

A Handbook on Reservation of Jobs for SCs, STs in Government Services

**Published by :
Assam Institute of Research for Tribals & Scheduled Castes
Jawaharnagar, Khanapara, Guwahati-22**

**Government of Assam
Department of Welfare of Plain Tribes & Backward Classes
Dispur, Guwahati-06**

A HANDBOOK ON RESERVATION OF JOBS FOR SCs, STs IN GOVERNMENT SERVICES published by the Directorate, Assam Institute of Research for Tribals and Scheduled Castes, Jawaharnagar, Khanapara, Guwahati-22 for the Department of Welfare of Plain Tribes & Backward Classes, Government of Assam.

Edition : 1st Edition, 2016 (August)

Published by : Assam Institute of Research for Tribals and Scheduled Castes, Jawaharnagar, Khanapara, Guwahati-22.

© All rights reserved.

Compiled and Edited by: Udayan Hazarika, IAS
Director, AIRT & SC.

Price: Rs. 200.00 only.

Published at : TOP Printers, Janaki Path, Ganeshguri Chariali
Guwahati-781006

Publishers Note:

This publication is being sold on the condition and understanding that the information, comments and views it contains are merely for guidance and reference and must not be taken as having the authority of, or being binding in any way on, the author, editors, publishers and sellers, who do not owe any responsibility whatsoever for any loss, damage, or distress to any person, whether or not a purchaser of this publication, on account of any action taken on the basis of this publication. Despite all the care taken, errors or omissions may have crept inadvertently into this publication. For authoritative text information, please contact the department concerned or refer to the Government publication or the Gazette notification. The publishers shall be obliged if any such error or omission is brought to their notice for possible correction in future edition. In case of misprint, binding defect, missing pages, the publishers' liability is limited to replacement of the defective copy within one month of its purchaser by a copy of the same edition or reprint.

No part of this publication may be reproduced, in any form or by any means – electronic, mechanical, recording, photocopying or otherwise without the prior permission from the publishers.

PUBLISHERS

Smti. Pramila Rani Brahma



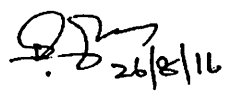
Minister
Environment & Forest, Soil Conservation,
WPT & BC and Mines & Minerals
Assam, Dispur, Guwahati-781006

FOREWORD

The compilation of a Handbook containing various Government Acts, Rules and Regulations, orders etc. on the Government's Reservation Policy has been a worthy step taken by the Directorate of Assam Institute of Research for Tribals and Scheduled Castes, Jawaharnagar, Guwahati-22. The compilation is proposed to be brought out on completion of 100th day of the assumption of office of the New Government.

This volume is expected to cater the needs of our officers posted at various districts, subdivisions and even in the Secretariat.

I hope this venture of the Institute will be a worthy one and they will take up the updating of the volume from time to time incorporating the new notification, policies etc.


26/8/16
(Pramila Rani Brahma)

Rajiv Kumar Bora, IAS
Additional Chief Secretary

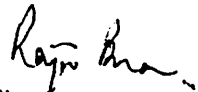


Government of Assam
Power, Welfare of Plain Tribes &
Backward Classes and Soil
Conservation Departments
Block "A", 4th floor
Assam Secretariat
Dispur, Guwahati-781006
Tel.: +91-361-2237329 (O)
Fax : +91-361-2237018

MESSAGE

It gives me immense pleasure to know that the Directorate of Assam Institute of Research for Tribal and Scheduled Castes has come out with a *Handbook containing various Acts, Rules and Regulations, orders etc on the Government Reservation Policy*. This volume is proposed to be bought out on the completion of the 100 days of the assumption of the office of the new Government of Assam.

I am sure that this volume will give Academicians and Policy makers to look into the Reservation issues and policies for SCs/STs with a new perspective. I congratulate Shri Udayan Hazarika, IAS, Director, AIRTSC for compiling and editing the volume within a short time.


(Rajiv Kumar Bora)

PREFACE

This volume is the first attempt to compile various government Rules, Office Memorandum, Notifications containing Government policies (both central and State Government's Policies) on the reservation of posts in services etc, for the Scheduled castes and Scheduled tribes. Attempt has been made to include all the necessary OMs/ Circulars/ Notifications, etc in this volume. Care has been taken so that guidelines containing government policy in force are incorporated in the volume.

Incorporation of the orders of the Supreme Court in three leading cases was necessary, as these cases are frequently referred to in the context of reservation policy while the orders are not always available when required. The volume will be updated as and when Policies are modified or updated.

I deem it fit to mention that Hon'ble Minister Welfare of Plains Tribes and backward classes, has laid great emphasis on the early completion of the compilation and printing of it for wide circulation. To expedite its completion, Hon'ble Minister also included it as an activity within her framework of 100 days' agenda. This is one reason why we could successfully complete this task of compilation. Additional Chief Secretary Shri Rajeev Kumar Borah, IAS has always been the source of inspiration in all such works. It was under his direction that the sanction for this volume was received. Shri M.C. Sahu, IAS, former Commissioner and Secretary, WPT & BC and Shri P. K. Hazoari, ACS, Commissioner and Secretary, WPT & BC Department have been of great help while the volume was under compilation. Shri B.R. Samal IAS, presently Commissioner & Secretary WPT & BC Department, immediately after joining made all possible help so that the work on the volume is completed.

I must name Shri Ganesh Chandra Kakati, Joint Director, AIRT & SC who has rendered all possible help both academically and logistically, during the compilation and printing of this volume. Shri Pintu Baruah & Sri Dharmendra Deka, Junior Assistants of the AIRT & SC has assisted for the project and managed all the secretarial assistance pertaining to the volume at record time.

I hope the Volume will cater the long standing need in this account.



Udayan Hazarika, IAS
Director, AIRT & SC

Contents

Chapter –I : Introduction	1-13
1.1: A Historical Overview of the Issue: Roots of the issue of discrimination- Characteristics of caste system- The Scheduled Castes - Scheduled Tribes.	
1.2: Creation of the Schedules.	
1.3: Demographic pattern of the Scheduled tribe and Scheduled caste population.	
1.4: Constitutional provisions for the Scheduled tribes, Scheduled Castes	

CHAPTER –II: NATIONAL COMMISSIONS

14-20

2.1: Constitution of National Commission:

Article 338 in its original form - National Commission For Scheduled Tribe- National Commission for Scheduled Castes.

2.2: Functions and Duties of the Commission

CHAPTER III: INTERVENTIONS BY THE GOVERNMENT OF INDIA

21-56

3.1: Reservation Policy of the Government of India- since inception
3.2: Judicial Reviews: Discussion of the court Cases chronologically.

CHAPTER –IV: STATE GOVERNMENT'S POLICY OF RESERVATION

57-221

CHAPTER -I

INTRODUCTION

1.1: A Historical Overview of the Issue:

In all human societies, problems arising out of discrimination against groups of citizens on grounds of race, religion, language, national origin, caste and creed have been observed from time immemorial. In India, too, certain groups or categories of people have long been subjected to discrimination due mainly to the fact that “their status is ascribed to them by birth in certain castes, creed and tribal groups. Their problems can be understood only in terms of the basic character of Indian society which consists of a multitude of closed status groups with unequal ranks, each with its own privileges and disabilities supported by traditional sanctions.”(Kuppuswami : 2004: 2001). In social science literatures, these categories or groups of oppressed or discriminated people, are referred to as ‘The Backward Classes’ that can be classified into three broad categories : a) Scheduled Caste or Dalits (formerly referred to as outcastes, untouchables, Harjans, etc), b) Scheduled Tribe (formerly known as Girijan, Adivasi.) and finally c) the Other Backward Classes. While the first two categories are listed in the Constitution, the third group is not listed and is very loosely defined. This last group happens to be the most heterogeneous and highly complex group.

In the Indian Constitution, although the term backward classes have been used in various Articles like Article 16(4), but the phrase itself has not been defined. However, different Articles mention their different features like (a) being socially and educationally backward [Article 15(4)] ; having inadequate representation in services [Article 16(4)]; victim of untouchability (Article 17) and forced labour(Article 23). In

Article 46, the term weaker section of the people has been used to refer to Scheduled Caste and Scheduled Tribes. The Constitution has accepted the following elements of backwardness; illiteracy and lack of education, poverty, exploitation of labour, non-representation in services and untouchability.

In order to understand the basis of social inequality in Indian society, one must turn to some important concepts of Hindu caste ridden society like varna, jati and caste system as a whole.

1.1.1: Roots of the issue of discrimination:

It has already been mentioned that the crux of the problem of disadvantageous groups like SC (Scheduled Castes or Dalits) ,the ST (Scheduled Tribes or Adivasis) and other disadvantageous groups for not being able to integrate with the mainstream society lie in the traditional Hindu world view regarding the social organisation . For understanding the origin of these discriminations, two concepts have to be clarified. These are *varna* and *jati*(caste). In common parlance, *varna* and *jati* are often used interchangeably which is quite misleading and confusing. *Varna* may be defined as an abstract classification of persons on the basis of mythical origin (Kar: 1998: 88-89). The religious explanation of the *varna* system is derived from the Rig Veda which describes the creation of *Brahmana* (priests) *Kshatriya* (Warrior), *Vaishya*(traders) and the *Shudra* (them describes the origin of priests from the creator's mouth , arms, thighs and feet of the Creator respectively, which however has no logical reasoning.) Of these, the *Varna*, therefore, is a symbolic structure within which various *jatis* or castes are grouped hierarchically in an all India frame. Castes or *jatis* on the other hand are concrete social groups based on ritualistic and occupational criteria. *Jatis* include many assimilated national and tribal groups. *Jatis* are often endogamous local or regional groups. According to Hindu scriptures, *Jatis* belonging to the three highest *varnas* in the hierarchy—Brahmins, Kshatriyas, and *Vaisyas*—are considered as “twice-born” Dweeja). It means that they are ritually more pure than the *Sudras*

and the polluting untouchables. These higher *jatis* perform certain ceremonies to demonstrate their ritual purity.

This leads one to the nature or characteristics of Indian caste system which has been succinctly described by Kuppaswami (2004: 185) in the following manner : “ The caste system is hierarchical determining the social status in the group. Broadly, we can classify these castes into four groups- the highest castes, the upper castes, the lower castes, and the lowest castes. The highest castes are the Brahmins and the *Kshatriya* and among the lowest castes are the *Harijans*. Each of these groups has its innumerable sub-castes. The status of an individual is determined by the social status of the group in which he is born. Nothing could alter this, neither education nor wealth, neither success nor failure

It is significant to note that the concept of *varna* differentiates between those who are within the *varna* scheme and those who are outside it. The traditional four groups –the Brahmins, the Kshatriyas, the Vaishya, and the Sudra –belong to the *varna* scheme. It may be mentioned that the untouchables and the tribal people are outside the *varna* scheme.(Kuppaswami : 184).

1.1.2: Characteristics of caste system:

Various scholars have identified certain characteristics of the Indian caste system as below:

1. **Segmental division of the society:** Caste system divides the society into several segmental divisions of society.
2. **Hierarchy:** the most important feature of the caste system is its hierarchical arrangements of castes and groups into higher and lower ranks and status according to different degrees of dominance and privileges.
3. **Restrictions on interaction between different caste** happens to be another feature of the caste system that has bearing upon the

perpetuation of social evils like untouchability and other forms of social and religious disabilities on the part of lower status groups.

4. **The ideology of purity and pollution:** The ideology of purity and pollution has been the central factor in creating and perpetuating discrimination against the lower *jatis* and untouchables.

1.1.3: The Scheduled Castes:

The Scheduled Castes were originally known as out castes or broken men in ancient India while during the British Raj they were commonly referred to as Exterior class in the 1931 census. It has already been mentioned that the deep rooted concept of pollution versus purity governs the interaction between members of different castes. The touch of an untouchable is considered defiling to an upper-caste Hindu. In southern India, where caste prejudice has been historically most severe, even the sight of an untouchable was considered polluting. Untouchables were usually entrusted with "impure" tasks such as work involving human waste and dead animals. As a result, untouchables were barred from entering temples, drawing water from upper-caste wells, and all social interaction with upper-caste Hindus (including dining in the same room). These social rules were strictly imposed and violators were severely punished; some were even killed. The situation continued unchallenged until reforms began in the 19th century.

Disabilities of untouchables:

The Untouchables had to face multifarious disabilities and oppression over the centuries in the hands of so called high and pure castes. Despite being Hindus, they were not allowed to enter into Hindu temples, monasteries, pilgrimage centres, on the flimsy plea that those holly places would become polluted by their contact. On the same plea, they were prevented from taking a holy dip in the sacred rivers, performing any Hindu religious rite either by themselves or by the Brahmin priest. They were also debarred from reading religious scriptures as they were denied the access to education. They had to remain outside

the *jajmani* network through which other castes had availed goods and services of each other on a reciprocal basis.

Their social disabilities include prevention from the use of public roads, wells and prevention from attending educational institutions. Neither were any schools for them. In reality, education was considered unnecessary for them.

The disabilities of the untouchables were extended to economic sphere also. They were not given permission to be engaged in such occupations that were rewarding as these were the prerogative of the higher castes. Therefore, they were engaged in such polluted occupations like scavenging, basket making, removal of dead cattle and animals. They were not permitted to own land, property of any kind. Most of the untouchables lived below poverty line due to their unrewarding ascribed occupations.

Disabilities have been also quite severe in some social habits related to food, drink and social intercourse. The higher castes did not accept food from the house of the untouchables. The untouchables were prevented from using expensive clothing. They were denied the services of other castes because of the deep rooted feeling of ritual purity and pollution has been and still to certain extent prevailing among the so called higher castes. "Since their touch defiled the higher castes social contact was not permitted with them" (Kar: 1998:157). They were also not allowed to participate in community or political activities

1.1.4: Scheduled Tribes:

Problems of the tribal people differed to a certain extent from those of the untouchables. The attitudes of the higher Hindu castes towards these people were also guided by the principle of pollution. The so called higher castes also avoided contact with the tribal people as being polluted. But the situation with the tribal people was not so much conspicuous as the tribal people generally lived in isolated more remote

inaccessible locations. it was only in rare situations the tribal people came into direct control with the high caste people.

Living in isolation has served two pronged problems among them. Isolation of a section of the tribal has kept their own culture and tradition relatively free from exploitation from money lenders, impact of outside influence from other so called superior cultures as has been faced by those tribal groups who are not isolated geographically. But, on the other hand, they remained outside the pale of the processes of modernisation and development.

