ST roster points, effecting the roster points of the posts in the two Centres, whereby in Centre I SC point has shifted to ST and in Centre II, ST point is de-reserved and this has adversely affected the Petitioners, who were aspiring to apply against the said posts.

46. The stand of the Respondents per contra, put in a nutshell is that recasting of the reservation rosters was carried out due to the judgement of Allahabad High Court and the UGC Regulation, 2018 followed by 2019 Ordinance, Gazette Notification dated 07.03.2019, UGC letter dated 08.03.2019 and MHRD Notification dated 12.07.2019 and the inclusion of EWS category due to DOPT OM dated 31.01.2019. The roster points issued after recasting of rosters, caused interpolation with previous roster points / earmarked posts which resulted in change of several roster points. It is on this count that the roster position of post no. 135 under Advertisement RC/61/2019 and post no.60 under Advertisement RC/60/2019 changed. The change did not cause loss of reservation but only shifting of points. There is no de-reservation of the reserved

category and neither have any points been exchanged between the SC and the ST categories. Any shortfall in the two categories shall however be made up by recruitment in the coming years as expeditiously as possible.

47. The foundation of the manifold arguments of the petitioners has been laid on the observation of the Supreme Court in ***R.K. Sabharwal (supra)*** and the several OMs of the DOPT issued thereafter including the 2016 Brochure. The arguments were primarily structured and sought to be substantiated by drawing a comparison between the 2017 and 2019 rosters. Learned senior counsel for the Petitioners has labored hard to demonstrate that the number of reserved vacancies advertised under the 2016 Advertisements were far more in number than those under the 2019 impugned Advertisements. Petitioners have also heavily relied on the information in the Academic Branch Statement dated 28.02.2017 and 20.02.2020 to argue that the numerical data reveals that the number of posts advertised have reduced to nearly half from 94 in 2017 to 57 (38 for SC and 19 for ST) in 2019. A tabular representation to bring out a comparison in the 2017 and 2019 roster has been made in the various pleadings filed on record. Additionally, the Petitioners have made a very comprehensive comparative chart in an attempt to demonstrate the SC/ST posts which have been de-reserved or changed to OBC/EWS and the SC posts exchanged to ST etc. in support of their contentions.

48. In so far as the contention of the Petitioners that the University was not entitled to recast the 2017 roster despite several developments that took place between 2017 and 2019, is concerned, in my opinion, the same only deserves to be rejected. It is true that the 2017 roster and the 2019 roster are at variance with each other but the reason for the difference is

not far to seek. In 2017, the Allahabad High Court in *Vivekanand Tiwari (supra)* had held that the rosters should be prepared taking department wise and subject wise as the 'unit' and not the University as a 'unit'. This led to the UGC issuing Guidelines amending the earlier Clauses 6(c) and 8(a)(v) to follow the department wise and subject wise preparation of rosters. Subsequent thereto the 2019 Ordinance was issued followed by the 2019 Act, followed by the MHRD Notification dated 12.07.2019. Respondent No.1 has taken a categorical stand in all its pleadings that on account of these developments, the rosters had to be recast and the 12 roster registers had to be merged leading to reduction in the number of posts as well as shifting of the points on account of interpolation of the EWS category. University was bound to follow the provisions of the Notifications of the Government and in doing so if the roster had to be recast, the action cannot be faulted with. It is thus not open to the Petitioners to argue that the roster of 2019 should be mirror image of 2017 roster and the only argument that can be raised is that the redrawing of the reservation roster must conform to the policy of post-based roster and the law on the subject. It needs to be highlighted that the Petitioners have not laid a challenge to any of the Notifications or the OMs issued by the Government on the basis of which the roster has been recast.

