

From .

The Chief Secretary to Government, Haryana.

To

1. All Heads of Departments,  
Commissioners, Ambala, Rohtak, Gurgaon and  
Hissar Divisions.
2. The Registrar,  
Punjab and Haryana High Court,  
Chandigarh.
3. All Deputy Commissioners  
& Sub-Divisional Officers (Civil) in  
Haryana State.

Dated Chandigarh, the 14th October, 1999.

Subject: Reservation of posts for Scheduled Castes,  
Backward Classes under the services of Haryana  
State.

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Sir,

I am directed to invite your attention on the subject cited above and to say that after the decision of Ajit Singh Janjua and others Vs State of Punjab (1996 (2) SCC 215) Haryana Government had issued instructions vide circular letter No. 22/73/92-3GSIII, dated 10-1-1997 that from the date of pronouncement of the judgement by Hon'ble Supreme Court in the case of R.K.Sabharwal Versus State of Punjab i.e. 10-2-1995, no employee belonging to reserved categories of scheduled castes or backward classes be given the benefit of accelerated seniority. Shortly thereafter, in a case of Jagdish Lal it was decided by the Apex Court that the seniority of reserved category candidates will be as per provisions of service rules i.e from the date of continuous officiation. The instructions dated 10-1-1997 were, therefore, withdrawn vide circular letter No. 22/12/97-3GSIII, dated 13-1-1999.

2. Since the law laid down in Ajit Singh Janjua and Jagdish Lal was contradictory, the State of Punjab filed I.A. Nos. 1-3 in the Supreme Court of India which came up for hearing before the five judges Constitution Bench and were decided on 16-9-1999. The SLPs of reserved category employees of Haryana Civil Secretariat and FCM's office were also heard and decided by

the Constitution Bench. The Apex Court has now held that Vir Pal Singh and Ajit Singh have been correctly decided and that Jagdish Lal is not correctly decided. It was also observed that the instructions dated 9-2-1979 and 10-1-1997 issued by the Haryana Government on the subject correctly reflected the legal position.

3. The Hon'ble Supreme Court while affirming the decision of R.K.Sabharwal and Ajit Singh Janjua also decided the prospectivity of these two judgements and held that principles of both these judgements will be applicable from the date of their pronouncements i.e 10-2-1995 and 1-3-1996 respectively. A copy of the operative parts of the judgement is enclosed.

4. You are, therefore, requested to implement the law laid down by the Apex Court. In sum the principle of operation of roster decided in R.K.Sabharwal will be applicable from 10-2-1995 and the principle of accelerated seniority decided in Ajit Singh will be applicable from 1-3-1996. In other words from the date of the two judgements no employee belonging to the reserved categories of Scheduled Castes or Backward Classes should be allowed the benefit of accelerated seniority over his/her senior belonging to General Category on account of his/her accelerated promotion from the feeder service under the policy of reservation.

Yours faithfully,

Sd/-

Joint Secretary General Administration,  
for Chief Secretary to Government, Haryana.

This point concerns the "prospective" operation of the two judgments in Sabharwal and Ajit Singh. The point regarding these two cases directly arises in the appeals from Punjab, Haryana and Rajasthan. The prospectivity of Pappal has been particularly raised by learned Additional Solicitor General, Sri C.S. Vaidyanathan, in the IAs filed by the Railways. Once again our approach here is to prevent reversions and avoid hardship to the reserved candidates already promoted before the two judgments and at the same time to try to balance the rights to seniority of the general candidates as against those of the reserved candidates, in the light of Article 16(1).

Prospectivity of Sabharwal:

(i) What Sabharwal said in regard to "prospectivity".

Before Sabharwal was decided on 10.2.1995, it appears that, in several services, the roster was initially put in operation and promotions at all the roster points were filled up. But the roster was once again operated on future vacancies, even though all the required reserved candidates were in position at the promotional level. It was not realised that once the roster points were all filled, the roster had served its purpose and fresh members of the reserved classes, could claim promotional posts only if any promotional posts already filled by the reserved candidates fell vacant. This misapplication of the roster came to be removed for the first time on 10.2.95 when Sabharwal was decided. Obviously, by that time several reserved candidates had got promotion in excess of their quota because of the wrong "re-operation" of the roster

points. If the law declared in Sabharwal were to be treated as retroactive as is the normal position whenever the law is declared by this Court, it would have resulted in reversions of several officers of the reserved classes as their promotions before 10.2.95 by the fresh operation of the roster as aforesaid was wholly unjustified. This Court in Sabharwal therefore tried to prevent such reversions and declared (P.753 of SCC, Para 11) as follows at the end of the judgment :

"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".

(ii) The rival contentions:

To the extent of saving the reversions of those from reserved classes promoted before 10.2.95 though such promotions were made contrary to what was decided in Sabharwal, there is no serious dispute from the side of the general candidates, but a contention is raised by the reserved candidates who got such promotions in excess of the reservation quota that they should in addition get the benefit of the seniority in the promotional post even if such promotion made before 10.2.95 was wrong in view of what was decided in Sabharwal. This plea is strongly opposed by the general candidates.

(iii) Our conclusion:

It is axiomatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as ad hoc. This applies to reservation quota as much as it applies to direct recruits and promotee cases. If a Court decides that in order only to remove hardship such roster point promotees are not to face reversions, then it would, in our opinion be, necessary to hold- consistent with

our interpretation of Articles 14 and 16(1) - that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of the roster. In our view, while Courts can relieve immediate hardship arising out of a past illegality, Courts cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10.2.95 are protected, such promotees cannot claim seniority. Seniority in the promotional cadre of such excess roster point promotees shall have to be reviewed after 10.2.95 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate. That disposes of the "prospectivity" point in relation to Sabharwal.

Prospectivity of Ajit Singh:

Coming to the "prospectivity" of Ajit Singh decided on 1.3.96 the question is in regard to the seniority of the reserved candidates at the promotional level where such promotions have taken place before 1.3.96.

We have accepted, while dealing with Points 1 and 2 that the reserved candidates who get promoted at two levels by roster points (say) from Level 1 to Level 2 and level 2 to level 3 cannot count their seniority at Level 3 as against senior general candidates who reached Level 3 before the reserved candidates moved upto Level 4. The general candidate has to be treated as senior at Level 3.

Where, Before 1.3.96 i.e. the date of Ajit Singh's judgement, at the level 3, there were reserved candidates who reached there earlier and also senior general candidates who reached there later, (but before the reserved candidate was promoted to level 4) and when in spite of the fact that the

senior general candidate had to be treated as senior at level 3 (in view of Ajit Singh), the reserved candidate is further promoted to level 4- without considering the fact that the senior general candidate was also available at level 3 - then, after 1.3.96, it becomes necessary to review the promotion of the reserved candidate to level 4 and reconsider the same (without causing reversion to the reserved candidate who reached level 4 before 1.3.96). As and when the senior reserved candidate is later promoted to level 4, the seniority at level 4 has also to be refixed on the basis of when the reserved candidate at level 3, would have got his normal promotion, treating him as junior to the senior general candidate at level 3.