1.2: Creation of Schedules

Our Constitution framers had observed the prevalence of inequality in the society and social attitude towards the vulnerable groups in the society. This led to incorporation of several provisions for protection of interests of the vulnerable groups. Through the passage of time, experience and difficulties made the law makers more and more alert about the prevailing discrimination against these groups. Thus, while looking at the history of the working of the Constitution, we find number of amendments made for the protection of interest of the unequally placed communities.

The Constitution of India is known for its equal treatment to all. Article 14 of the Constitution states that "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Similarly, the Article 15 reads, "The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place or birth or any of them". These two provisions make it amply clear that the dream of the Constitution frames was to achieve an egalitarian society. But the age old exploitation and discrimination resulting from the prevalence of caste system made the castes at the lower rung of the population and in every walk of life, they lag behind of the total population and significantly. Lack of educational opportunities and social restrictions imposed upon them have become a stumbling block on their road to

progress. They do not match in any way the average upper castes families. Due to their age old social and economic backwardness, they cannot reach the average standard determined for obtaining various benefits.

In the above backdrop, it was felt an urgent necessity to adopt some measures so as to minimise the caste based distinction in the society. This has resulted in the introduction of the system of compensatory discrimination. This system attempts to eliminate the "adverse impact of the historical oppression and segregation of these communities"

In order to make arrangement for accelerated progress of these communities, the Constitution has under Article 341¹ and 342² made provision for identification of these communities under two schedules namely scheduled Castes and Scheduled tribes.

Exercising the power under the above two Articles Government of India published the list of scheduled Castes and Scheduled Tribes under Constitution Scheduled Caste Order 1950 and Constitution (Scheduled Tribes) Order 1950 respectively. These lists are updated from time by inclusion and exclusion of castes and tribes from the lists. Table-1 shows the list of Scheduled castes as declared in the Part II of the Schedule for Assam. The Detailed Order is annexed at Annexure-1.

Table -1 List of Scheduled Castes in Assam

Sl No	Name of the Caste	Sl No	Name of the Caste
-------	-------------------	-------	-------------------

¹ **Article 341 Schedule Castes:**

The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

² **Article 342: Schedule Tribes:**

The President, and where it is a State, after consultation with the Governor by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be].

1	Bansphor	9	Kaibartta, Jaliya
2	Bhuinmali, Mali	10	Lalbegi
3	Brittial Bania, Bania	11	Mahara
4	Bhupi, Dhobi	12	Mehtar, Bhangi
5	Dugla, Dholi	13	Muchi, Rishi
6	Hira	14	Namasudra
7	Jalkeot	15	Patni
8	Jhalo, Malo, Jhalo-Malo	16	Sutradhar

Table -2 List of Scheduled Tribes in Assam (Part-II)
[In the autonomous districts of Karbi Anglong and North Cachar Hills]

Sl No	Sub Sl	Name of the Tribe	Sl No	Name of the Tribe
1		Chakma	(xx)	(xx) Kuki
2		Dimasa, Kachari	(xxi)	(xxi) Lengthang
3		Garo	(xxii)	(xxii) Lhanguin
4		Hajong	(xxiii)	Lhoujem
5		Hmar	(xxiv)	Lhouvun
6		Khasi, Jaintia, Synteng, Pnar, War, Bhoi, Lyngngam	(xxv)	Lupheng
7		Any Kuki Ttribe	(xxvi)	Mangjel
	(i)	Biate, Biete	(xxvii)	Misao
	(ii)	Changsan	(xxviii)	Riang
	(iii)	Chongloi	(xxix)	Sairhem
	(iv)	Doungel	(xxx)	Selnam
	(v)	Gamalhou	(xxxi)	Singson
	(vi)	Gangte	(xxxii)	Sithou
	(vii)	Guite	(xxxiii)	Sukte
	(viii)	Hanneng	(xxxiv)	Thado
	(ix)	Haokip, Haupt	(xxxv)	Thangngeu
	(x)	Haolai	(xxxvi)	Uibuh
	(xi)	Hengna	(xxxvii)	Vaiphei
	(xii)	Hongsung	8	Lakher
	(xiii)	Harangkhwai, Rangkhoh	9	Man (Tai speaking)

(xiv)	Jongbe	10	Any Mizo (Lushai) tribes
(xv)	Khawchung	11	[Karbi]
(xvi)	Khawathlang, Khothalong	12	Any Naga tribes
(xvii)	Khelma	13	Pawi
(xviii)	Kholhou	14	Syntheng.
(xix)	Kipgen	15	Lalung

1.3: Demographic pattern of the Scheduled tribe and Scheduled caste population:

In the following Table - 3 the Scheduled caste population in the State is presented as per the latest Census (2011).

Table -3: Population of Scheduled Castes in Assam

Sl No	Name of the Caste	Total	Male	Female
1	Bansphor	16,359	8,189	8,170
2	Bhuinmali, Mali	69,535	35,621	33,914
3	Brittial Bania, Bania	50,598	25,777	24,821
4	Dhupi, Dhobi	52,431	27,029	25,402
5	Dugla, Dholi	7,991	4,091	3,900
6	Hira	55,300	27,860	27,440
7	Jalkeot	24,774	12,626	12,148
8	Jhalo, Malo, Jhalo-Malo	80,376	41,620	38,756
9	Kaibartta, Jaliya	6,93,219	3,53,177	3,40,042
10	Lalbegi	790	404	386
11	Mahara	1,822	1,020	802
12	Mehtar, Bhangi	8,835	4,489	4,346
13	Muchi, Rishi	77,643	39,875	37,768
14	Namasudra	6,31,542	3,26,753	3,04,789
15	Patni	1,81,904	93,599	88,305
16	Sutradhar	66,303	34,121	32,182
	Total	20,19,422	10,36,251	9,83,171

The total Scheduled tribe population in the State as per 2011 Census is shown in the following Table- 4.. It may be observed that there are discrepancies in the totals arrived at by the Census of India and that of the actual total found when calculated. WE have however used in this compilation the Census figures only.

Table-4: -Total Scheduled Tribe population in Assam (2011)

All Schedule Tribes	Census	38,84,371	19,57,005	19,27,366
	Actual	37,05,315	18,66,486	18,38,831

Table-5:- Scheduled Tribe population in Assam (in Autonomous Council Areas) (2011)

Sl No	Name of the Tribe	Total	Male	Female
1	Chakma	2,032	1,043	989
2	Dimasa, Kachari	1,02,961	51,832	51,129
3	Garo	25,315	12,684	12,631
4	Hajong	436	223	213
5	Hmar	15,745	7,964	7,781
6	Khasi, Jaintia, Synteng, Pnar, War, Bhoi, Lyngngam	15,936	7,916	8,020
7	Any Kuki Tribes, including:**	33,399	17,220	16,179
8	Lakher	37	20	17
9	Man (Tai speaking)	1,269	644	625
10	Any Mizo (Lushai) tribes	880	419	461
11	Karbi	4,30,452	2,17,758	2,12,694
12	Any Naga tribes	29,767	14,905	14,862
13	Pawi	3	1	2
14	Syntheng	5	2	3
15	Lalung	18,252	9,128	9,124
	Total	6,76,489	3,41,759	3,34,730

Source: Census of India

** Aggregates of all Kuki tribe is shown.

Table-6:- Scheduled Tribe population in Assam (excluding Autonomous Council Areas) (2011)

Sl No	Name of the Tribe	Total	Male	Female
1	Barmans in Cachar	6,716	3,398	3,318
2	Boro, Borokachari	13,61,735	6,82,931	6,78,804
3	Deori	43,750	21,938	21,812
4	Hojai	642	327	315
5	Kachari, Sonwal	2,53,344	1,27,692	1,25,652
6	Lalung	1,82,663	91,340	91,323
7	Mech	9,883	4,968	4,915
8	Miri	6,80,424	3,45,786	3,34,638
9	Rabha	2,96,189	1,48,887	1,47,302
10	Dimasa	19,702	9,738	9,964
11	Hajong	34,253	17,385	16,868
12	Singpho	2,342	1,175	1,167
13	Khampti	1,106	566	540
14	Garo	1,36,077	68,594	67,483
	Total	30,28,826	15,24,725	15,04,101

1.4: Constitutional provisions for the Scheduled tribes, Scheduled Castes.

In our earlier discussion, we have briefly stated about certain Constitutional provisions in respect of the SC & STs. Here the specific Articles are incorporated for easy reference.

Article 15(4): This Article contains the basic provision regarding compensatory discrimination in favour of Scheduled tribes and scheduled castes. Initially, Clause -4 was not within the framework but incorporated later through 1st Amendment of the Constitution in 1951 after the Supreme Court judgement in the Champakam Dorairajan vs State of Madras (see annexure-..).

Art. 15 (5) : This clause was added by the Constitution 93rd Amendment Act in 2005 and allows the state to make special provisions for backward

classes or SCs or STs for admissions in private educational institutions, aided or unaided.

Art. 16(4): This clause allows the state to reserve vacancies in public service for any backward classes of the state that are not adequately represented in the public services.

Art. 16 (4A): This allows the state to implement reservation in the matter of promotion for SCs and STs.

Art. 16(4B): This allows the state to consider unfilled vacancies reserved for backward classes as a separate class of vacancies not subject to a limit of 50% reservation.

Art. 17: This Article abolishes untouchability and its practice in any form. Although the term untouchability has not been defined in the constitution or in any act but its meaning is to be understood not in a literal sense but in the context of Indian society. Due to the varna system, some people were relegated to do menial jobs such as cleaning toilets. Such people were not to be touched and it was considered a sin to even touch their shadow. They were not even allowed to enter public places such as temples and shops. The constitution strives to remove this abhorring practice by not only making the provision a fundamental right but also allows punishment to whoever practices or abets it in any form. Towards this end, Protection of Civil Rights Act 1955 was enacted. It has implemented several measures to eradicate this evil from the society. It stipulates up to 6 months imprisonment or 500 Rs fine or both. It impresses upon the public servant to investigate fully any complaint in this matter and failing to do so will amount to abetting this crime. In the case of State of Kar. vs Appa Balu Ingle, SC upheld the conviction for preventing a lower caste person from filling water from a bore well.

Art. 19(5): It allows the state to impose restriction on freedom of movement or of residence in the benefit of Scheduled Tribes.

Art. 40: Provides reservation in 1/3 seats in Panchayats to SC/ST.

Art. 46: Enjoins the states to promote with care the educational and economic interests of the weaker sections, especially SC and STs.

Art. 164: Appoint special minister for tribal welfare in the states of MP, Bihar, and Orrisa.

Art. 275: Allows special grant in aids to states for tribal welfare.

Art. 330/332: Allows reservation of seats for SC/ST in the parliament as well as in state legislatures.

Art. 335: Allows relaxation in qualifying marks for admission in educational institutes or promotions for SCs/STs.

Art. 338/338A/339: Establishes a National Commission of SCs and STs.

Art. 339 allows the central govt. to direct states to implement and execute plans for the betterment of SC/STs.

Art. 340: Allows the President to appoint a commission to investigate the condition of socially and economically backward classes and table the report in the parliament.

CHAPTER -II

2.1 : Constitution of the National Commission

The Constitution in Article 338 has made provisions for appointment of a special officer for effective implementation of the various provisions of Constitution³. Accordingly, Government of India took various measures for implementation of the said provisions. In the succeeding paragraphs several such important measures are discussed.

2.1.1: Article 338 in its original form

With a view to provide safeguards against the exploitation of members of Scheduled Castes & Scheduled Tribes and to promote and protect their social, educational, economic and cultural interests, special provisions were made in the Constitution. The Government realized that due to their social disability and economic backwardness, they were grossly handicapped in getting reasonable share in elected offices, Government jobs and educational institutions and, therefore, it was considered necessary to follow a policy of reservation in favour of these communities to ensure their equitable participation in governance.

³ Article 338 of the Constitution:

- (i) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President;
- (ii) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the SCs & STs under the Constitution and to report to the President on the working of these safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament;
- (iii) In this Article, references to the SCs and STs shall be construed as including references to such Other Backward Classes as the President may, on receipt of the report of a Commission appointed under Clause (1) of article 340 of the Constitution, by order, specify and also to the Anglo-Indian community.

For effective implementation of various safeguards provided in the Constitution for the SCs & STs and various other protective legislations, the Constitution provided for appointment of a Special Officer under Article 338 of the Constitution. This Article in its original form may be seen at foot note.

Following the provision of this Article, Government of India appointed a Special Officer designated as Commissioner for Scheduled castes and Scheduled Tribe in 18th November 1950. The major functions attached to him were to monitor and investigate all matters pertaining to the safeguard of SCs and STs. The subsequent happenings in this context are presented below in chronological order:

- July 1965 Setting up of 17 regional offices for the Commissioner. This office were headed by one Assistant Commissioners for SCs and STs
- July 1967 The nomenclature of the Assistant Commissioners have been changed to Deputy Commissioners.
- Post of Director General of backward Classes was created
- June 1967 17 regional offices were reorganised into 5 zonal offices viz, Chandigarh (Northern Zone), Bhopal (Central Zone), Patna (Eastern Zone), Baroda (Western Zone) and Madras (Southern Zone). and placed under the control of the Director General of backward Classes.
- Thus the 17 field offices which worked as independent monitoring agencies on the matter related to the welfare of backwards classes have been abolished.
- July 1978 The single member system was replaced by a multi member Commission namely Commission for Scheduled Castes and Scheduled Tribes.

August 1978 The First Commission was constituted with Chairman Shri Bhola Paswan Shastri and four other Members including the Special Officer appointed under Article 338.

August 1978 Constitution 44th Amendment Bill proposing to amend the Article 338 to accommodate the provision of a national Commission was presented in Lok Sabha. However the Bill could not get through for lack of time.

April 1979 The Bill was again presented before the Lok Sabha as Constitution fifty first Amendment Bill. Even in this case due to lack of majority the Bill could not be passed.

The non-statutory Commission Continued with overlapping functions with the Director General.

September 1981 Government of India demarcated the functions of the Commissioner, SC and ST and that of the Commission for SC and ST. The core function of the Commissioner was to submit the Annual Report to the President and that of the Commission was to conduct various studies.

November 1981 The Commissioner of SC and ST demit the office. The position was not filled up till 1985.