49. The only question that now arises is whether the recasting of the rosters is in accordance with the dicta of the Supreme Court in *R.K. Sabharwal (supra)* and the subsequent OMs issued with respect to reservations of SC/ST categories. In this context, it needs a mention that the University has filed counter affidavit, additional affidavits, written submissions and an Explanatory Note. However, the stand of Respondent

No.1 is inconsistent on the core issue of how the roster has been prepared qua the reservation points in relation to the two posts in question. In the counter-affidavit filed to the writ petition the stand is that the University after publication of Ordinance, 2019 and the MHRD letter dated 07.03.2019 and Notification dated 12.07.2019 as well as UGC letter dated 07.03.2019, carried out recasting of the existing reservation rosters by plotting and including the already issued roster points and posts sanctioned/ vacated in the mean time in the University. The reservation roster points as per registers, for the posts of Professors and Associate Professors were accordingly issued in accordance with the judgment in ***R.K. Sabharwal (supra)*** and DOPT OMs dated 02.07.1997 and 31.01.2019, as per reservation percentages prescribed in MHRD Notification dated 12.07.2019, treating University as a single 'unit'. Relevant paras are as under:

*“E. The reservation roster points as per registers (for the posts of Professor & Associate Professor) were accordingly issued in accordance with the principles laid down in the judgment of a Constitution Bench of the Hon'ble Supreme Court in R.K. Sabharwal v. State of Punjab (1995) 2 SCC contained in DoPT OM dated 02.07.1997 and the guidelines issued in DoPT O.M. No. 36039/1/2019-Estt. (Res.) dated 31.01.2019 by incorporating reservation percentages as prescribed each for SCs, STs, OBCs and EWSs in MHRD Gazette Notification 12th July, 2019 by **treating University as a single Unit**. A copy of the OM dated 02.07.1997 is annexed as **Annexure-F**.*

F. In order to comply with the provision for reservation for EWSs and OBCs, in addition to the reservation of SCs and

*STs at the level of Associate Professor and Professor, the recasting of reservation roster register has caused interpolation with the previous roster points which resulted into change of category of several roster points. Reservation share is calculated with regard to total number of sanctioned posts in a cadre but reservation points are issued having due regard to 50% limit of available vacant posts. In fact, the share of reserved category shall, practically and in all likelihood, be usually equal to or less than what is prescribed and shall be completed only when the entire roster is rationalized (entire roster posts of a cadre are filled as per reservation share). This is because reservation has been implemented in CUs at a later stage. **No post of SCs and STs has been converted/de-reserved into UR post though the reservation categories has been changed in respect of some roster points due to interpolation, as stated above.***

50. In stark contrast to this, the stand in another part of the affidavit is that the recruitment initiated in the year 2016-17 was put on hold due to communication received from the UGC regarding implementation of reservation policy for recasting the roster department wise, subject wise instead of cadre wise in compliance of the judgment of Allahabad High Court. However, once the new UGC Regulations 2018 were received, the vacancies were advertised afresh in 2019 on the basis of said Regulations.

“In the meanwhile Respondent University received the New UGC Regulations and the University after adopting the new UGC Regulations, 2018, advertised all the vacancies afresh in 2019, after cancelling the faculty positions advertised earlier in 2016/2017. The copy of the notification issued and after the implementation of the reservation roster, as per Govt. of India directions vide Advertisements No.

RC/59/2019, RC/60/2019, RC/61/2019 & RC/61/2019 is annexed as Annexure-L.”

51. In the written submissions the stand is that the recasting of the rosters was carried out on the basis of Ordinance 2019 and the subsequent Notifications. In the additional affidavit subsequently filed reliance is placed on the DOPT OM dated 31.01.2019 to explain the method followed to give reservation to OBCs and EWSs in addition to the reservations of SCs/STs/PWDs. Support is taken from this OM to explain that various rosters were merged into single rosters and the serial numbers of earlier rosters got renumbered. As an illustration, it is stated that there were 12 rosters prior to July, 2019 and on change it became one roster per cadre, thereby resulting in 3 rosters. Explanatory Note filed does not shed any light on how the roster was recast and/or the shift of reservation points due to interpolation.

52. Petitioners filed the writ petition bringing forth that the rosters were not being prepared as per the dicta of the Supreme Court and the University was continuing to make vacancy-based reservation rosters. Petitioners have also repeatedly averred that the short-fall in prescribed reservation percentages has resulted in shift of roster points in addition to the exchange of reservation and de-reservation. The response of the University aptly put is one of simple denial. While the pleadings are replete with averments that roster has been prepared as per post-based reservation policy and there is no loss of reservation or exchange/ de-reservation, but the stand is unsubstantiated and as held above self contradictory at places. In so far as the alleged short-fall is concerned, the

University has at several places admitted that there is a short-fall and efforts shall be made to carry out recruitment drives expeditiously.

