

(M.M. Kumar, J.)

Before M. M. Kumar & Ajay Kumar Mittal, JJ.

SMT. DEVINDER KAUR,—*Petitioner*

versus

SMT. RANI CHADDA & OTHERS,—*Respondent*

Civil Writ Petition No. 8914-CAT of 2004

7th April, 2007

Constitution of India 1950—Art. 16(4A) & 226/227—“Catch Up Principle” CAT holding that Catch Up Principle would be available to Respondent No. 1 and on promotion she would regain seniority over the petitioner, who promoted against a roster point belonging to scheduled caste, original applicant—Respondent No. 2 direct recruited in the General Category and promoted as a Junior Scale Stenographer—Petitioner belonging to reserved category of scheduled caste appointed 8 years later—Petitioner promoted as Senior Assistant subject to qualifying Assistant Grade Examination—Tentative seniority list showed Respondent No. 1 junior to petitioner in the cadre of Senior Assistant—Representation filed and subsequently gradation list challenged in CAT—Application allowed granting seniority by invoking “Catch Up Principle”.

Held, That Tribunal misread the instructions by ignoring the fact Catch Up Principle was introduced by amendment only on 31st January, 1997 and that judgment of the Hon’ble Supreme Court in Union of India *versus* Vir Pal Singh Chauhan (JI) 1995(7) SC 231 was prospective in operation of *inter se* seniority of schedule caste senior in the lower cadre. Question to be considered whether promotion of petitioner on the post of Senior Assistant without qualifying Assistant Grade Examination. Petition allowed and matter remanded to Tribunal for determination of the issues.

(Para 12 &13)

H. S. Sethi, Advocate, *for the petitioner.*

Rita Kohli, Advocate, *for respondent No. 1.*

Jaishree Thakur, Advocate, *for the respondents No. 3 to 6.*

M. M. KUMAR, J.

(1) The short question of law raised in the instant petition filed under Article 226 of the Constitution is whether 'catch-up principle' as propounded in various judgments rendered by Hon'ble the Supreme Court, would be applicable so as to benefit the original applicant-respondent No. 1, who is a candidate belonging to General category. The instant petition is directed against the judgment dated 26th May, 2004 (P-7) rendered by the Chandigarh Bench of the Central Administrative Tribunal (for brevity, 'the Tribunal') holding that the 'catch up principle' would be available to original applicant-respondent No. 1 and on promotion to the post of Assistant in the office of Chief Architect, Department of Urban Planning, she would regain her seniority over the petitioner who was promoted as such against a roster point belonging to Scheduled Caste ahead of the original applicant-respondent No. 1. For the aforesaid view, the Tribunal has placed reliance on instructions dated 3rd July, 1986 (R-2) and proceeded to hold that the original applicant-respondent No. 1 would be entitled to regain her seniority on the ground that in the lower cadre of Steno Typist, she was senior to the petitioner. The view of the Tribunal is discernible from para 6 and 7 of the judgement which reads as under :—

“6. Now, coming to the question of promotion of respondent No. 6 to the post of Senior Assistant in 1990, it is an admitted fact that the applicant joined as Steno Typist in 1974 and the respondent No. 6 (Mrs. Devendra Kaur) joined as Steno Typist in 1983. Thus the applicant was senior to Mrs. Kaur. However, since Mrs. Kaur belongs to SC category, she was promoted as Senior Assistant in 1990, by giving her the benefit of reservation of the post of Senior Assistant, whereas the applicant who was a general category candidate was promoted in her turn in 1994. *The learned counsel for the applicant stated that prior to 17th June, 1995 the following instructions governed the seniority of SC candidate vis-a-vis general candidates :-*

'If a candidate belonging to the Scheduled Caste or Schedule Tribe is promoted to an immediate higher

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post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted candidate of the SC and ST in the immediate higher post/grade.