The Commission for SC & ST was re-designated as the National Commission for SC & ST,

The Commission has been made a twelve member body including the Chairperson.

1990 : A fresh Bill namely Constitution (Sixty-fifth Amendment) Bill, 1990 was introduced in the Parliament seeking amendment of the Article 338 and incorporation of a new Article 338A.

March 1992: This time the Bill was Passed by Parliament and it was notified in June 1990.
The Act came into effect in March 1992.

The post of Commissioner for Scheduled Caste and Scheduled Tribe was abolished with effect from March 1992.

The first Commission under the Constitution (Sixty-fifth Amendment) Act, 1990 was constituted on 12 March, 1992 under the Chairmanship of Shri Ram Dhan.

October 1995 The second Commission was constituted on 5 October, 1995 under the chairmanship of Shri H.Hanumanthappa .

December 1998 The third Commission was constituted on 16 December, 1998 under the Chairmanship of Shri Dileep Singh Bhuria.

March 2002 The fourth Commission was constituted on 21 March, 2002 consisting of Dr.Bizoy Sonkar Shastri as Chairman.

2003 Constitution (Eighty ninth Amendment) was passed inserting a new article 338(A) making provision for a separate National Commissions for Scheduled Castes and Scheduled Tribes.

2.1.2: Natioal Commission For Scheduled Tribe:

March 2004 A separate National Commission for Scheduled Tribe was set up with Sri Shri Kunwar Singh, as Chairperson. The objectives remain unchanged.
The term of office of Chairperson, Vice-Chairperson and each member is three years from the date of assumption of charge. The Chairperson

has been given the rank of Union Cabinet Minister, and the Vice-Chairperson that of a Minister of State and other Members have the ranks of a Secretary to the Government of India.

June 2007

The second commission constituted in June 2007 with Smt. Urmila Singh, as Chairperson, and four others as Members.

October 2010

The Third Commission, was headed by Dr. Rameshwar Oraon, who assumed office on 28.10.2010.

November 2013

Dr. Rameshwar Oraon has been re-appointed for 2nd term of three years as Chairperson, National Commission for Scheduled Tribes.

2.1.3: National Commission for Scheduled Castes.

In a similar manner after the enactment of Constitution Eighty Ninth Amendment Act in 2003, the first separate National Commission for Scheduled Castes was also set up in the year 2004 under the chairmanship of Shri Suraj Bhan. The Commission aid down their office in the year 2007 and in May 2007 the Second National Commission for SC was constituted under the Chairmanship of Late Buta Singh. The third national Commission for SC was constituted on the year 2010 under the Chairmansip of Dr. P.L. Punia. Dr Punia also continued as Chairperson of the fourth National Commission constituted in the year 2013 till date.

2.2: Functions and Duties of the Commission

The functions, duties and power of the Commission have been laid down in clauses(5), (8) and (9) of the Article 338 of the Constitution. The clauses are inserted below:

(5) It shall be the duty of the Commission-

(a) to investigate and monitor all matters relating the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid

before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

(a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

CHAPTER III

INTERVENTIONS BY THE GOVERNMENT OF INDIA

3.1: Reservation Policy of the Government of India- since inception

Government of India in as early as in 1950 had announced its policy of reservation for backwards classes vide Ministry of Home Affairs No 42/21/49 – NGS dated the 13th September 1950 reproduced below.

Ministry of Home Affairs Resolution No. 42/21/49 –NGS, Dated the 13th September,1950

No. 42/21/49 –NGS.- The policy of the new Government of India in regard to communal representation in the Service immediately before the coming into force of the new Constitution was that in appointments made by open competition 12½% of the vacancies filled by direct recruitment were reserved for candidates belonging to the Scheduled Castes while in regard to posts and services for which recruitment was made otherwise than by completion the principal communities in the country were given appointments in proportion to their population. Certain reservations were also made for Anglo- Indians in services with which they had special past associations.

2. The Government of India have now reviewed their policy in this regard in the light of the provisions of the Constitution of India which lay down inter alia that with certain exception no discrimination shall be made in the matter of appointments to the Services under the State on grounds of race, religion, caste. etc. The exceptions are that special provision shall be made for Scheduled Castes and Scheduled Tribes in all Services and for Anglo- Indians in those services in which they had special reservations on the 14th August, 1947. Pending the determination of the figures of

population at the Census of 1951 the Government of India have decided to make the following reservations in recruitment to posts and services under them :

(a) Scheduled Castes – The existing reservations of 12 ½ of vacancies filled by direct recruitment in favour of the Scheduled Castes will continue in the case of recruitment of posts and services made, on an all India basis , by open competition ,i.e through the Union Public Service Commission, or by means of open competitive tests held by any other authority . where recruitment is made otherwise than by open competition the reservation for Scheduled Castes will be 16-2/3 percent as at present.

(b) Scheduled Tribes – Both in recruitment by open competition and in recruitment made otherwise than by open competition there will be a reservation in favour of members of Scheduled Tribes of 5% of the vacancies filled by direct recruitment.

(c) Anglo – Indians – The reservation which were in force in favour of Anglo – Indians , in the Railway Services ,the Posts and Telegraph Department and the Customs Department on the 14th August 1974, will be continued subject to the provisions of Article 336 of the Constitution.

3. The reservations prescribed in the previous paragraph will apply in case of recruitment made on an all-India basis. Under the Constitution all citizens of India are eligible for consideration for appointment to posts and service under the Central Government irrespective of their domicile or place of birth and there can be no recruitment to any Central Service which is confined by rule to the inhabitants of any specified area. In practice however recruitment to Class I and Class II services and posts is likely to attract candidates from all over India and will be on a truly all-India basis , while for the majority of Class III service and posts which are filled otherwise than through the Union Service Commission only those residing in the area or locality in which the office is located are

likely to apply. In the latter class of cases the percentage of reservations for Scheduled Castes and Scheduled Tribes will be fixed by Government taking into account the population of the for Scheduled Castes and Scheduled Tribes in that area.

4. (1) The orders regarding reservation of vacancies in favour of the various communities will not apply to recruitment by promotion which will continue to be made as heretofore irrespective of communal considerations and on the basis of seniority and / or merit as the case may be.

(2) In all case a minimum standard of qualifications will be prescribed and the reservations will be subject to the overall condition that candidates of the requisite communities possessing the prescribed qualifications and suitable in all respects for the appointment in question , are forthcoming in sufficient numbers for the vacancies reserved for them.

(3) The maximum age limit prescribed for appointment to a service or post will be increased by three years in case of candidates belonging to the Scheduled Castes and Scheduled Tribes and the fees prescribed for admission to any examination or selection will be reduced to one-fourth in their case.

Another important Office Memorandum of Government of India regarding Reservation of posts etc having historical value is the OM No 42/21/49-NGS dated 28th January 1952. The OM is reproduced below:

Ministry of Home Affairs OM No. 42/21/49-NGS

dated 28th January, 1952

Subject:- Supplementary instructions connected with the orders on communal representation in the services.

The undersigned is directed to refer to the Ministry of Home Affairs Resolution No. 42/21/49-NGS. dated the 13th September, 1950,

and to say that the instructions given below will govern the application of the orders on communal representation in the services.

Recruitment by open competition:

2. (a) If the candidates of Scheduled Castes, Scheduled Tribes and the Anglo-Indian community obtain by competition less vacancies than are reserved for them, the difference will be made up by the nomination of duly qualified candidates of these castes. Tribes and communities i.e., candidates of these communities etc. *who have qualified in the test, selection etc.* held for the purpose, but have secured ranks lower than the candidates of other communities for whom no reservation have been made.

(b) A roster of 40 vacancies will be necessary to give effect properly to the reservations for Scheduled Castes and Scheduled Tribes and the roster given below should be adopted as a model roster for the services in which there are no reservation for Anglo-Indians :-

1	Scheduled Castes	21	Scheduled Tribes
2	Scheduled Castes	22-24	Unreserved
3-8	Unreserved	25	Scheduled Castes
9	Scheduled Tribes	26-32	Unreserved
10-16	Unreserved	33	Scheduled Castes
17	Scheduled Castes	34-40	Unreserved
18-20	Unreserved		

In case of recruitment to service in which vacancies are reserved for members of the Anglo-Indian Community, rosters should be drawn up by Ministries concerned in consultation with the Ministry of Home Affairs.

(c) Instructions for the maintenance of the rosters are given in Appendices A & B.

Recruitment otherwise than by open competition

3. (i). The following roster should be followed for services to which recruitment is made on an all-India basis otherwise than by open competition:-

1	Scheduled Castes	21	Scheduled Tribes
2	Scheduled Castes	22-24	Unreserved
3-6	Unreserved	25	Scheduled Castes
7	Scheduled Castes	26-30	Unreserved
8-12	Unreserved	31	Scheduled Castes
13	Scheduled Castes	31-36	Unreserved
14-18	Unreserved	37	Scheduled Castes
19	Scheduled Castes	38-40	Unreserved
20	Unreserved		

NOTE:- In every third cycle of the above roster, the 37th point will be treated as unreserved.

(ii) Instructions for the maintenance of the roster are given in Appendices A & B.

Local Recruitment:

4(a). If the candidates of Scheduled Castes, Scheduled Tribes from the neighbouring areas are likely to be available, the percentages of reservations will be prescribed by the Ministries concerned in consultation with the Ministry of Home Affairs. Pending the results of the 1951 Census, the percentage of reservations will be based on the population figures given in the 1941 Census Report. Proposals in this regard should be sent to the Ministry of Home Affairs as soon as possible and pending a decision on the percentage to be fixed, the reservations prescribed for recruitment on an all-India basis should be followed.

(b) the purely temporary establishment such as work charge staff including the daily rated and the monthly rated staff, shall be excluded from the scope of the orders regarding communal representation in services.

General:

5(1) It has been decided as a rule not to grant any exemption from the scope of these orders in respect of posts and services, but exceptional cases should be referred to the Ministry of Home Affairs for a decision.

(2) The communal representation orders are applicable separately :

(a) to permanent vacancies; and

(b) to temporary vacancies lasting three months or longer whether in permanent or in temporary posts.

(3) If a sufficient number of candidates of the communities for whom the reservation are made, who are eligible for appointment to the posts in question and are considered by the recruiting authorities as suitable in all respects for appointment to the reserved quota of vacancies, are not available, the vacancies that remain unfilled will be treated as unreserved and filled by the best available candidates but a corresponding number of vacancies will be reserved in the following years for the communities whose vacancies are thus filled up in addition to such number as would ordinarily be reserved for them under the orders contained in the Resolution. (For further clarification please see rule III in Appendix 'A').

(4) If suitably qualified candidates of the communities for whom the reservations have been made are again not available to fill the vacancies carried forward from the previous year under clause (3) above the vacancies not filled by them will be treated as unreserved and the reservations made in those vacancies will lapse.

(5) A vacancy caused by the termination of the services of a probationer should be treated as a fresh vacancy but should be treated as (a)

unreserved or (b) reserved for (i) Scheduled Castes or (ii) Scheduled Tribes or (iii) Anglo-Indians according as the vacancy was originally treated as unreserved or reserved.

(6) In order to justify the statement that a sufficient number of suitable candidates of a community are not available and the vacancy should, therefore, be treated as unreserved, it is essential that adequate steps should be taken to bring the existence of the vacancies to the notice of candidates of those communities. For this purpose, it is necessary to advertise the vacancies in newspapers and also to consult the agencies which may be in a position to assist in the manner. The instructions in the succeeding sub-paragraphs should be carefully followed in this connection:-

(a) All vacancies in services and posts recruitment to which is made on an all-India basis should, until further orders, be advertised in the newspapers indicated below:-

1. Madras	The Mail, Madras. The Hindu, Madras. The Indian Express, Madras.
2. Bombay	The Times of India, Bombay. The Free Press Journal, Bombay The Bombay Chronicle, Bombay The Bharat, Bombay
3. West Bengal	The Hindustan Standard, Calcutta The Statesman, Calcutta The Amrit Bazar Patrika, Calcutta
4. Uttar Pradesh	The Amrit Bazar Patrika, Allahabad The Pioneer, Lucknow The National Herald, Lucknow The Frontier Mail, Dehra Dun
5. Orissa	The New Orissa, Cuttack
6. Assam	The Assam Tribune, Guwahati
7. Bihar	The Indian Nation, Patna
8. Madhya Pradesh	The Hitavada, Nagpur The Nagpur Times, Nagpur

9. Punjab
10. Delhi

The Tribune, Chandigarh
The Statesman, Delhi
The Hindustan Times

NOTE:- The above list is provisional and is subject to amendment.

In case of local recruitment [c.f. para 4(a) the local Head of the Department may decide the newspapers in which advertisements regarding vacancies in his office should be published.

(b) in all cases, where experience has shown that a sufficient number of suitably qualified candidates of a particular community will not be forthcoming by advertisement for vacancies reserved for them, the local Head of the Department should consult the organisations mentioned in Appendix 'C' and such other organisations as are recognised by the Government of India from time to time as representative of the communities for whom the reservations are made. Detailed instructions, giving the address of the branches of these organisations in the various States, will issue separately.

It should, however, be made clear to these organisations that their functions are limited:-

- (i) to bring to the notice of suitable candidates any examination for recruitment to services for which they could usefully enter and any advertisements of appointments to be made by selection.
- (ii) to advise the candidates about the examinations for recruitment to services for which they should apply, and
- (iii) to advise candidates on any matter which might be of assistance to them in preparing for, or applying for admission to examinations held for recruitment to the services; and that it

will not be for them to press the claim of any individual candidates, who should submit their applications direct to the appointing authorities.

(c) Copies of the advertisements should be sent to the Regional or local Employment Exchange. Where the Local Employment Exchange is unable to provide suitable candidates, a reference will be made by it to the Directorate General of Resettlement and Employment, which maintains an all-India list of members of the Scheduled Castes, who have registered themselves with the Employment Exchanges for appointment to posts under the Government of India. The candidates recommend by the Employment Exchange/Directorate General of Resettlement and Employment should be considered along with those who apply direct in response to the advertisement, or at the instance of the organisations referred to in Appendix 'C'.

(7) The claims of candidates for employment to be treated as Scheduled Castes or Scheduled Tribes will ordinarily be verified by the appointing authorities through the District Magistrates of the place where such persons and / or their families ordinarily reside. At the discretion of the Selecting / Appointing authorities the following may also be accepted as sufficient proof of the claims.