53. The Petitioners have discharged their onus in providing the limited information they had received from the administrative statements and have made calculations collating the data based on the earlier rosters and advertisements. To practically demonstrate the contentions raised, Petitioners relied on the following tables prepared by them:

ANNEXURE P 17

32

Comparison between 2017 and 2019 Rosters for Associate Professor Level

	SC/ST Posts which have been derecruited or changed to OBC/EWS
	SC Posts which have been changed to ST
	Unrecruited Posts which have been issued to SC/ST
	SC/ST Posts which have been kept as is
	SC/ST Posts in 2019 Roster by creation of New Roster Points
	Posts in 2019 Roster original to SC/ST which cannot be identified against 2017 Roster due to absence of description

SN as in 2019 roster	Name	Date of appointment or current post	Current School	2017 Roster Point	2019 Roster Point
216.	I.M. Mahalingam	-	CSAS/SIS	SC	R.F. issued to OBC
217.	Amal Bharti	7 Jan 1977	DDP/SLL&CS (new)		R.F. issued to PII (PII)
218.	Pudhar. Purnak	1-Oct-1974	CESP/SSA	SC	R.F. issued to OR
219.	R.G. Gupta	23 May 1975	SC&SS		R.F. issued to OBC
220.	Vishal Gadre	04-Oct-1975	CSPILAS-SLL &CS	UR	R.F. issued to SC (Transferred to SC&E from CSPILAS/SLL&CS)
221.	Ananta Achin	5-Sep-1987	CL/SLL&CS	UR	R.F. issued to OR
222.	H.S. Pambhakar (Assistant Professor appointed against the post of Associate Professor)	29-Mar-1989	CLAS/NIS	UR	R.F. issued to OR
223.	Shashi Kumar Rao	1 Apr. 1989	CES/ SIS	SC	R.F. issued to OBC
224.	V.K. Sen	4 Apr-1989	SIS	SC	R.F. issued to OR
225.	S.M. Desai	30-Jun-1989	NIS	UR	R.F. issued to OR
226.	Vidhata Nirmal	30 May 1989	CL/SLL&CS	UR	R.F. issued to OBC
227.	K. Mankar	30-Jun-1989	CFFS/	SC	R.F. issued to SC
228.	P.S. Motwani	30-Jun-1989	CES/SLL&CS		R.F. issued to ST
229.	C.P. Kaul	5-Jul-1989	SC&SS	UR	R.F. issued to OR
230.	Y.S. Tyagi	21-Jul-1989	CL/S/ SIS		R.F. issued to OBC