- (7) *These instructions are squarely applicable in the present case.* The above position was however, later changed by amending Article 16(4A) of the Constitution right from the date of its inclusion in the Constitution i.e. 16th June, 1995 with a view to allow the SC/ST candidates to regain the seniority in the case of promotion by virtue of rule of reservation. In the instructions issued on the subject, the DOP&T in its order dated 21st January, 2002 (Annexure A-8) in para 41(1)(b) has very clearly stated that "the above decision shall be effective from 17th June, 1995." These instructions have also been reiterated by the Chandigarh Administration in its letter dated 30th March, 1998 (Annexure A-15). As Mrs. Kaur was promoted to the post of Senior Assistant in the year 1990 and the applicant was promoted in 1994, i.e. prior to the crucial date of 17th June, 1995, the extent instructions prevailing in 1994, which allowed general candidate to regain his/her seniority over an earlier promoted SC/ST candidate will be applicable." (*Italics by us*)

(2) It is also pertinent to mention that on the basis of the aforesaid view expressed by the Tribunal, the gradation list of Senior Assistant circulated *vide* letter dated 4th August, 2003 (A-1) was set aside and official respondents were directed to accord seniority to the original applicant-respondent as Senior Assistant over the petitioner in accordance with the instructions prevailing prior to 17th June, 1995 with all consequential benefits, including grant of promotion on the post of Superintendent, if she is otherwise eligible according to the rules.

(3) In order to put the controversy in its proper perspective, it is necessary to notice few facts. The original applicant-respondent No. 1 is a direct recruit on the post of Steno-Typist and she was appointed as such on 26th December, 1974. She belonged to General Category

and was further promoted on the post of Junior Scale Stenographer on 24th September, 1977. On the other hand, the petitioner, who belongs to reserved category of Schedule Caste, was appointed as Steno Typist on 6th January, 1983, which is more than eight years later. Obviously she is far junior to the original applicant in the cadre of Steno-typist. A roster point vacancy belonging to Scheduled Caste in the cadre of Senior Assistant became available in October, 1989 and as per the instructions issued by the official respondents, all vacant posts were required to be filled up by 31st March, 1990. Accordingly, the petitioner was given promotion as Senior Assistant on 28th March, 1990 and she joined as such on 29th March, 1990. However, her promotion order was withdrawn on 26th April, 1990, on the ground that she did not pass the Assistant Grade examination. She challenged the withdrawal of her promotion order by filing O.A. No. 492-CII of 1990. The Tribunal,—*vide* order dated 10th April, 1997, set aside the order dated 28th March, 1990 by giving liberty to the official respondents to issue fresh Show Cause Notice to the petitioner. However, the official respondents promoted the petitioner on the post of Senior Assistant,—*vide* order dated 6th June, 1997 (P-2) with effect from 29th March, 1990 with the condition that she would have to qualify Assistant Grade examination as and when conducted by the Chandigarh Administration.

(4) The official respondents circulated a tentative seniority list showing the original applicant-respondent No. 1 junior to the petitioner in the cadre of Senior Assistant. Thereafter, the original applicant-respondent No. 1 filed representation against her placement in the seniority list urging that she deserved to be senior to the petitioner. It was alleged by the original applicant-respondent No. 1 that the petitioner has filed representation before the SC/ST Commission who summoned the Secretary of Chandigarh Administration, UT Chandigarh on 24th March, 2003 and on account of the aforesaid pressure, the petitioner was shown senior to her in the gradation list dated 4th August, 2003. Thereafter, the original applicant-respondent No. 1 challenged the gradation list by filing O.A. No. 731-CII of 2003. Her application has been allowed granted her seniority over and above the petitioner by invoking the 'Catch-up principle' on the basis of purported instructions date 3rd July, 1986 (R-2) as already noticed. It is pertinent to mention that on the basis of the seniority shown in the gradation list, the petitioner was further promoted as Superintendent on 25th August, 2003 (P-6).