- a. Matriculation or School Leaving Certificates of birth certificates giving the caste or community of the candidates and place of residence in original or copies thereof duly attested by a Gazetted Officer of the Central or State Government.
- b. Certificates issued by Gazetted Officers of the Central or of a State Government countersigned by the District Magistrate of the District in which the candidates belong.

These certificates should be in the form given in Appendix 'D'.

(8) (a) For the purpose of these orders an 'Anglo-Indian' means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only.

(b). The procedure to be followed in verifying the claims of persons as belonging to the Angle-Indian community will be as follows :-

(i) A candidate's own claim to be an Anglo-Indian should be accepted unless there is any reason to doubt it.

(ii) As regards doubtful cases a reference may be made to the nearest branch of the All-India Anglo-Indian Association and the candidates may be asked to furnish documentary evidence such as birth certificates, school leaving certificates and certificate from persons of responsibility and repute who are themselves Anglo-Indians. On the basis of the evidence thus obtained the appointing authority will decide whether the claims should be accepted.

6. *Grouping of Posts* : When applied to individual posts or to cadres consisting of a few posts only, the orders regarding communal representation in the services take long to produce the results aimed at, since an isolated post can be held only by a member of one community at the time and, in the case of small cadres, vacancies may not occur with sufficient frequency to enable for the Scheduled Castes etc., to secure adequate representation. To overcome this difficulty, it is necessary to posts of similar status and salary and to apply these orders to the groups so formed. Instructions relating to grouping of posts are in Appendix 'E'.

7. *Communal Returns* : The reservations provided for in the Resolution are based on provisions in the Constitution of India and it is therefore absolutely necessary that they should be strictly

followed. In order to enable the Government of India to watch the observance of these orders, the Ministries should submit to the Ministry of Home Affairs 'Communal Returns' in the forms attached (Appendix G & H), Appendix 'F' contains the instructions which will govern in submission of these returns.

8. The communal returns submitted by the Ministries will show only whether the percentage of reservations prescribed for the various castes, tribes etc. were followed during the year to which the returns relate and there is no provision in these returns to indicate the point in the communal roster (of paragraphs 2 and 3 above) at which recruitment began during the year in each grade, service or group. For this purpose, the appointing authorities will maintain communal registers in the form and according to instructions given in Appendices A and B and maintain a record of the appointments made annually.
9. The instructions apply *mutatis mutandis* to all Part C States as well. Such States should also therefore observe these instructions and submit their returns to the Ministry of Home Affairs.
10. The orders contained in the Resolution of the 13th September, 1950 and in the Office Memorandum should be deemed to have come into force on the 26th January, 1950 and further recruitment to grades and services in which vacancies had been filled on or after the 26th January and before the issue of these orders should, where necessary, be suitably readjusted with a view to protecting the interests of Scheduled Castes, Scheduled Tribes and Anglo-Indian in the matter of appointing to posts under the Central Government.

Present Reservation Policy of the Government of India

The present Policy of Government of India regarding reservation of jobs have been incorporated in various OMs , notifications and

circulares. The Frequently Asked Questions on the Government Reservation Policy recently prepared by Government of India can give an idea of the GOI's Policy. Accordingly, the FAQ is incorporated below.

Frequently Asked Questions (FAQs) on the Policy of Reservation to SCs, STs and OBCs:

Q.1. What is the policy of the Government on reservation for SCs, STs and OBCs?

Ans: Reservation to the SCs, STs and OBCs in case of direct recruitment on all India basis by open competition is given at the rate of 15%, 7.5% and 27% respectively. In case of direct recruitment on all India basis otherwise than by open competition, reservation for SCs, STs and OBCs is 16.66%, 7.5% and 25.84% respectively. In case of direct recruitment to Group C and D posts which normally attract candidates from a locality or a region, percentage of reservation for SCs/STs is generally fixed in proportion to the population of SCs and STs in the respective States/UTs. For OBCs it is fixed keeping in view the proportion of their population in the concerned State/UT and the fact that total reservation for SCs/STs/OBCs remains within the limit of 50% and reservation for OBCs remains within the limit of 27%.

Reservation in promotion by non-selection method is available to SCs and the STs in all groups of services viz. A, B, C, and D at the rate of 15% and 7.5% respectively. In case of promotion by selection method reservation is available upto the lowest rung of Group 'A' at the same rates. In promotion by selection to posts within Group 'A' which carry an ultimate salary of Rs. 18,300/- or less (in pre-revised scale), there is no reservation, but the Scheduled Caste/Scheduled Tribe officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list is to be drawn up, would be included in that list provided they are not considered unfit for promotion.

Q. 2. What are the provisions of Reservation Policy?

Ans: Following are the key provisions of Policy of Reservation for SCs, STs and OBCs:

- (i) SCs/Sts get reservation in all groups of posts under the Government in case of direct recruitment and in case of promotions made by non-selection method. In case of promotions made by selection, reservation is available to them when promotions are made in Group B, C, D posts and from Group B to the lowest rung in Group 'A' posts.
- (ii) SC/ST/OBC candidates appointed by direct recruitment and SC/ST candidates also promoted on their own merit are adjusted against unreserved posts.
- (iii) In promotion by selection to posts within Group 'A' which carry an ultimate salary of Rs. 18,300/- or less (pre-revised), there is no reservation, but the Scheduled Caste/Scheduled Tribe officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list is to be drawn up, would be included in that list provided they are not considered unfit for promotion.
- (iv) There is a general ban on dereservation of posts in case of direct recruitment.
- (v) In case of direct recruitment various relaxations, like relaxation in age limit by 5 years; exemption from payment of examination/application fees; relaxation in qualification of experience at the discretion of UPSC/competent authority; relaxation in standard of suitability, etc. are available to members of SCs and STs.
- (vi) In case of direct recruitment, OBCs get relaxation of 3 years in upper age limit, relaxation in standards of suitability, etc.
- (vii) In case of promotion, zone of consideration is extended upto five times the number of vacancies in case suitable candidates are not available within normal zone of consideration; minimum qualifying marks/standards of evaluation are relaxable; upper age limit is relaxable by five years where upper age limit for promotion is prescribed not more than 50 years.

(viii) There is a provision of appointment of liaison officers in all Ministries/Departments to ensure proper implementation of reservation policy.

Q.3: What are the relaxations available to SCs/STs?

Ans. The relaxations that are available for the SCs and STs in direct recruitment are as follows:-

- a) Relaxation in the upper age limit by five years;
- b) Exemption from payment of examination / application fees;
- c) Where interview is a part of the recruitment process, SC / ST candidates should be interviewed separately;
- d) Qualification regarding experience can be relaxed in respect of SC / ST candidates at the discretion of UPSC/ Competent Authority;
- e) Standards of suitability can be relaxed etc.

The relaxations that are available for the SCs / STs in promotions are as follows:-

- a) The zone of consideration is extended to five times the number of vacancies in case suitable SC / ST candidates are not available within the normal zone of consideration;
- b) Minimum qualifying marks / standards of evaluation are relaxable;
- c) Upper age limit relaxable by five years where upper age limit for promotion is prescribed not exceeding fifty years, etc.

Q.4. What are the relaxations available to OBCs?

Ans: Relaxations available to OBCs in direct recruitment are as follows:

- (i) Relaxation in the upper age limit by 3 years.
- (ii) Qualification regarding experience can be relaxed at the discretion of Competent Authority.
- (iii) Standards of suitability can be relaxed, etc.

Q.5. What is an own merit candidate?

Ans. A candidate belonging to SC/ST/OBC who is selected on the same standard as applied to general category candidates and who appears in the general merit candidate. Such candidate is adjusted against unreserved point of the reservation roster. Department of Personnel and Training O. M. No. 36011/1/98-Estt.(Res.) dated 1-7-1998 clarifies that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidate, for example in the age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates, etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed to be unavailable for consideration against unreserved vacancies.

Q.6. What is the difference between post based reservation and vacancy based reservation?

Ans. Reservation to SCs, STs and OBCs prior to 2.07.1997 was implemented through vacancy based rosters in which case calculation of reserved vacancies depended on the total number of vacancies to be filled. The Supreme Court in the case of R.K. Sabharwal held that reservation in a cadre should be calculated on the basis of total number of posts in the cadre and not the vacancies. It means that if reservation for SCs is 15% and cadre strength in a grade is 100, 15 posts will be reserved for SCs i.e. at any point of time 15 posts in this cadre should be held by SCs appointed by reservation. Whenever their representation comes down, it would be completed.

Q. 7. What is a Backlog vacancy and why are so many backlog vacancies in services?

Ans. Backlog Reserved Vacancies of a category are those vacancies which were earmarked reserved for that category in an earlier

recruitment year but remained unfilled in the previous recruitment attempt on account of non-availability of suitable candidates belonging to that category and are still lying unfilled.

As per instructions issued by DoP&T, if sufficient number of suitable SCs/STs and OBC candidates do not become available to fill up the vacancies reserved for them in the first attempt of recruitment, a second attempt is made for recruiting suitable candidates belonging to the concerned category in the same recruitment year or as early as possible before the next recruitment year so that backlog reserved vacancies are not created. However, even after making such efforts the reserved vacancies are not filled up and backlog vacancies are created which are carried forward to the subsequent recruitment year, in which concerted efforts are made to fill up the backlog reserved vacancies as soon as possible.

It may be observed that reason of creation of backlog reserved vacancy is non-availability of reserved category candidates for some posts.

Q.8. Whether the ceiling of 50% reservation would apply to backlog reserved vacancies of SCs, STs and OBCs.

Ans. Backlog reserved vacancies are treated as special and distinct group and ceiling of 50% reservation in a recruitment year does not apply to backlog reserved vacancies.

Q.9. What is the policy of the Government about appointment of less qualified SCs, STs and OBCs candidates?

Ans. Instructions provide that in direct recruitment whether by examination or otherwise, if sufficient number of Scheduled Castes candidates are not available on the basis of the general standard to fill all vacancies reserved for them, candidates belonging to this community should be selected to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for Scheduled Castes cannot be filled on the basis of general standard, candidates belonging to SC community are

taken by relaxed standard to make up the deficiency in the reserved quota, subject to the fitness of these candidates for appointment to the post/posts in question.

In addition to the concession referred to above, instructions further provide that in cases where the requisite number of SC candidates fulfilling even the relaxed standards admissible in their cases are not available to fill the vacancies reserved for them in non-technical Group C and D services/posts required to be filled by direct recruitment otherwise than by written examination, the selecting authorities should to the extent of the vacancies reserved for SC select for appointment the best among the SC candidates who fulfil the minimum educational qualification laid down in the notice for recruitment of advertisement. In order to bring such candidates to the minimum standard necessary for the posts and for the maintenance of efficiency of administration, they should be given in-service training.

Where some period of experience is prescribed as an essential qualification for direct recruitment to a post, an where, in the opinion of the Ministry / Department concerned, the relaxation of the experience qualification is not inconsistent with efficiency, a provision is inserted under the "essential qualification" in the relevant recruitment rules to the effect that UPSC/ Competent Authority may relaxed the experience / qualification in the case of SC/ST/OBC candidates.

Q.10. Why there is no reservation in case of promotion within Group A? issued in pursuance of Article Ans. Reservation to SCs and STs is available at all levels in t (4A) has he matter of promotion by non-selection method. In case of promotion by selection, they get reservation up to the lowest rung of Group 'A'. Though there is no reservation in promotion by selection within Group A. In case of promotion by selection from a Group 'A' post to another Group 'A' post having a maximum salary of Rs. 18,300/- or less (in pre-revised scale), the Scheduled Caste/Scheduled Tribe officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list is to be drawn up, are included in that list provided

they are not considered unfit for promotion. Thus sufficient care is taken to ensure that the SC/ST officers get promotion to such higher posts even if they do not meet the criterion laid down for general category candidates.

The Supreme Court in Indra Sawhney's case had declared reservation in promotion ultra virus. However, in order to continue reservation in promotion, the 77th Amendment was made to the Constitution which enabled the State to continue reservation in promotion. The statement of Objects and Reasons of the Constitution (77th Amendment) Act, stated that the object was to continue the then existing dispensation. Since reservation in promotion was not available when promotions were made by selection within Group 'A' posts even before the judgement of the Supreme Court in Indra Sawhney case, the Department's O.M. dated August 13, 1997 issued in pursuance to Article 16 (4A) has restored the previously existing dispensation, which did not provide for reservation in promotion by selection within Group 'A' posts.

Q.11. What is the objective behind the issuance of caste certificates to Scheduled Castes and Scheduled Tribes?

Ans. The main objective of issuance of caste certificate is to facilitate access of bonafide candidates belonging to the Scheduled Castes, Scheduled Tribe and Other Backward Class to the reserved posts and services under the State and other facilities provided by the State to them.

Q.12. Whether the Government have achieved the objective behind the issue of caste certificate?

Ans. On the basis of caste certificates, large number of reserved category candidates have been able to secure employment in Government establishments, PSUs, Banks, autonomous bodies etc.; secure admissions to educational institutions; and get other facilities provided by the Government to the members of Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Q.13. What is the procedure for issuing of Scheduled Caste/Scheduled Tribe/Other Backward Class certificates? Who is the competent authority

to issue the same? Is any other authority other than specified, in any circumstances allowed to issue such certificates. If so, elaborate.

Ans. The instructions contained in this Department's O.M. No. 36012/6/88-Estt.(Res) dated 24.4.90 and OM No. 36012/22/93-Estt.(Res.) dated 15.11.1993 provide the Authorities who are competent to issue of caste certificates and also the proforma. However, the Central Government accepts the certificates issued only by the following authorities in the prescribed proforma:

- (1) District Magistrate / Additional District Magistrate / Collector / Deputy Commissioner / Additional Deputy Commissioner / Deputy Collector / 1st Class Stipendiary Magistrate / Sub Divisional Magistrate / Taluka Magistrate / Executive Magistrate / Extra Assistant Commissioner.
- (2) Chief Presidency Magistrate / Additional Chief Presidency Magistrate / Presidency Magistrate.
- (3) Revenue Officer not below the rank of Tehsildar and
- (4) Sub-Divisional Officer of the area where the candidate and / or his family normally resides.