231.	C.P. Chandrasekhar	1-Oct-1986	CESP/ SSS		R.P. issued to PH-VH
232.	G.C. Pam	21-Nov-1986	CWAS/ SIS	UR	R.P. issued to UR
233.	Murali Dhar Vemuri	2-Feb-1987	CSRD/ SSS	ST	R.P. issued to UR
234.	Faizullah Farooqi	2-Mar-1987	CAAS/ SLL&CS	UR	R.P. issued to UR
235.	Kulbhushan Warikoo	3-Apr-1987	CIAS/ SIS	UR	R.P. issued to SC (Transferred from CIAS to 56E) (School of Engineering)
236.	Akhilesh Pandey	26-Oct-1987	SPS		R.P. issued to UR
237.	Norjadari Bhattacharya	2-Dec-1987	CHS/ SSS	ST	R.P. issued to UR
238.	A.K. Rastogi	6-Oct-1988	SPS	ST	R.P. issued to OBC
239.	H.B. Bohidar	2-Jun-1989	SPS		R.P. issued to UR
240.	Anand Kumar	15-Jan-1990	CSSS/ SSS	UR	R.P. issued to EWS
241.	Arun Kumar	17-Jan-1990	CESP/ SSS	UR	R.P. issued to SC
242.	Manoj Pant	13-Mar-1990	CITD/ SIS		R.P. issued to OBC
243.	Kamal Mitra Chenoy	23-Mar-1990	CCP&PT/ SIS	UR	R.P. issued to UR
244.	P.K. Yadava	7-Sep-1990	SLS	UR	R.P. issued to UR
245.	R.K. Kale	10-Dec-1990	SLS	ST	R.P. issued to OBC
246.	R. Madhubala	13-Dec-1990	SLS	UR	R.P. issued to EWS
247.	K.J. Mukherjee	1-Aug-1991	SBT		R.P. issued to SC
248.	R.C. Phoha	20-Jan-1992	SC&SS	ST	R.P. issued to UR
249.	Sudha Pai	22-Mar-1993	CPS/ SSS	UR	R.P. issued to OBC
250.	Tulsi Ram	27-Aug-1993	CR&CAS/ SIS	PH OH	R.P. issued to UR
251.	Uttam K Pati	12-Sep-1994	SBT	PH OH	R.P. issued to PH-OH
252.	B.K. Khadria	17-Jan-1995	ZHCES/ SSS		R.P. issued to OBC
253.	Rupamanjari Ghosh	15-May-1995	SPS		R.P. issued to EWS
254.	Mohd. Shahad Hussain	7-Feb-1996	CIL/ SLL&CS	UR	R.P. issued to SC
255.	Mohan Rao	10-May-1996	CSM&CH/ SSS	UR	R.P. issued to ST
256.	P.N. Desai	17-Aug-1997	CSSP/ SSS		R.P. issued to OBC
257.	S.S. Doorn	11-Jul-1997	CIPOD/ SIS	UR	R.P. issued to UR

258.	Deepak Kumar	31-Dec-1997	ZHCE/ SSS	UR	R.P. issued to UR
259.	H.S. Butola	17-Nov-1998	CSRD/ SSS	SC	R.P. issued to UR
260.	Manmohini Kaul	30-Jun-1999	CIPS/ SIS	UR	R.P. issued to OBC
261.	S.Y. Shah	16-Aug-1999	GAE/ SSS	SC	R.P. issued to SC
262.	Remuka Singh	2-Dec-1999	CSSS/ SSS	UR	R.P. issued to UR
263.	Savita pandey	3-Jul-2000	CSAS/ SIS		R.P. issued to OBC
264.	Khwaja Md. Ekramuddin	29-Sep-2001	CIL/ SLL&CS	UR	R.P. issued to UR
265.	Ravikesh (Assistant professor)	13-Nov-2001	CKS/ SLL&CS	UR	R.P. issued to UR
266.	Shashi Prabha Kumar	27-Nov-2001	SS&IS/ (Sanskrit)	UR	R.P. issued to UR
267.	Vikas Rawal (Assistant Professor appointed against the post of Professor)	29-Nov-2001	CESP/ SSS	PH OFF	R.P. issued to OBC
268.	H.S. Shiva Prakash	11-Dec-2001	SA&A		R.P. issued to SC
269.	Vijayn Ramaswamy	1-Mar-2002	CHS/ SSS		R.P. issued to EWS
270.	Rajesh Rajagopalan	31-Mar-2004	CIPOD/ SIS	SC	R.P. issued to UR
271.	Radhmi Banga	20-May-2005	CCUS&LAS/ SIS	UR	R.P. issued to OBC
272.	Arun Kumar Mohanty	1-Jul-2005	CR&CAS/ SIS		R.P. issued to EWS
273.	Srikanth Kondapalli	28-Aug-2006	CEAS/ SIS	SC	R.P. issued to EWS
274.	Arvind Sinha	17-Oct-2006	CHS/ SSS	UR	R.P. issued to SC
275.	Jayoti Srivastava	16-Nov-2006	CIPOD/ SIS	UR	R.P. issued to OBC
276.	Supratim Sengupta	30-Mar-2007	SC&IS	SC	R.P. issued to UR
277.	Sudhir Kumar	4-Mar-2008	SS&IS	SC	R.P. issued to EWS
278.	Aditi Sen De	3-Dec-2008	SPS	ST	R.P. issued to OBC
279.	Sanjay Kumar Malik	1-Jun-2014	SA&A	UR	R.P. issued to PH-VH