(5) Mr. H. S. Sethi, learned counsel for the petitioner has vehemently argued that the instructions dated 3rd July, 1986 (R-2) did not have any provision regarding 'Catch-up principle'. According to the learned counsel the 'Catch-up principle' was incorporated for the first time on 30th January, 1997 in the instructions dated 3rd July, 1986 on the basis of the judgment of Hon'ble the Supreme Court rendered in the case of **Union of India versus Virpal Singh Chauhan (1)**. Mr. Sethi has maintained that once the 'Catch-up principle' has been adopted on 30th January, 1997, it would not govern the promotion of the original applicant *vis-a-vis* the petitioner on the post of Senior Assistant, which was earned by the petitioner with effect from 1990 on a roster. Likewise it would not be available to the original applicant-respondent No. 1 who become Senior Assistant in the year 1994. Mr. Sethi has maintained that in any case, the judgment in **Virpal Singh Chauhan's case (supra)** is prospective in nature it would not apply to the promotions already earned in the year 1990 by the petitioner *vis-a-vis* the promotion of original applicant-respondent No. 1 made in 1994. He has relied upon paras 30 and 31 to argue that the judgment in **Virpal Singh Chauhan's case (supra)** is prospective and not to have a retrospective effect. The date of operation of 'Catch-up principle' fixed in the aforesaid paras is 10th February, 1995 which again does not adversely affect the promotion of the petitioner made in the year 1990 on the post of Senior Assistant and that of the original applicant-respondent No. 1 made in the year 1994.

(6) The learned counsel also submitted that the instructions dated 30th January, 1997 (R-4) have been withdrawn on 21st January, 2002 (P-8) with effect from 30th January, 1997 from its inception. According to him the aforesaid step was necessitated to enable the State Government to make provision for giving accelerated roster point promotion to the member of reserved category along with the accelerated seniority in view of the amendment in the Constitution. These two constituents of promotion laced with seniority were separated from each other by the judgments of Hon'ble the Supreme Court rendered in the cases of **Virpal Singh Chauhan (supra)** and **Ajit Singh Janjua versus Punjab State (2)**. It has been laid down in the aforesaid judgements that accelerated promotion

(1) (1995) 6 SCC 684 = JT 1995 (7) SC 231

(2) (1999) 7 SCC 209

given to members of Scheduled Caste on a roster point was not to be treated as conferring benefit of accelerated seniority and a General category senior candidate in the lower cadre was to regain his seniority over the roster point promoted. Therefore, the argument raised is that there was no 'Catch-up principle' devised before the judgment in **Virpal Singh Chauhan's case (supra)** and, therefore, the seniority *inter se* between the Scheduled Caste candidate and the General category candidate in the cadre of Senior Assistant has to be determined on the basis of general principle of continuous length of service. It has, thus, been submitted that the view taken by the Tribunal deserves to be set aside and that of the respondent Administration is liable to be accepted.

(7) Ms. Rita Kohli, learned counsel for the original applicant-respondent No. 1 has argued that the seniority in the cadre of steno-typist has to be maintained and on account of longer continuous length of service the applicant-respondent No. 1 having been appointed on 26th December, 1974 deserves to rank senior to the petitioner who was appointed as Steno-typist on 6th January, 1983. According to the learned counsel the basic seniority has to be protected and merely because the applicant-respondent No. 1 has been given promotion on a roster point in 1994 on the post of Senior Assistant would not mean that the petitioner could steal march over her without actually working on the post of Assistant by virtue of order dated 6th June, 1997 (P-2) with effect from 29th March, 1990. She has stressed that without qualifying the Assistant Grade Examination she in any case could not be promoted with effect from 29th March, 1990 when she was not even eligible for want of qualifying Assistant Grade Exam.

(8) We have heard learned counsel for the parties and perused the paper book along with the record of the case. We firstly find it necessary to set out the instructions issued,—*vide* office Memorandum dated 3rd July, 1986 (R-2), issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, which is as under :—

“Subject : Seniority--Consolidation orders on.