Q. 14. What are the guidelines that have been issued to the appointing authorities in regard to scrutiny and verification of caste certificates of candidates at the time of their entry into Government service? Whether the present guidelines on the subject are fool proof so that genuine SC/ST are not deprived of their Constitutional rights.

Ans. The Government of India has issued instructions regarding scrutiny and verification of the caste certificates of the candidates at the time of initial appointment and at every important upturn of employer's career. This Department re-iterated the instructions vide O.M. No. 36011/3/2005-Estt. (Res) dated 9th September, 2005.

Q. 15. What are the guidelines in case of migration of a reserved category person from one state to another state?

Ans. When a person migrates from the portion of the State in respect of which his community is Scheduled to another part of the same State in respect of which his community is not scheduled, he will continue to be

deemed to be a member of the Scheduled Caste or the Scheduled Tribe or the Other Backward Class, as the case may be in relation to that State;

When a person who is a member from one State to another, he can claim to belong to a Scheduled Castes or a Scheduled Tribe only in relation to the State to which he originally belonged and not in respect of the State to which he has migrated.

Q.16. What action is taken when complaints are received about the genuineness of caste certificate once the appointments have been given or on detection of a prima facie of a false SC/ST certificate at any stage of employment? Is there a set procedure to be followed for punishing such an employee?

Ans. The instructions contained in the Department of Personnel & Training's O.M. No. 11012/7/91-Estt.(A) dated 19.5.93 provide that wherever it is found that a Government servant, who was not qualified or eligible in terms of the recruitment rules etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Government servant, he should be discharged or his services should be terminated. If he has become permanent Govt. Servant, an inquiry as prescribed in Rule 14 of CSS (CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed. Necessary action may also be taken under the provisions of the IPC for production of false certificates.

Q.17. What is 'Creamy Layer' amongst OBCs?

Ans. The Supreme Court in Indra Sawhney case has upheld 27% reservation for OBCs in civil posts and services under the State subject to exclusion of socially advanced persons/ sections (creamy layer) from OBCs within 4 months from the date of judgement.
2. Following the above judgement of the Supreme Court, the Government has constituted the Expert Committee to make recommendations on the socio-economic criteria to be adopted for excluding the creamy layer

amongst OBCs. The report of the Expert Committee was considered and accepted by the Government and the categories of the persons / selections to be excluded from the purview of reservation orders for OBCs were notified in the Schedule to the OM dated 8.9.1993 issued by this Department. Initially, the Income limit of 'creamy layer' vide the aforesaid OM for exclusion of reservation was fixed Rs. 1 lakh.

3. Last time, this income ceiling was revised from Rs. 2.5 lakh to 4.5 lakh vide OM No. 36033/3/2004-Estt.(Res) on 14.10.2008.

Q.18. What is the criteria to determine the 'creamy layer' amongst OBCs Employees working in PSUs?

Ans. The criteria prescribed for determining creamy layer status of sons and daughters of persons in Government service mutatis mutandis applies to the sons and daughters of persons holding equivalent or comparable posts in PSUs, Banks, Insurance Organisations, Universities etc. and also holding equivalent or comparable posts and positions under private employment. The creamy layer status of the sons and daughters of employees of organisations where evaluation of the posts on equivalent or comparable basis has not been made is determined on the basis of 'Income/Wealth Test' given in the Schedule. The income/ wealth test prescribes that the gross annual income of Rs. 4.5 lakh or above or possessing wealth the exemption limit as prescribed in Wealth Tax Act for a period of three consecutive years would be treated to fall in creamy layer.

Government of India's OM dated 25th April contains important guideline in regard to reservation in promotion. Accordingly the same is included below.

Department of Personnel and Training O.M. No.36012/17/88-Estt(SCT), dated the 25th April, 1989, to all Ministries/Departments, etc.

Subject :—Reservation for Scheduled Castes and Scheduled Tribes in posts filled by promotion applicability to grades or services in which the element of direct recruitment does not exceed 66-45%.

The question of enlarging the scope of the existing scheme of reservation for Scheduled Castes and Scheduled Tribes in posts filled by promotion by extending it to grades or services in which the element of direct recruitment is more than 66-M% has been under the consideration of Government.

2. Under the existing orders contained in the Department of Personnel & A.R. O.M. No 4071/7/75-Fitt. dated the 25th Feb., 1976, reservations have been provided at 15% and 7% of the vacancies for Scheduled Castes and Scheduled Tribes respectively (i) in promotions through limited departmental competitive examinations in Group B, C & 13 (ii) in promotions by selection in Groups B, C & D and from Group B to the lowest rung of Group A and (iii) in promotion on the basis of seniority subject to fitness in all Groups A, B, C & D (in all these cases), in grades or services in which the element of direct recruitment, if any, does not exceed 66- M%. It has now been decided in partial modification of above mentioned O.M. that the reservations in posts by promotion under the existing scheme as indicated above should be made applicable to all grades or services, in which the element of direct recruitment, if any, does not exceed 75%.

3. The above instructions take effect from the date of issue of these orders except where a Select List for promotion under the relevant orders has already been prepared by the Departmental Promotion Committee and in the case of selections made through limited departmental competitive examination, the relevant exam has already been held.

4. Ministry of Finance etc. are requested to bring the above decision to the notice of all concerned.

No.360 1711 12004-Estt.(Res.)

Government of India

Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
New Delhi, dated the 5' July, 2005.

OFFICE MEMORANDUM

Subject: Revision of quantum of reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes in case of direct recruitment to Group 'C' and 'D' posts normally attracting candidates from a locality or a region.

The undersigned is directed to say that reservation for Scheduled Castes and Scheduled Tribes in case of direct recruitment to Group 'C' and 'D' posts, normally attracting candidates from a locality or a region, which is generally fixed in proportion to the population of the Scheduled Castes and Scheduled Tribes in the respective States/NTs, was last fixed in 1985 on the basis of the 1981 Census. Reservation for Other Backward Classes in such cases was fixed in 1993 keeping in view the proportion of their population in the respective States/NTs subject to a ceiling of 27% while also ensuring that the total reservation for SCs, STs and OBCs did not exceed the limit of 50% in any case. It has now been decided to revise the quantum of reservation for SCs, STs and OBCs in case of direct recruitment to Group 'C' and 'D' posts normally attracting candidates from a locality or a region, keeping in view the figures of the 2001 Census, as given in the Annexure to this O.M.

2. These orders will take effect from the date of issue of this O.M. However, the cases where requisitions for filling up the posts have already been sent to the recruiting agencies or posts have already

been advertised in accordance with the percentages of reservation existing prior to issue of this O.M., need not be reopened.

3. It is requested that contents of this O.M. may be brought to the notice of all concerned

K.G. Verma)
Deputy Secretary to the Government of India
Tele: 23092797

To

1. All Ministries/Departments of the Government of India.
All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions and all attached/subordinate offices of this Ministry.

Department of Economic Affairs (Banking Division), New Delhi.
Department of Economic Affairs (Insurance Division), New Delhi.

Department of Public Enterprises, New Delhi. Railway Board.
Union Public Service Commission/Supreme Court of India Election

Commission Lok Sabha Secretariat Rajya Sabha Secretariat
Cabinet Secretariat, Central Vigilance Commission/ President's Secretariat. Planning Commission.

Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
Ministry of Social Justice and Empowerment, Shastri Bhavan, New Delhi.

National Commission for SCs, Lok Nayak Bhavan, New Delhi.
National Commission for STs, Lok Nayak Bhavan, New Delhi.

National Commission for Backward Classes, Trikot-I, Bhikaji Cama Place, R.K. Puram, New Delhi.

Office of the Comptroller and Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi - 1 10002.

CBI, LBSNAA, ISTM, PESB, Central Sectt. Library, MHA Library. Information and Facilitation Centre, DOPT, North Block, New Delhi, 300 spare copies for Estt.(Res.) Section.

Annexure to

O.M.No.36017/1./2004Estt. (Res.) dated 5.7.2005

Sl NO	State & UT	SC	ST	OBC
	Andhra Pradesh	16	7	27
	Arunachal Pradesh	1	45	0
	Assam	7	12	27
	Bihar	16	1	27
	Chhatisgarh	12	32	6
	Goa	2	0	18
	Gujarat	7	15	27
	Haryana	19	0	27
	Himachal Pradesh	25	4	20
	Jammu & Kashmir	8	11	27
	Jharkhand	12	26	12
	Karnataka	16	7	27
	Kerala	10	1	27
	Madhya Pradesh	15	20	15
	Maharastra	10	9	27
	Manipur	3	34	13
	Meghalaya	1	44	5
	Mizoram	0	45	5
	Nagaland	0	45	0
	Orissa	16	22	12
	Punjab	29	0	21
	Rajasthan	17	13	20
	Sikkim	5	21	24
	Tamil Nadu	19	1	27
	Tripura	17	31	2
	Uttaranchal	18	3	13
	Uttar Pradesh	21	1	27
	West Bengal	23	5	22
	Andaman & Nicobar	0	8	27

Island				
Chandiarh	18	0	27	
Dadra & Nagar Haveli	2	43	5	
Daman & Diu	3	9	27	
Delhi	15	7.5	27	
Lakshadweep	0	45	0	
Pondicherry	16	0	27	

3.2: Judicial Reviews: Discussion of the court Cases chronologically.

Indian Judiciary has pronounced some Judgments upholding reservations and some judgments for fine tuning its implementations. Lot of judgments regarding reservations have been neutralised subsequently by Indian parliament through constitutional amendments. Some judgments of Indian judiciary have been flouted by state and central Governments. Given below are the major judgments given by Indian courts and its implementation st

Year	Case details	Operative part of the Judgment
1951	State of Madras Vs Smti Champakam Doraranjan	
1963	M R Balaji v Mysore AIR 1963 SC 649	“A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits. The interests of weaker sections of society which are, a first charge on the states and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object

		of Article 15(4). In this matter again.. we arc reluctant to say definitely what would be a proper provision to make. Speaking generally and in a road way, a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case.”
1990	Syndicate Bank SC&ST Employee Association through its General Secretary Sh K S Badalia & Others Versus Union of India & Others	The Apex court of the country held that reservation is applicable and available in selection method of promotions of Group-A/class-1 officers up to highest level and the Govt of India have committed mistake in not giving reservation to SC&ST officers w.e.f. 01st January, 1978.
1992	Indira Sawhney & Ors v. Union of India. AIR 1993 SC 477 : 1992 Supp (3)SCC 217.	“Reservation being extreme form of protective measure or affirmative action it should be confined to minority of seats. Even though the Constitution does not lay down any specific bar but the constitutional philosophy being against proportional equality the principle of balancing equality ordains reservation, of any manner, not to exceed 50%. “ Article 16(4) does not permit provision for reservations in the matter of promotion.....It is further directed that wherever reservations are already provided in the matter of promotion - be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in Article 12- such reservations may continue in operation for a period of five years from this day. Within this period, it

		would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Article 16(4)."
1996	<i>C.A. Rajendran v. Union of India.</i> AIR 1968 SC 507. See also <i>State Bank of India Scheduled Caste / Tribe Employees Welfare Association v. State Bank of India</i> AIR 1996 SC 1838.	This is one of the first cases in which it was laid down as part of the <i>ratio decidendi</i> , that Article 16(4) does not grant a fundamental right to the backward classes. A petition was filed under Article 32 praying for the issue of writ quashing an Office Memorandum providing for no reservation for Scheduled Castes (SCs) and Schedule Tribes (STs) in post filled by promotion. The Court rejected the petition and one of the grounds for doing so was that Art. 16(4) was merely an enabling provision and did not confer any right on the petitioner and there is no constitutional duty imposed on the Government to make a reservation for SCs and STs, either at the initial stage of recruitment or at the stage of promotion
1989	<i>In P. and T. Scheduled Caste/Tribe Employees' Welfare Association (Regd.) v. Union of India</i> AIR 1989 SC 139	The withdrawal of reservations for SCs and STs in the Posts and Telegraphs Department pursuant to an agreement between the Ministry of Communications and certain associations of employees was challenged by beneficiaries of the reservation. The Supreme Court held that while there was no right to reservation, in the present case the State action was discriminatory as the SCs and STs working in the Posts and Telegraphs Department were discriminated against when compared

		with SCs and STs holding similar posts in other Government departments.. Moreover, they were discriminated against vis a vis those SC and ST beneficiaries, who had availed of reservations prior to withdrawal of the same.
	<i>R.K. Sabharwal and Others Vs State of Punjab and Others</i> Writ Petition (Civil) No. 79 of 1979	Introduction of Post based Reservation system
1997	<i>Superintending Engineer, Public Health, U. T. Chandigarh v. Kuldeep Singh</i> AIR 1997 SC 2133	The respondent had, before the Tribunal, challenged the promotion of another candidate ahead of him. The Respondent was a SC candidate and claimed that pursuant to the rule which stated that in the absence of any ST candidate the vacancy could be filled by an SC candidate, he ought to have been considered in the ST quota. The Tribunal accepted the contention and allowed the petition. It was argued by the Petitioners that the Rules stated that if there were no SC or ST candidate the vacancy would be carried forward for three years and then it would lapse. In the present case, it had lapsed.
	<i>Ajitsingh Januja & Ors Vs State of Punjab</i> AIR 1996 SC 1189.	. it was held that a roster point promotees getting the benefit of accelerated promotion would not get consequential seniority and the seniority between the reserved category candidates and general candidates in promoted category shall be governed by their panel position.