280.	Narender Kumar	11-Mar-2014	CPS/ SSS	SC	R.P. issued to ST
281.	Radhini Sawhney	12-Mar-2014	SA&A	UR	R.P. issued to SC
282.	V. Bijukumar	9-Jun-2014	CCP&PT/ SIS	SC	R.P. issued to OBC
283.	Rita Banerjee	20-Aug-2014	CES/ SLL&CS		R.P. issued to UR
284.	Varalakshmi Chaudhry	8-May-2015	LEC/ SLL&CS	UR	R.P. issued to UR
285.	K Kesava Rajarajan	1-Oct-2015	SA&A		R.P. issued to UR
286.	Vacant		SC&IS		R.P. issued to OBC (XI Plan Post)
287.	Vacant		SC&IS		R.P. issued to SC (XI Plan Post)
288.	Vacant		SCMM		R.P. issued to UR
289.	Vacant		SPS		R.P. issued to PH-OH (XI Plan Post)
290.	Vacant		SPS		R.P. issued to UR (XI Plan Post)
291.	Vacant		SCNS		R.P. issued to UR (XI Plan Post)
292.	Vacant		SA&A		R.P. issued to UR (XI Plan Post)
293.	Vacant		SA&A		R.P. issued to OBC (XI Plan Post)
294.	Vacant		SA&A		R.P. issued to SC (XI Plan Post)
295.	Vacant		CIS&LS/ SSS		R.P. issued to ST (XI Plan Post)
296.	Vacant		CAS/ SIS		R.P. issued to UR (XI Plan Post)
297.	Vacant		CMS/ SSS		R.P. issued to OBC (XI Plan Post)
298.	Vacant		CGS/ SLL&CS		R.P. issued to UR (OBC Plan Post – I)
299.	Vacant		CAAS/ SLL&CS		R.P. issued to SC (OBC Plan Post – I)
300.	Vacant		CKS/ SLL&CS		R.P. issued to OBC (OBC Plan Post-I)
301.	Vacant		SM&E		R.P. issued to UR

302.	Vacant		SM&E		R.P. issued to UR Transferred from CJS/ SLL&C5
303.	Vacant		SoE (School of Engineering)		R.P. issued to EWS Transferred from MC&EC
304.	Vacant		SoE (School of Engineering)		R.P. issued to OBC Transferred from cognitive science
305.	Vacant		CIPS/ SIS		R.P. issued to UR (OBC Plan Post – I)
306.	Vacant		CILS/ SIS		R.P. issued to UR (OBC Plan Post – I)
307.	Vacant		CR&CAS/ SIS		R.P. issued to SC (OBC Plan Post – I)
308.	Vacant		CIPOD/ SIS		R.P. issued to ST (OBC Plan Post – I)
309.	Vacant		CWS/ SSS		R.P. issued to OBC (OBC Plan Post-I)
310.	Vacant		ZHCES/ SSS		R.P. issued to EWS (OBC Plan Post-I)
311.	Vacant		CMS/ SSS		R.P. issued to UR
312.	Vacant		CSRDS/ SSS		R.P. issued to OBC (OBC Plan Post-I)
313.	Vacant		CHS/ SSS		R.P. issued to UR (OBC Plan Post-I)
314.	Vacant		SCMM		R.P. issued to SC (OBC Plan Post-I)
315.	Vacant		CP/ SSS		R.P. issued to OBC (OBC Plan Post-II)
316.	Vacant		CPS/ SSS		R.P. issued to UR (OBC Plan Post-II)
317.	Vacant		CHS/ SSS		R.P. issued to UR (OBC Plan Post-II)
318.	Vacant		CHS/ SSS		R.P. issued to OBC (OBC Plan Post-II)
319.	Vacant		CCUS&LAS/ SIS		R.P. issued to OBC (OBC Plan Post-II)
320.	Vacant		CCUS&LAS/SI S		R.P. issued to ST (OBC Plan Post-II)
321.	Vacant		CIPS/ SIS		R.P. issued to SC (OBC Plan Post-II)