The undersigned is directed to say that instructions have been issued by this Department from time to time laying down the principles for determining seniority of persons appointed to services and

posts under Central Government. For facility of reference, the important orders on the subject have been consolidated in this Office Memorandum. The number and date of original communication has been quoted in the margin so that the users may refer to it to understand fully the contest in which the order in question was issued.

SENIORITY OF DIRECT RECRUITS AND PROMOTEEES

(MHA O.M. NO. 9/11/55-RPS, dated 22nd December, 1959).

- 2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.
- 2.2 Where promotions are made on the basis of selection by a D.P.C. the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

2.3 to 5 xxx xxx xxx"

(9) A bare perusal of the aforesaid Office Memorandum would show that the instructions issued by the Department of Personnel and Training from time to time laying down the principles for determining seniority of persons appointed to services and posts under the Central Government were, in fact, consolidated in the said office memorandum. In the instructions issued,—*vide* O.M. No. 9/11/55-RPS, dated 22nd December, 1959 or

dated 3rd July, 1986, there was no 'Catch-up principle because it was probably laid down for the first time by Hon'ble the Supreme Court in the case of **Virpal Chauhan (supra)**. It was only thereafter that the Department of Personnel and Training again issued instructions,—*vide* office memorandum dated 30th January, 1997 (R-4). It would be profitable to read the instructions in extenso :

“**Subject** :—Seniority of SC/ST officers promoted earlier **vis-a-vis** general candidate promoted later.

According to the general principle 5(i) contained in MHA OM No. 9/11/55-RPS dated 22nd December, 1959 and Para 2.2 in DOPT OM No. 22011/7/86-Estt. (D), dated 3rd July, 1986 read with DOPT OM No. 20011/5/90-Estt.(D), dated 4th November, 1992, (copy enclosed) seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and seniority of persons promoted to various grades shall be determined in the order of selection for such promotion. Thus, persons appointed through an earlier selection will enblock be senior to those promoted through subsequent selection.

2. The Supreme Court has in its judgment dated 10th October, 1995 in the case of **Union of India versus Virpal Singh Chauhan etc. (3)**, held as follows :—

“Even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/ Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though over the general candidate is promoted later to that category.”

3. Having regard to the above judgment of the Supreme Court, it has been decided to modify the existing policy of fixing seniority on promotion on the lines mentioned in para 2 above. Accordingly, it has been decided to add the following proviso to general principle 5(i) contained in MHA (now DOPT) OM No.9/11/55-RPS, dated 22nd December, 1959 and para 2.2 of this Department OM No. 22011/7/86-Esst.(D), dated 3rd July, 1986 :—

“Provided that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/ grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will retain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade.”

4. These orders shall take effect from the date of issue of this office Memorandum.” (EMPHASIS ADDED).

(10) However on 21st January, 2002 (P-B) the said amendment made in the instructions dated 22nd December, 1959 and office Memorandum dated 3rd July, 1986, was withdrawn with effect from 31st January, 1997 itself keeping in view the Constitution (Eighty Fifth) Amendment Act, 2001. The relevant portion of the instructions issued,—*vide* Office Memorandum, dated 21st January, 2002 (P-8) reads thus :

- “3. The Government have now decided to negate the effects of the DOPT OM, dated 30th January, 1997 by amending Article 16(4A) of the Constitution from the date of its inclusion in the Constitution i.e. 17th June, 1995 with a view to allow the government servants belonging to SC/STs to regain the seniority in the case of promotion by virtue of rule of reservation. In other words the candidates belonging to general/OBC category promoted later will be placed junior to the SC/ST Government servants promoted earlier even though by virtue of the rule of reservation.