	Jagdish Lal and others v. State of Haryana and Others (1997) 6 SCC 538	The Court overruled the above judgement in Ajit sing Januja and declared that the date of continuous officiation has to be taken into account and if so, the roster- point promotees were entitled to the benefit of continuous officiation.
1999	Ajitsingh Januja & Ors Vs State of Punjab & Ors AIR 1999 SC 3471	The Supreme held that roster promotions were meant only for the limited purpose of due representation of backward classes at various levels of service and therefore, such roster promotions did not confer consequential seniority to the roster point promotee.
2001	Court overruled Jagdish Lal M G Badappanvar Vs St of Karnataka 2001(2) SCC 666 : AIR 2001 SC 260	
October 2006	Writ Petition (civil) 61 of 2002 M. Nagaraj & Others Petitioners Vs Union of India & Others (Respondents)	
	Suraj Bhan Meena Vs. State of Rajasthan.	Held that, in view of M. Nagaraj & Ors v. Union of India and Ors. AIR 2007 SC 71, if the state wants to frame rules with regard to reservation in promotions and consequential seniority it has to satisfy itself with quantifiable data that is there is backwardness, inadequacy of representation in public employment and overall administrative inefficiency and

		unless such an exercise was undertaken by the state government the rules in promotions and consequential seniority cannot be introduced. Reservation in promotion is dependent on the inadequacy of representation of members of SC, ST and backward classes and subject to the condition of ascertaining whether such reservation was at all required. As no exercise was undertaken to acquire quantifiable data regarding in adequacy of representation.
April 2012	U.P.Power Corp.Ltd. vs Rajesh Kumar & Ors. Bench: Dalveer Bhandari, Dipak Misra In The Supreme Court Of India	2. The controversy pertaining to reservation in promotion for the Scheduled Castes and Scheduled Tribes with consequential seniority as engrafted under Articles 16(4A) and 16(4B) and the facet of relaxation grafted by way of a proviso to Article 335 of the Constitution of India being incorporated by the Constitution (Seventy-seventh Amendment) Act, 1995, the Constitution (Eight-first Amendment) Act, 2000, the Constitution (Eighty-second Amendment) Act, 2000 and the Constitution (Eighty-fifth Amendment) Act, 2001 at various stages having withstood judicial scrutiny by the dictum in M. Nagaraj v. Union of India[1], the issue of implementation of the same through existing statutory enactment by the State Legislature and the subsequent rules framed by the authorities of the

	Jagdish Lal and others v. State of Haryana and Others (1997) 6 SCC 538	The Court overruled the above judgement in Ajit sing Januja and declared that the date of continuous officiation has to be taken into account and if so, the roster- point promotees were entitled to the benefit of continuous officiation.
1999	Ajitsingh Januja & Ors Vs State of Punjab & Ors AIR 1999 SC 3471	The Supreme held that roster promotions were meant only for the limited purpose of due representation of backward classes at various levels of service and therefore, such roster promotions did not confer consequential seniority to the roster point promotee.
2001	Court overruled Jagdish Lal M G Badappanvar Vs St of Karnataka 2001(2) SCC 666 : AIR 2001 SC 260	
October 2006	Writ Petition (civil) 61 of 2002 M. Nagaraj & Others Petitioners Vs Union of India & Others (Respondents)	
	Suraj Bhan Meena Vs. State of Rajasthan.	Held that, in view of M. Nagaraj & Ors v. Union of India and Ors. AIR 2007 SC 71, if the state wants to frame rules with regard to reservation in promotions and consequential seniority it has to satisfy itself with quantifiable data that is there is backwardness, inadequacy of representation in public employment and overall administrative inefficiency and

		unless such an exercise was undertaken by the state government the rules in promotions and consequential seniority cannot be introduced. Reservation in promotion is dependent on the inadequacy of representation of members of SC, ST and backward classes and subject to the condition of ascertaining whether such reservation was at all required. As no exercise was undertaken to acquire quantifiable data regarding in adequacy of representation.
April 2012	U.P.Power Corp.Ltd. vs Rajesh Kumar & Ors. Bench: Dalveer Bhandari, Dipak Misra In The Supreme Court Of India	2. The controversy pertaining to reservation in promotion for the Scheduled Castes and Scheduled Tribes with consequential seniority as engrafted under Articles 16(4A) and 16(4B) and the facet of relaxation grafted by way of a proviso to Article 335 of the Constitution of India being incorporated by the Constitution (Seventy-seventh Amendment) Act, 1995, the Constitution (Eight-first Amendment) Act, 2000, the Constitution (Eighty-second Amendment) Act, 2000 and the Constitution (Eighty-fifth Amendment) Act, 2001 at various stages having withstood judicial scrutiny by the dictum in M. Nagaraj v. Union of India[1], the issue of implementation of the same through existing statutory enactment by the State Legislature and the subsequent rules framed by the authorities of the

		<p>State or concerned corporation of the State of Uttar Pradesh, has, as the learned counsel appearing for both sides in their astute and penetrating manner have pyramided the concept in its essentiality, either appeared too simple that simplification may envy or so complex that it could manifest as the reservoir of imbalances or a sanctuary of uncertainties. Thus, the net result commands for an endeavour for a detailed survey of the past and casts an obligation to dwell upon the controversy within the requisite parameters that are absolutely essential for adjudication of the lis emanated in praesenti.</p> <p>Extraordinary and, in a way, perplexing though it may seem, yet as the factual scenario pronouncedly reveals, the assail in some of the appeals of this batch of appeals is to the judgment and order passed by the Division Bench of the High Court of Judicature at Allahabad in Writ Petition No. 63217 of 2010 (Mukund Kumar Srivastava vs. State of U.P. and Another) upholding the validity of the provisions contained in Rule 8-A of the U.P. Government Servants Seniority Rules, 1991 (for brevity the 1991 Rules) that were inserted by the U.P. Government Servants Seniority (3rd Amendment) Rules, 2007 by the employees-appellants and in some of the appeals, the challenge by the State Government and the U.P. Power Corporation Ltd. (for short the Corporation) is to the judgment and order passed by the Division Bench of the High Court of Judicature</p>
--	--	--

		<p>at Allahabad, Lucknow Bench, Lucknow, in Writ Petition No. 1389 (S/B) of 2007 (Prem Kumar Singh and others v. State of U.P. and others) and other connected writ petitions holding, inter alia, that the decision rendered by the Division Bench in the case of Mukund Kumar Srivastava (supra) at Allahabad is per incuriam and not a binding precedent and further Section 3(7) of the Uttar Pradesh Public Servants (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 (for short the 1994 Act) and Rule 8A of the 1991 Rules, as brought into force in 2007, are invalid, ultra vires and unconstitutional and, as a necessary corollary, the consequential orders relating to seniority passed by the State Government deserved to be quashed and, accordingly, quashed the same and further clarified that in case the State Government decides to provide reservation in promotion to any class or classes of posts in the services under the State, it is free to do so after undertaking the exercise as required under the constitutional provisions keeping in mind the law laid down by this Court in M. Nagraj (supra). It has been directed that till it is done, no reservation in promotion on any post or classes of posts under the services of the State including the Corporation shall be made hence forth.</p>
August 2015	S. PANNEER SELVAM & ORS.	Common issues involved in this bunch of appeals are:-(i) In the

<p>..Appellants Versus GOVERNMENT OF TAMIL NADU & ORS. ..Respondents WITH CIVIL APPEAL NO. 6633 of 2015 (Arising out of SLP (Civil) No.10928 of 2012) A. Venkatachalam & Ors. ..Appellants Versus The Secretary , Government of Tamil nadu & Ors. ..Respondents and Civil Appeal Nos 6634-6636 of 2015 (Arising out of SLP (Civil) Nos. 16692- 16694 of 2012) Government of Tamil Nadu and Anr etc. ..Appellants Vs V. Vivekanandan & Ors...Respondents</p>	<p>absence of policy decision taken by the State/rules framed pursuant to the enabling provision of Article 16 (4A) of the Constitution of India whether a reserved category candidate promoted on the basis of reservation earlier than his senior general category candidate in the feeder category can claim consequential seniority in the promotional post; (ii) In the absence of policy decision taken by the State with regard to Tamil Nadu Highways Engineering Service Rules, whether Division Bench was right in holding that Article 16(4A) of the Constitution of India by itself would give consequential seniority in addition to accelerated promotion to the roster-point promotees.</p> <p>In the absence of any provision for consequential seniority in the rules, the 'catch up rule' will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16 (4A) of the Constitution of</p>
---	---

		<p>India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.</p>
<p>March 2016</p>	<p>Suresh Chand Gautam Vs State of Uttar Pradesh & ors. With Writ petition (civil) no. 715 of 2015 Writ petition (civil) no. 273 of 2015.</p>	<p>In these Writ Petitions the prayers are for issuing of a direction in the nature of mandamus commanding the respondents to enforce appropriately the constitutional mandate as contained under the provisions of Articles 16(4-A), 16(4-B) and 335 of the Constitution of India or, in the alternative, directing the respondents to constitute a Committee or appoint a Commission chaired either by a retired Judge of the High Court or Supreme Court in making survey and collecting necessary qualitative data of the Scheduled Castes and the Scheduled Tribes in the services of the State for granting reservation in promotion in the light of direction gives by this Court in <i>M. Nagaraj & others v. Union of India & others</i>.</p> <p>The Court however refused the prayer stating that : to issue a mandamus to collect the data would tantamount to asking the authorities whether there is ample data to frame a rule or regulation. This will be in a way, entering into the domain of legislation, for it is a step towards commanding to</p>

		<p>frame legislation or a delegated legislation for reservation. Consequently, the Writ Petitions, being devoid of merit, stand dismissed. There</p>
--	--	--

CHAPTER -IV STATE GOVERNMENT'S POLICY OF RESERVATION

Scenario in Assam

After independence, the State government had made various provision for giving preferential treatment to the Scheduled castes and Scheduled tribes. In 1950 Government had offered concessional application fee to the SC and ST candidates at the rate of half the normal price vide AAP 34/50/1950 dated 7th may 1950. In 1951, the Government have come up with the relaxation of upper age limit for SC and ST candidates by 5 years vide AAA 20/51 dated 11-8-1951. Although modified from time to time, this relaxation of age is still in force.

Thereafter, came the Government steps for reservation of jobs for SC and ST candidates. The relevant Circulars/ Notifications are reproduced below from the Government Handbook of General Circulars Vol-I :

Reservation in Govt, services and posts

AAP. 108/49/16, dated 25.1.1951 , Superseded by AAP . 66/63/482 24.8.1963 .

Consistent with the maintenance of efficiency of administration, there shall be a general reservation of 7 per cent of the vacancies for the Scheduled Castes, 10 per cent of the vacancies for the Scheduled Tribes belonging to the plains area and 12 per cent of the vacancies for the Scheduled Tribes belonging to the hills in making appointments to services and posts in connection with the affairs of the State of Assam . If a sufficient number of suitable candidates for filling up the reserved vacancies is not available from the respective classes in any particular year then such vacancies would be available to the others . But this deficiency in the number of Scheduled Castes and Scheduled Tribes will be carried forward to the next recruitment year and made good in the recruitment by that year provided that the reservation on account of the

deficiency shall not be carried forward for more than one year . After the expiry of the second year, these reservations should be treated as lapsed.

7 AAP.108/49/2 dated 11.4.1951 .

The reservation for Scheduled Castes and Scheduled Tribe laid down in the orders above is only for vacancies which are filled by direct recruitment and not for promotion vacancies which must be filled according to the principles laid down in the service rules for the particular service , such as seniority or selection strictly on merits or a combination of these two methods . The reservation does not apply to anything besides vacancies in public service under the State

AAP 66/63/Pt . I/22i

In partial modification of the orders contained in Government office memorandum No. AAP.66/63/482, dated 24.8.1963 there shall be no reservation of vacancies for Scheduled Castes and Scheduled Tribes to scientific services and posts in connection with the affairs of the state of Assam so far as it concerns appointments to posts for conducting scientific research, or organizing , guiding and directing scientific research .

Reservation in posts and services under local bodies LLB. 258/54, 15.9.1955.

The reservation for Scheduled Castes and Scheduled Tribes in recruitment to posts and services under the local bodies in Assam should be on the basis of the population of each of the communities named above in the area covered by the local body without any separate quota for sub-tribes or sub-castes . It will be far more equitable than applying the percentage fixed for appointment under Government .

In making appointments to posts and services of the local bodies if in any year suitable candidates of the Scheduled Castes and Scheduled Tribes

be not available for recruitment for any services or establishment to the extent prescribed , the deficiency should be made good in the forward for more than one year . All local bodies should be instructed accordingly .

Reservation in posts and services under public undertaking and Government aided institutions

AAP 236/63/28, dated 18.9.1964

Whenever possible, the concerned departments should impress upon the public undertaking under their control to see that the contractors employ as many local candidates belonging to Scheduled Castes and Scheduled Tribes and to bring pressure upon the institutions receiving financial assistance from Government to see that principles of reservation are followed in these institutions . They are requested to see that the principle of reservation of vacancies as envisaged in Government office memorandum AAP.66/63/482 dated 24.8.1963 is invariably followed in making appointment to posts under the public undertaking under their control

2 Henceforward, normal administrative inspection should also give specific attention to the performance on the part of the office in filling up the reserved vacancies and the in filling up the reserved vacancies and the inspection report should make specific mention of the position in this regard .

Public undertaking should make a reservation in their services on the lines adopted by the State Government, for their services. The contractors connected with the undertakings should also fall in line and adopt such principle of reservation. It would be highly desirable that such an arrangement is formalized as a condition of the agreement entered into by the undertaking with the contractor .

Government insists that every institution , receiving financial assistance from it should observe the principle of reservation in employment under it

Returns regarding reservation in posts AAP.43/58/95, dated 6.11.1958.

The figures in respect of civil appointments help by the people belonging to the different categories should be submitted as per proforma enclosed . In case it is found that the members of Scheduled Castes/ tribes etc . have not been represented strictly according to the ratio fixed for then by Government ,viz,7% for Scheduled Castes 10% for Scheduled Tribes (plains) and 12% for Scheduled Tribes(hills) ,the reasons for under-representation may please be collected and a consolidated statement in duplicate submitted to Appointment Department positively within the dates given below .

Such a statement should be submitted twice a year viz, one for the period ending 30th June and the other for the period ending 31th December every year . The returns must reach the Chief Secretary to the Government of Assam positively on or before 31th July and 31 January every year.

Assam enacted the Assam Scheduled Caste Scheduled tribes reservation in promotion Act in 1978. The Act came into force immediately and was in operation till 2012 . During this period of operation there were no serious set back in the implementation of the provision of the Act. Till 2012, there were several minor amendments to the Act including the Schedule-I Which provided a list of 20 roster points (Ref: Annexure-) . This roster schedule however was amended in the year 19..... and was replaced by a 100 point Roster Schedule. (Ref: Annexure-...).

The Act provided reservation for three categories of backward communities. It identified the scheduled tribes living in the autonomous council i.e in the hilly districts as Scheduled tribes (Hills) [in short ST(H)] and those living in plains as Scheduled Tribe (Plains [in short ST(P)] and the scheduled castes. The stipulated percentage of reservation allowed was 5 per cent for ST(H) and 10 percent for ST(P) i.e in all 15 per cent to

Scheduled tribes. The percentage was fixed more or less depending on the census figures of 1971. The census figures of 1961 and 1971 are shown in the following table. It may be observed from the table that in case of scheduled castes the percentage of growth was negative and as such the percentage was kept at 7 percent. However, some cushion was given while determining the percentage of reservation for STs mainly due to the fact that 1) the population was growing, 2) already more than 8 years was elapsed since census was conducted in 1971, 3) the process of conferring ST status was going on in respect of several other communities.