322.	Vacant		SCMM		R.P. issued to ST (OBC Plan Post-II)
323.	Vacant		Human Genome Programme		R.P. issued to OBC (OBC Plan Post-II)
324.	Vacant		SBT (C&SB)		R.P. issued to UR (OBC Plan Post-II)
325.	Vacant		SPS		R.P. issued to ST (OBC Plan Post-II)
326.	Vacant		SES		R.P. issued to OBC (OBC Plan Post-II)
327.	vacant		SLS		R.P. issued to SC (OBC Plan Post-II)
328.	Vacant		CSL&G		R.P. issued to UR (OBC Plan Post-III)
329.	Vacant		NEISP/ SSS		R.P. issued to UR (OBC Plan Post-III)
330.	Vacant		CSSS/ SSS		R.P. issued to OBC (OBC Plan Post-III)
331.	Vacant		CSSS/ SSS		R.P. issued to PH-VH (OBC Plan Post-III)
332.	Vacant		ZHCES/ SSS		R.P. issued to UR
333.	Vacant		CHS/ SSS		R.P. issued to UR (OBC Plan Post-III)
334.	Vacant		CESP/ SSS		R.P. issued to EWS (OBC Plan Post-III)
335.	Vacant		CESP/ SSS		R.P. issued to SC (OBC Plan Post-III)
336.	Vacant		CMS/ SSS		R.P. issued to EWS (OBC Plan Post-III)
337.	Vacant		CES/ SLL&CS		R.P. issued to EWS (OBC Plan Post – III)
338.	Vacant		CIL/ SLL&CS		R.P. issued to OBC (OBC Plan Post – III)
339.	Vacant		CFPS/ SLL&CS		R.P. issued to UR (OBC Plan Post – III)
340.	Vacant		SA&A		R.P. issued to SC (OBC Plan Post – III)
341.	Vacant		CC&SEAS/ SLL&CS		R.P. issued to OBC (OBC Plan Post – III)

342.	Vacant		CRS/ SLL&CS		R.P. issued to UR (OBC Plan Post – III)
343.	Vacant		CCUS&LAS/SI S		R.P. issued to EWS (OBC Plan Post – III)
344.	Vacant		CCUS&LAS/SI S		R.P. issued to UR (OBC Plan Post – III)
345.	Vacant		CITD/ SIS		R.P. issued to OBC (OBC Plan Post – III)
346.	Vacant		CITD/ SIS		R.P. issued to UR (OBC Plan Post – III)
347.	Vacant		CEAS/SIS		R.P. issued to SC (OBC Plan Post – III)
348.	Vacant		CIAS/ SIS		R.P. issued to ST (OBC Plan Post – III)
349.	Vacant		CWAS/SIS		R.P. issued to OBC (OBC Plan Post – III)
350.	Vacant		CILS/SIS		R.P. issued to UR (OBC Plan Post – III)
351.	Vacant		CILS/SIS		R.P. issued to PH-OH (OBC Plan Post – III)
352.	Vacant		SLS		R.P. issued to ST (OBC Plan Post – III)
353.	Vacant		SLS		R.P. issued to UR
354.	Vacant		SBT		R.P. issued to OBC (OBC Plan Post – III)
355.	Vacant		SBT		R.P. issued to UR (OBC Plan Post – III)
356.	Vacant		SC&SS		R.P. issued to ST (OBC Plan Post – III)
357.	Vacant		SES		R.P. issued to EWS (OBC Plan Post – III)
358.	Vacant		SC&IS		R.P. issued to UR (OBC Plan Post-III)
359.	Vacant		SPS		R.P. issued to UR (OBC Plan Post – III)
360.	Vacant		SCMM		R.P. issued to OBC (OBC Plan Post – III)

361.	Vacant		SCNS		R.P. issued to OBC (OBC Plan Post – III)
362.	Vacant		SCNS		R.P. issued to SC (OBC Plan Post – III)
363.	Newly Created Post		SCNSS (Security		R.P. issued to OBC
364.	Newly Created Post		SCNSS (Security		R.P. issued to UR
365.	Newly Created Post		SoE (School of		R.P. issued to UR
366.	Newly Created Post		SoE (School of		R.P. issued to UR
367.	Newly Created Post		SoE (School of		R.P. issued to OBC
368.	Newly Created Post		SoE (School of		R.P. issued to SC
369.	Newly Created Post		SoE (School of		R.P. issued to UR
370.	Newly Created Post		SoE (School of		R.P. issued to EWS
371.	Newly Created Post		SM&E		R.P. issued to OBC
372.	Newly Created Post		SM&E		R.P. issued to UR