4. Therefore, in pursuance of the aforementioned Constitution (Eighty Fifth) Amendment Act, 2001 it has been decided as follows :
- (i)(a) SC/ST Government Servants shall, on their promotion by virtue of rule of reservation/roster be entitled to consequential seniority also and
 - (b) the above decision shall be effected from 17th June, 1995.
 - (ii) The instructions contained in DOPT OM No. 20011/1/96 Estt (D), Dated 30th January, 1997 as well as the clarifications contained in DOPT OM No. 20011/2/97-Estt(D), dated 21st March, 1997 shall stand withdrawn with effect from 30th January, 1997 itself.
 - (iii) Seniority of Government servants determined in the light of OM dated 30th January, 1997 shall be revised as if that OM was never issued.
 - (iv)(a) On the basis of the revised seniority, consequential benefits like promotion, pay pension etc. should be allowed to the concerned SC/ST Government Servants (but without arrears by applying Principles of no work no pay).
 - (b) for this purpose, senior SC/ST Government servants may be granted promotion with effect from the date of promotion of their immediate junior general/OBC government servants.
 - (c) Such promotion of SC/ST Government servant may be ordered with the approval of Appointing Authority of the post to which the Government servant is to be promoted at each level after following normal procedure of DPC (Including consultation with UPSC).
 - (v) Except seniority other consequential benefits like promotion pay etc (including retrial benefits in respect of those who have already retired allowed to general/OBC Government servant by virtue of implementation of OM

dated 30th January, 1997 and/or in pursuance of the directions of CAI/Court should be protected as personal to them.

5. xxx xxx xxx" (emphasis added)

(11) Another aspect of the matter is that 'Catch-up principle' has been laid down in the case of **Virpal Singh Chauhan** (*supra*) and the judgment in that case has been made prospective with effect from 10th February, 1985. From paras 30 and 31 the aforesaid position is absolutely clear, which reads thus :

"30. If the above rules are observed and followed, there may not remain much room for grievance on the part of the general candidates. While in the very scheme of things, it is not possible to give retrospective effect to these rules a fact recognised in *R. K. Sabharwal* [(1995) 2SCC 745], the above rules, operated conjointly, should go a long way in maintaining a balance between the demands of merit and social justice.

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

(12) The view of the Tribunal needs to be examined in the light of the above facts and principles, namely, there was no 'Catch-up principle' discernible from the instructions dated 3rd July, 1986. The Tribunal has

obviously misread the instructions by ignoring the fact that 'Catch-up principle' was introduced by amendment only on 31st January, 1997. Therefore, the view taken by the Tribunal is unsustainable in law. We are further of the view that the judgment of Hon'ble the Supreme Court in **Virpal Singh Chauhan's case (supra)** is prospective in its operation. Therefore, it would not govern the promotions and the question concerning determination of *inter se* the seniority of the Scheduled Caste promotee on a roster point *viz-a-viz* her counterpart General category candidate who was senior in the lower cadre. Therefore, the judgment of the Tribunal is liable to be set aside.

(13) However, the question which remains to be considered is whether promotion of the petitioner on the post of Senior Assistant.— *vide* order dated 6th June, 1997 from a retrospective date of 29th March, 1990 is in order. It has been argued that the petitioner was promoted as Senior on 28th March, 1990 on a roster point. This promotion was withdrawn in less than a month on 26th April, 1990 on the ground that she was not qualified because she did not pass the Assistant Grade exam, which is essential qualification for promotion. If that be so then how could she be promoted with effect from 29th March, 1990 again? The question needs to be determined is whether a candidate like the petitioner would be eligible for promotion on the post of Senior Assistant without qualifying Assistant Grade examination. There are no pleadings to this effect and, therefore, the parties have to be sent back before the Tribunal.

(14) As a sequel to the above discussion, the instant petition succeeds. The order of the Tribunal is set aside and the matter is remanded back to the Tribunal for determination of the issue highlighted in para 13. The parties are given liberty to file additional pleadings on the question concerning legal validity of the order dated 6th June, 1997 giving promotion to the petitioner with effect from 29th March, 1990 when the petitioner had not acquired requisite qualification of passing Assistant Grade examination. The parties shall appear before the Tribunal on April 25, 2011.

(15) The petition stands disposed of in the above terms.