Table- 4.1

State	Total Population of Assam	Scheduled Castes population	% of SC to total population	Scheduled tribe population	PC of ST to total population
1961	10837329	731490	06.74	1164641	10.75
1971	14625152	912557	06.23	1606648	10.98

This percentage of reservation for the above categories of persons still continues. Interestingly since last forty years the scheduled castes population has not increased in proportion to the total population of the State. The following table shows the population of SC and STs since last two decades.

Table-4.2

State	Total Population Of Assam	Scheduled Castes population	% of SC to total population	Scheduled tribe population	PC of ST to total population		
2001	26655528	1825949	06.85	3308570	12.41		
2011	31169272	2231321	07.15	3884371	12.46		

Thus in 50 years i.e from 1961 to 2011 the scheduled caste population has risen from 731490 to 2231321 in absolute terms giving a slightly more than three fold rise in their population. The case is similar in case of scheduled tribe also where there was a rise of 3.33 times that of the population of 1961. The rate of increase of total population however

slightly lagging behind which registers a rise of almost 2.87 fold of the total population of the 1961.

The policy of reservation of the Government of Assam during the subsequent period has been envisaged in several nos of Office memorandums and Notifications. Hich are summarised beow.

Government of Assam
Department for welfare of plains Tribes & Backward classes Etc
DISPUR- - - GUWAHATI
No.TAD/BC/64/87/16 , Dated Dispur , the 20th July 1989
From - Shri A.P.Sarwan I.A.S
Chief Secretary to the Govt . of Assam

To: 1 Special Commissioner / Commissioner /Special Secretary to the Govt . of Assam (all Departments)
2 All Heads of Department
3 All Heads of Autonomous Bodies under the control of the Govt of Assam

Sub : Reservation for the SC,ST (P) and ST (H) Special drive for filling of the backlog - Publicity measure

Ref : Letter Nos TAD/BC/64/87/9,dt.21.6.89 and TAD/BC/64/87/11,dated 24.6.89

Sir

1 . I am directed to say that whenever any direct recruitment vacancy is advertised the gist of the same should be published in the local/regional / newspapers for two consecutive days publication with a view to their wider publicity for every direct recruitment appointment for which the State Government or the Head of the Department or a Regional Head of the Department under the State Government is the appointing authority . For vacancies , which are required to be filled up by SC/ST/(p) /ST(H) candidates, this fact should be clearly mentioned in every such advertisement, For these appointments , for which the APSC is the selecting authority , the APSC is the selecting authority , the APSC should be requested by the concerned .Administrative Department/Head of the Department/ Regional Head of the Department for publishing these advertisements in the local regional news papers for two consecutive .

2 . As regards direct vacancies, which are to be filled up by District level authorities such as Deputy commissioner / District agriculture officer /

Executive engineer etc . These are also to be published both in the regional newspapers and local papers for two consecutive days , If these vacancies are to be filled up by SC/ST(p) / ST (H) candidates by clearly mentioning this point in the advertisement . In addition to this , it is instructed that , a copy of any advertisement on filling of direct recruitment vacancies at the district level by any district level appointing authority should be displayed in a separate office Notice Board in the office of the concerned Head of the office which should be entirely devoted to such employment news and the advertisement should be displayed in this ' Employment News ' Notice Board up to the closing date of the receipt of application from the concerned candidates .

Yours faithfully

Sd. (A. P.Sarwan)
Chief Secretary to the Government of Assam

GOVERNMENT OF ASSAM

DEPTT.OF WELFARE OF PLAINS TRIBES: BACKWARD CLASSES E.T.C.

NO.TADIBC1461861pt4

: Dated Dispur, the 23.08.93.

GOVERNMENT OF ASSAM

Sub: Implementation of Assam Scheduled Caste and Scheduled Tribes (Reservation Of Vacancies in Services and Posts)Act,1978 and the Rules framed thereunder.

It has come to the notice of WPT & BC Department that some confusion prevails as ___ whether the Assam SC & ST (Reservation Of Vacancies in Services and Posts)Act, 1978 and Rules framed thereunder are applicable to cases of direct recruitment under Regulation 3(f) of the A.P.S.C Limitation and Functions) Regulations,1951, and in case of temporary appointment of other non- gazetted staff. The Act provides reservation of vacancies in services and posts for members of SCs/ STs and not the mode of recruitment to the vacancies. The 20 point Roster in the Scheduled of the above mentioned Act deals with the vacancies and not with the posts. The Roster of vacancies as prescribed below Section 13 of the Act is a running account of vacancies from year to year. All appointments include permanent/temporary appointments and maintenance of Roster for all category of appointments is necessary as per law.

Thus the Act is applicable also to causes of direct recruitment under Regulation /3(f) of A.P.S.C (Limitation and Functions) Regulations 1951, or /in case of temporary recruitment to vacancies of non-gazetted staff.

All the Department may take action accordingly.

Sd/-J.S.L. Vasava.
Secretary to the Govt. of Assam.
W.P.T. & B.C. Department.

Memo. No. TAD/BC/46/86/Pt/4- A, Dated Dispur, the 23.08.93. Copy to:

1. All Commissioner and Secy./Secretary to the Govt. of Assam
_____ Department, Dispur.
2. All Heads of Departments.
3. All Deputy Commissioners/ Sub. Divisional Officers (Civil).
4. The Judicial Department, with reference to their U/O.No.LR.429 /93, dt.03.03.1993.

**GOVERNMENT OF ASSAM
DEPARTMENT OF WELFARE OF PLAINS TRIBES AND
BACKWARD CLASSES
No. TAD/OBC/141/91/60: Dated Dispur the 30th June 1993**

OFFICE MEMORANDUM

Sub: Representation of Other Backward Classes and More Other Backward Classes in Public Services and Public sector Undertakings.

After due consideration and keeping in view the maintenance of efficiency of the Administration and to provide adequate representation in the services to the Other Backward Classes (Other Backward Classes including More Other Backward Classes) who are not adequately represented in services, the Govt. of Assam, in pursuance of Article 16 of the constitution of India have

been pleased to order reservation of 15 % of vacancies in all posts under the State and in services connected with the affairs of the State and its Public Sector Undertakings for the members of the Other Backward Classes (Other Backward Classes including More Other Backward Classes), vide Personnel Department's O.M. No. ABP.338/83/14, dt. 4-1-84. To ensure proper implementation of the order for reservation for the members of the notified Other Backward Classes / More Other Backward Classes in direct recruitment to services and posts in an establishment under the Government of Assam and its Public Sector Undertakings the Government of Assam have now decided to adopt a roster of 20 (twenty) vacancies for giving effect the reservation of vacancies for Other Backward Classes / More Other Backward Classes as below:

The roster shall be adopted for the purpose of direct recruitment by cash establishment for each cadre below:

Roster Points:

- | | |
|-----------------|--|
| 1 st | Vacancy – Reserved for ST (P) under Assam
SC & ST (RSVP) Act 1978 |
| 2 nd | Vacancy – OBC / MOBC |
| 3 rd | Vacancy – SC -do- |
| 4 th | Vacancy – Unreserved |
| 5 th | Vacancy – Unreserved |
| 6 th | Vacancy – Unreserved |
| 7 th | Vacancy – ST(H) -do- |

- 8th Vacancy – OBC / MOBC
 9th Vacancy – Unreserved
 10th Vacancy – Unreserved
 11th Vacancy – Reserved for ST (P) under Assam
 SC & ST (RSVP) Act 1978.
 12th Vacancy – SC -do-
 13th Vacancy – Unreserved
 14th Vacancy – Unreserved
 15th Vacancy – OBC / MOBC
 16th Vacancy – Unreserved
 17th Vacancy – Unreserved
 18th Vacancy – Unreserved
 19th Vacancy – Unreserved
 20th Vacancy – Unreserved

Reservation Points:

ST(P) – 1, 11

SC – 3, 12

ST(H) – 7

OBC – 2, 8, 15

A Register shall be maintained separately for each cadre in each establishment for giving effect to the roster prescribed below:

The Roster is a running account of vacancies from year to year and shall be maintained accordingly. No gap shall be left in the roster in filling vacancies and if sufficient number of suitable candidates for filling up the reserved vacancies is not available from the designated Other

Backward Classes / More Other Backward Classes of the people in / particular year then such of the vacancies which remained unfilled would be available to others.

In the absent of qualified Other Backward Classes & More Other Backward Classes candidates in a particular year the vacancies shall be carried forward till the requisite percentage in that cadre is filled up.

A candidate who claimed to be a member of the Other Backward Classes and More Other Backward Classes shall support his candidature by a certificate from the Competent Authority.

These instructions shall come into force with immediate effect. All Appointing Authorities under the Government of Assam and Public Sector Undertakings will strictly follow the instruction and any departure or failure should be promptly reported by Administrative Departments to WPT and BC Department.

Sd/- A Perti,

Secretary to the Govt. of Assam,
WPT & BC Department

**GOVERNMENT OF ASSAM
DEPARTMENT OF WELFARE OF PLAINS TRIBES AND
BACKWARD CLASSES
ASSAM : DISPUR**

OFFICE MEMORANDUM

No. TAD/OBC/142/96/12

Dated Dispur the 18th May'99

The Assam Scheduled Caste & Scheduled Tribes (Reservation in Vacancies & Posts) Act 1978 and the Rules thereunder provide that a roster involving fixed reserved points for SC and ST people, would be followed in the matter of appointments in all categories of posts and both by direct recruitment and by promotion. It is also provided that the appointing authorities would be invariably seek approval of the WPT & BC Department whenever a suitable candidate is not available for appointment on the reserved roster points. It has been observed for quite a long time that the proposals for appointment by promotion are submitted for dereservation to this Department indicating the fact that the reserved category candidates are not available in the zone of consideration. While most of the department, refer the cases of promotional appointments to this Department, many of them do not refer the cases of direct appointments in the feeder cadres from where promotions are made to the higher cadres. In fact it is felt that the non-availability of reserved candidates for promotional posts has a connection with the direct recruitment in the lower cadres and any violation of the provisions of the Act and rules in direct recruitment is bound to reflect severely in the promotional cases.

It is, therefore, decided that whenever a case of promotion is referred to the WPT & BC dereservation, the concerned department would provide information about the direct recruitment in the lower feeder cadre as far as the appointment of reserved candidates in that cadre is concerned. The department concerned would also certify that in the relevant feeder cadre where direct recruitment is made the rules have been followed specifically

the rule relating to the second advertisement. To avoid any query and consequent delay it would be desirable that the concerned department should furnish the roster register if such feeder cadre with every proposal of dereservation in promotional appointments.

Any proposal which does not comply with these recruitments would not be entertained by the WPT & BC Department shall be rejected without any consideration and the responsibility arising out of this situation would lie squarely with the concerned Department.

**Sd/ - P. P. VARMA
Commissioner & Secretary to the Govt. of
Assam,
WPT & BC Department.**

**GOVERNMENT OF ASSAM
DEPARTMENT OF WELFARE OF PLAINS TRIBES AND
BACKWARD CLASSES
DISPUR :: GUWAHATI :: 6**

No. TAD/OBC/142/96/6

Dated Dispur the 117th

December / 1996

OFFICE MEMORANDUM

Sub:- Dereservation of reserved points in excess of the vacancies recommended by the Selection Committee.

Rule 5(1) of the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1983, lays down, inter-alia, that the appointing authority shall furnish to the Selection Committee the details about the candidates equal to four times the number of vacancies, after proper assessment of the vacancies likely to occur in the various cadres in the Department in a year. The Select Committee, after consideration of the suitability of all candidates, shall recommend the list of candidates found suitable for promotion in order of preference, which will, by and large, be equal to double the number of vacancies. The Department, thereafter, would start filling up the vacancies in order of the preference from the said list and move WPT & BC Department for de-reservation following the procedure laid down in the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) 1978, and the rules framed thereunder, whenever necessary. Once the notified vacancies are filled-up by the candidates recommended by the Selection Committee for a particular year, recommendation of the select committee is deemed to have been completed and no proposal for further appointment

from the same select list should be made.

It is observed that many Department's move WPT & BC Department either for filling-up of additional unreserved vacancies or for de-reservation of reserved Vacancies in excess of the recommendation Select Committee on some plea or the other.

Such practice is not only violative of the Reservation Act or respective Service Rules but may also prejudicial to the interest of reserved category candidates.

In view of the circumstances stated above, it has been decided that henceforth WPT & BC Department would not entertain any proposal for de-reservation in case of promotion in excess of the vacancies for which recommendations have been made by the selection committee.

**Sd/ - P. P. VARMA
Commissioner & Secretary to the Govt. of
Assam, WPT & BC Department.**

**GOVERNMENT OF ASSAM
DEPARTMENT OF WELFARE OF PLAINS TRIBES AND
BACKWARD CLASSES**

No. TAD/EDN/159/95/4

Dated Dispur the 14th September' 1997

From: Shri A. R. Laskar, ACS,
Deputy Secretary to the Govt. of Assam,
W.P.T. & B.C. Department.

To: The Accountant General, Assam,
Bhangagarh, Guwahati-5.

Sub: Revision of rate of Pre-Matric Scholarship to SC/ST/TGT/OBC students within Assam – Enhancement of monthly rate thereof.

Sir,

I am directed to convey the sanction of the Governor of Assam to the following monthly rate for awarding Pre-Matric Scholarship to the students belonging to TGT/SC/ST and OBC categories within Assam with effect from the current academic session and until further orders.

Category	Existing rate	Revised rate
L.P.Classes	Rs. 5/-	Rs. 10/-
M.E. Classes	Rs. 10/-	Rs. 15/-
Class VIII-X	Rs. 15/-	Rs. 20/-

The expenditure will be debitable to the respective Head of Account of Welfare of TGT/SC/ST/OBC-III-Centrally Sponsor Schemes during the current year budget for 1995-96.

This has been issued with the concurrence of Finance (EC-I) Department vide their U/O No. FEC(I) 956 dt. 4-09-95.