54. In response the University filed an additional affidavit and stated the following:

“2. These 80 posts which were reserved for SCs/ STs became 91 posts in the advertisement in 2016-2017. In the year 2016-17, these 91 posts were advertised for SC/ST categories and interviews were held for 18 posts and none was found suitable so declared NFS (Nobody Found Suitable) and hence, remained unfilled and thus, calculated as backlog. For the remaining posts, the interview never took place hence, it was not their case that they remain unfilled as suitable candidate were not available and as such they were not backlog vacancies.

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5. The DoPT OM dated 31.01.2019 (Page No. 49 of Counter Affidavit) described the method to be followed by HEIs on how to give reservations to OBCs and EWSs in addition to reservation of SCs/STs/PwDs. This OM is also directed

HEIs to recast earlier existing rosters into one roster for each cadre. Thus, the various rosters were merged into single rosters and serial nos. of earlier rosters got renumbered. For example, if earlier there were 04 rosters for every 200 points, then, 04 X 03 (cadres) = 12 rosters prior to July, 2019, now, it became 01 roster per cadre, so now, there are 03 rosters. Obviously, it was natural that posts will be renumbered.

6. DoPT OM dated 02.07.1997 of Counter Affidavit (Page No.71 Point No. 1) states that these rosters are only an aid to determine the entitlement of different categories with regard to the quota reserved for them. DoPT OM dated 02.07.1997 also states that the rosters have been drawn up keeping in mind two fundamental principles – (i) the reservation for the entitled categories is to be kept within the prescribed percentage of reservation and (ii) the total reservation should in no case exceed 50% of the cadre. This is based on order of Constitutional Bench of Supreme Court in the case R.K. Sabharwal vs State of Punjab which is as follows ‘that the reservation of jobs for the backward classes SC, ST, OBC should apply to posts and not to vacancies’, meaning thereby that vacancy based rosters are to be replaced by Post based rosters.”

55. Finally an Explanatory note was filed by the University bringing forth the following facts:

“Explanatory Notes

➤ *Statement dated 28.02.2017 (Page No.77 of W.P.)*
It is clarified that the correct figure for SCs and STs in the cadre of Professor is 19 and 14 respectively as shown in the vacant positions as on 28.02.2017 which means that the vacant positions for SCs and STs worked out to 92 both for SCs and STs in the cadre of Professor and Associate Professor
(Annexure-A-total page-01).

➤ *Vacancy based rosters OR post based rosters :*

1. *The University has been operating its reservations rosters on the basis of posts based rosters as per GOI mandate enunciated in DoPT OM dated 02.07.1997;*
2. *This will be evident from the fact that 80 roster points were issued for SCs and STs out of 169 roster points in 2011. These roster points were calculated and issued on the basis of total sanctioned strength of the entire cadre, not on the basis of vacancies in hand;*
3. *The same method has continued followed scrupulously till date. In fact, all the roster points for SCs and STs have been issued according to the method prescribed for Post based Reservation roster.*

➤ *The following statements for attached below –*

1. *Statement of Fresh teaching positions 2010-2020 (Annexure-C-total page-01).*
2. *Details of all previous vacancies, Roster Points issued and posts filled-in for year 2011 onwards (Annexure-D-total page-01).*
3. *Details of fresh vacancies, Roster Points issued and posts filled in for period 2012-2018 (Annexure-D).*
4. *Details of vacancies position and Roster Points issued in 2019 after recasting of Reservation Roster Registers in Cadre-wise (Annexure-E-total page-01).*
5. *Details of vacancies available and Roster Points to be issued in 2020 (Annexure-E).*
6. *Details of posts advertised, filled and not filled / carry forward (Annexure-F).*

The statement on 89 posts (78+11) advertised in RC/02/2016 and RC/57/17 – (Annexure-G-total pages-10).

➤ *Supplementary comments :*

1. *The share of SCs/STs in the cadre of Professor and Associate Professor works out to 129 (@22.5%) of total sanctioned 573 posts. Out of these, 45 posts have been filled and 57 posts have been advertised RC/60/2019 and RC/61/2019 (Annexure 'B').*

2. *The remaining 27 posts shall be filled in future from vacant posts for which 31 posts are available at present with the University.*

3. *The recruitment of SCs/STs in the cadre of Professor and Associate Professor will further narrow down the backlog of SCs/STs.*

4. *It is pertinent to mention here that there is no shortfall for SCs in the cadre of Professor as out of there shall of total 30 posts, there are 14 in positions and 16 posts have been advertised.*

5. *It is further pertinent to mention here that the main reason for shortfall / backlog for SCs/STs in the cadre Associate Professor has been that despite sincere efforts made to fill up these posts, these posts have remained vacant mainly due to non-availability of suitable candidates, no application having been received for many posts.*

6. *It is respectfully submitted that JNU has traditionally adopted a very affirmative policy for implementation of reservations and the outcome of these efforts has been very encouraging in that the University has achieved almost full representation of SCs/STs in the cadre of Assistant Professor and other non-teaching posts.*

7. *However, for reasons beyond the control of University, some posts reserved for SCs/STs could not be filled.*

8. *But the University is determined to fill up all reserved vacancies gradually in future recruitment drives."*

56. The burden to rebut and prove that the reservation rosters were correctly recast was on the University, which in my view, it has failed to discharge. Mere statements and denials that there has been no de-

reservation or exchange of reservation points would not be enough for the University to rebut the data/tables placed on record by the Petitioners. The table extracted and referred to above, filed by the Petitioners have not been seriously controverted. The dicta of the Supreme Court is clear and binding. The reservation rosters have to be post-based and there cannot be exchange of reservation points or de-reservation. The latter is permissible only in very exceptional cases and that too by following a very rigorous process. Ample opportunities were given to the University to file affidavits but despite a host of affidavits and written submissions, it was unable to demonstrate that the shifting of the points in the two Centres with which this petition is concerned was a mere result of interpolation resulting from recasting of the rosters as per the new OMs and/or the UGC Guidelines.

57. Petitioner No.1 is working as Assistant Professor and his specific grievance is that post No. 135 under the Advertisement No. RC/61/2019 against which he was proposing to apply as SC candidate has been converted into ST post. Petitioner No.2 is aggrieved by the fact that post No.60 under Advertisement No. RC/60/2019 against which he was desirous of applying has been de-reserved while it was earlier a post reserved for ST candidate. In view of the unclear stand of the University, this Court has no option but to direct the University to revisit the issue and work out the roster points afresh with regard to post No. 135 and post No.60.

58. It may be noted at this stage that aggrieved by the denial of interim relief to stay the process pursuant to the Advertisement, Petitioners had approached the Division Bench in LPA No.180/2020. Noting the

grievance of the Petitioners as extracted in para 5 of the order, the Division Bench, amongst various other directions had restrained the University from making any appointments to post Nos. 135 and 60, which are the subject matter of the present petition. It is obvious that the Petitioners are confining their claim only to the two posts in the impugned Advertisement and there is no reason why the entire Advertisement should be quashed. The second relief sought by the Petitioners is to direct the Respondents to prepare the roster as per the post-based reservation policy.

59. In view of the observations made above, Advertisement Nos. RC/61/2019 and RC/60/2019 dated 19.08.2019 are quashed to the extent applications were invited for appointments against post Nos.135 and 60, respectively.

60. Respondent No.1 University is directed to re-visit and re-examine the roster and recast the roster points, if so warranted, with respect to the above two points, in accordance with the post-based reservation system as enunciated in the judgment of *R.K. Sabharwal (supra)*; provisions of DOPT OM's dated 02.07.1997, 06.11.2003 and the 2016 Brochure on reservations including the subsequent OM's as referred to above. The said exercise shall be completed within 3 months from today.

61. It is open to the University to initiate fresh recruitment process and advertise the two posts after the above exercise is completed.

62. Petition is partly allowed in the above terms. Pending application stands disposed of.

JYOTI SINGH, J

NOVEMBER 17th, 2020/sr, yo