Yours faithfully,

Sd/
Deputy Secretary to the Govt. Of Assam,
WPT & BC Depar

GOVERNMENT OF ASSAM
DEPARTMENT OF WELFARE OF PLAINS TRIBES AND
BACKWARD CLASSES
DISPUR : : GUWAHATI – 6

No. TAD/BC/142/96/56

Dated Dispur the 14th July, 2004

OFFICE MEMORANDUM

Sub:- Implementation of Assam SC & ST (RVSP) Act, 1978 and Rules 1986 – filling up of backlog vacancies for S.C. and S.T. there under

1. The undersigned is directed to draw attention of all administrative departments and appointing authorities that a large number of backlog of vacancies of SC & ST communities in different cadres / services is being reported by different Department. In this regard various Scheduled Castes and Scheduled Tribes Organizations have also submitted memorandum to the Government to fill up the backlog vacancies by reserved candidates belonging to S.C. & S.T. Government have also reiterated the need to reduce / eliminate the backlog of reserved vacancies.
2. It has been observed that a large number of backlogs shown by the different departments are due to mis-interpretation of Assam S.C. & S.T. (RVSP) Act, 1973 and Rules, 1983 and due to wrong calculation of backlog vacancies.
3. Under provision of section 5 of the Assam S.C. & S.T. (RVSP) Act 1978, the admissible reservation quota for S.C., ST(P) and ST(H) is 7%, 10% and 5% respectively.

4. In terms of Rules 4(6) & 5(6) of Assam S.C. & S.T. (RVSP) Rules, 1983 the reserved vacancies can be de-reserved following the procedure mentioned therein subject to carry forward of the vacancy de-reserved (called backlog).
5. in terms of Sub-para (VI) in the Schedule under Assam S.C. & S.T. (RVSP) Act. 1978, in the absence of a qualified reserved candidate the reserved vacancies shall be carries forward till the requisite percentage of reserved categories in the cadre is filled up. The same has been reiterated is Sub-rule (7) of Rule 4 of the Assam S.C. & S.T. (RVSP) Rules, 1983 wherein it has been mentioned that a vacancy reserved shall be filled up by general candidates but reservation will be carried forward till reservation quota is filled up.
6. Several instances have come to the notice of the Government in the WPT & BC Department that the departments carried forward backlog as well as current vacancies even extent beyond permissible entitled quota for ST(P), ST (H) ... which have shown exaggerated figures of backlog / current vacancies for reserved categories. All appointing authorities are respect to carry but a review for correct assessment of backlog / current vacancies in respect of Sc, ST(P) & ST(H) both by direct requirement and promotion and to make concerted efforts to fill up backlog / current vacancies under reserved categories.

Sd/- K.D.Tripathi,
Commissioner & Secretary to the Govt. of Assam
WPT & BC Department

GOVERNMENT OF ASSAM
DEPARTMENT OF WELFARE OF PLAINS TRIBES AND
BACKWARD CLASSES
DISPUR : : GUWAHATI - 6

No. TAD/BC/142/96/54

Dated Dispur the 28th Aug., 2001

OFFICE MEMORANDUM

Sub:- Treatment of backing vacancies reserved for SC & ST as a distinct group and non-applicability of 50% ceiling thereon:-

With reference to this Deptt's O.M/No. TAD/BC/142/96/9, dated Dispur, the 17th Dec./ 98, wherein it was laid down inspare 8 that "the Appointing Authorities will ensure that the reservations including belong does not exceed 50% of the vacancies a particular cadre in a calendar year", I am directed that the matter has since been reviewed by the Govt. of India and Article 16(4B) has ***** in the Constitution by Constitution (Eighty-First Amendment) Act, 2002, which address as under.

Nothing in this article shall prevent the state from considering any unfilled vacancies of a or which are proved for being filled up in that year in accordance with any provision for ****made under clause (4) clause (4A) 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 ceiling of 50% reservation on total member of vacancies of that year".

In announce of the provision of article 16(\$B) of the Constitution, it has been decided that **** of the above said notification would stand replaced as below:

"Appointing Authority shall ensue that the reservation (excluding backlog) on the vacancies in the current year shall not exceed 50% of the total vacancies of the said year. Further, as far as the backlog is concerned, the vacancies available shall be utilized to clear this backlog subject to availability of candidates of reserved category without any ceiling. However, the backlog subject would **** to be leaped in a particular cadre as soon as the combined representation of a particular reserved category in the recruitment and in promotion taken together in either *** to or more than the percentage of reservation.

1. All the Appointment Authorities are requested to adhere strictly to the above instructions and make ***** up the backlog vacancies.
2. This order takes effect from the date of issue.

Sd/-
(J. S. L. VASAVA)
WPT & BC Department

THE ASSAM SCHEDULED CASTES AND SCHEDULED TRIBES ACT, 1978

ASSAM ACT XII OF 1979
(Received the assent of the Governor on 23rd May 1979)
THE ASSAM SCHEDULED CASTES AND SCHEDULED TRIBES (RESERVATION OF VACANCIES IN SERVICES AND POSTS) ACT, 1978

To provide for reservation of vacancies in services and posts for the members of the Scheduled Castes and Scheduled Tribes.

PREAMBLE

Whereas the members of the Scheduled Castes and Scheduled Tribes who are Backward Classes of citizens are not adequately represented in the services and posts within the State;

And Whereas it is expedient to provide for the reservation of vacancies in services and posts for them;

It is hereby enacted in the Twenty-ninth Year of the Republic of India, by the Legislature of Assam, as follows:—

Short title, extent and commencement

1. (1) This Act may be called the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978.

(2) It extends to the whole of Assam.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Definition

2. In this Act, unless the context otherwise requires, —

(a) "Appointing authority", in relation to a service or post in an establishment, means the authority empowered to make appointment to such service or post;

(b) "Establishment", means any Officer of the State Government, a local or statutory authority constituted under any State Act for the time being in force or a Corporation in which not less than fifty-one per cent of the paid up share capital is held by the State Government and includes Universities and Colleges affiliated to the Universities, Primary, Secondary and Multipurpose Schools and also other educational institutions which are owned or aided by the State Government and also includes an establishment in Public Sector;

(c) "Establishment in public sector" means any industry, trade, business or occupation owned, controlled or managed by —

(i) The State Government or any department of the State Government, or

(ii) A Government Company as defined in Section 617 of the Companies Act, 1956 or a Corporation established by or under a Central or State Act, in which not less than fifty-one percent of the paid up share capital is held by the State Government, or

(iii) A local or statutory authority, constituted under any State Act for the time being in force;

(d) "Establishment in private sector" means any industry, trade business or occupation which is not an establishment in Public Sector;

(e) "Schedule" means the Schedule appended to this Act.

To apply in relation to certain employments

3. This Act shall not apply in relation to —

(a) Any employment under the Central Government;

(b) Any employment in the Assam Judicial Service Grade I;

(c) Any employment in domestic service.

Reservation for Scheduled Castes and Scheduled Tribes in vacancies to be filled by direct recruitment

4. At the commencement of this Act, all appointments the services and post in the establishment which are to be filled up by direct recruitment shall be regulated in the following manner, namely:—

(a) Subject to the other provisions of this Act, seven per cent of the vacancies shall be reserved for the candidates belonging to Scheduled Castes and ten percent for Scheduled Tribes (Plains) and five percent for Scheduled Tribes (Hills), in the manner set out in the Schedule:

Provided that the State Government may from time to time review the implementation of the reservation policy and take adequate measures including increase of percentage, mentioned in Clause 4 (a) of this Bill:

Provided also that in respect of the Assam Judicial Service, the percentage shall be seven for Scheduled Castes and ten for Scheduled Tribes (Plains) and five for Scheduled Tribes (Hills) in Grade II and III of the Service.

(b) Fees, if any, prescribe for any examinations for selection to any service or post shall be reduced to half in the case of candidates belonging to the Scheduled Casts or Scheduled Tribes.

(c) The members of the Scheduled Castes and the Scheduled Tribes shall be entitled to a concession of three years over the prescribed maximum age limit for appointment to any services or post.

Reservation for Scheduled Castes and Scheduled Tribes in vacancies to be filled up by promotion

5. Reservation for members of Scheduled Castes and Scheduled Tribes in vacancies to be filled up by promotion in any establishment shall be regulated in the following manner, namely:—

(a) There shall be reservation at seven per cent for members of the Scheduled Castes and ten per cent for the members of Scheduled Tribes (Plains) and five per cent for the members of the Scheduled Tribes (Hills):

Provided that the State Government may from time to time review the implementation of the reservation policy and take adequate measures including increase of percentage, mentioned in Clause 5(a) of this Bill.

(b) A separate twenty point roster in the form given in the Schedule shall be maintained by every establishment.

Power to exempt

6. If the State Government is of opinion that the reservation for members of the Scheduled Castes or Scheduled Tribes shall not be applied to any specialised service or post in view of the specialised qualification or experience necessary and in absence of such qualified candidates from amongst the Scheduled Castes and Scheduled Tribes the State Government may, by notification in the Official Gazette, exempt such service or post from the provisions of this Act.

Penalty

7. If an appointing authority makes an appointment in contravention of the provisions of Section 4 or Section 5, he shall be punishable with five which may extend to one thousand rupees and the State Government may also draw up proceedings against the respective Head of the Department asking for show cause and for further punishment:

Provided that nothing contained in this Section shall apply in relation to an appointment to any service or post of which the appointing authority is the Governor.

Cognizance of Offices

8. No prosecution for an offence under this Act shall be instituted except by, or with the sanction of the State Government.

Protection of action taken in good faith

9. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Removal of difficulties

10. If any difficulty arises in giving effect to the provisions of the Act, the State Government may take such steps or issue such orders no inconsistent with the provisions of this Act, as the State Government may consider necessary for removing the difficulty

Power to amend the Scheduled

11. The State Government may, by order publish in the Official Gazette, add to, amend or after the Schedule.

Submission of annual Report maintenance of other records and thereon

12. (1) Every appointing authority shall maintain such records as may be prescribed by rules made in this behalf and shall furnish to the State Government in the prescribed manner as annual report on the appointments made by it, during the previous financial year.

(2) Any Officer authorised by the State Government in that behalf may inspect any records or document which are maintained in relation to appointments made by such appointing authority.

(3) It shall be the duty of the appointing authority to produce such records or documents for inspection by the officer authorised under sub-section (2), and furnish such information or afford such assistance as may be necessary for him to carry out his functions under this Act.

(4) Notwithstanding anything contained in the Assam Civil Services (Conduct) Rules, 1965, any member of any Scheduled Castes or any Scheduled Tribes who is adversely affected on account of non-compliance with the provisions of this Act or the rules made thereunder by any appointing authority, may bring the fact to the notice of the State Government and upon application made by him the State Government may call such records or take such action thereon as it may think fit.

Power to make rules

13. (1) The State Government may make rules for carrying out the purposes of the Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:

(a) Form in which every establishment shall submit annual report to the State Government regarding the number of person recruited in such establishment.

(b) Any other matter which has to be or may be prescribed by rules made in this behalf.

THE SCHEDULE
(see section 4)

The reservation for the members of the Scheduled Castes and the Scheduled Tribes in services or posts in an establishment shall be given effect to in the following manner, namely:

(i) A roster of twenty vacancies will be necessary in give effect to the reservation of vacancies for the Scheduled Castes and the Scheduled Tribes The roster given below shall be adopted for the purpose by each establishment.

1st Vacancy	Scheduled Tribes (Plains)
2nd Vacancy	Unreserved
3rd Vacancy	Scheduled Castes
4th Vacancy	Unreserved
5th Vacancy	Unreserved
6th Vacancy	Unreserved
7th Vacancy	Scheduled Tribes (Hills)
8th Vacancy	Unreserved
9th Vacancy	Unreserved
10th Vacancy	Unreserved
11th Vacancy	Scheduled Tribes (Plains)
12th Vacancy	Scheduled Castes
13th Vacancy	Unreserved
14th Vacancy	Unreserved
15th Vacancy	Unreserved
16th Vacancy	Unreserved
17th Vacancy	Unreserved
18th Vacancy	Unreserved

19th Vacancy	Unreserved
20th Vacancy	Unreserved
Reservation points-	
Scheduled Tribes (Plains)	1.11
Scheduled Castes	3.12
Scheduled Tribe (Hills)	7

(ii) A register shall be maintained for giving effect to the instructions contained in paragraph (i)

(iii) Before making an appointment by direct recruitment, the appointing authority shall ascertain by consulting the register whether the vacancy is reserved or unreserved and if it is reserved, for whom it is so reserved. Immediately after an appointment is made the particulars thereof shall be entered in the register and signed by the appointing authority.

(iv) The roster is a running account for year to year and shall be maintained accordingly If recruitment in a particular year stop at a particular point of the cycle, say at the 4th point, recruitment in the subsequent year shall begin at the next point the at the 5th point.

(v) No gap shall be left in the roster in filling vacancies and if a reserved vacancy, say at the 5th point of the cycle, has, for want of a qualified Scheduled Caste candidate to be treated as unreserved the candidate appointed shall be shown against the point An attempt shall be made at the time of filling each successive unreserved vacancy to recruit a Scheduled Caste candidate but if a Scheduled Caste candidate cannot still be found in the year in which the vacancy is filed, the reservation shall be carried forward to the following year. The first unreserved vacancy in that year shall be reserved for the Scheduled Castes in addition to any other vacancy available to them according to the cycle.

(vi) In the absence of a qualified Scheduled Caste/Scheduled Tribe candidate in a particular year, the vacancy shall be carried forward till the requisite percentage in that cadre is filled up.

(vii) The roster, shall be maintained separately for permanent and temporary vacancies.

(viii) A vacancy due to whatever cause, except termination of service during probation, shall be treated as a fresh vacancy.

(iv) A candidate who claims to be a member of the Scheduled Castes or the Scheduled Tribes shall support his candidature by a Certificate from a Gazetted Officer or from such other authority as may be prescribed by rules made under the Act.

U. TAHBILDAR,
Secretary to the Govt. of Assam
Legislative Department.

GOVERNMENT OF ASSAM
DEPARTMENT OF WELFARE OF PLAINS TRIBES AND BACKWARD
CLASSES

DISPUR::: ASSAM

No. TAD/BC/68/2011/Pt-I/207

Dated Dispur 3rd August, 2016.

OFFICE MEMORANDUM

Subject: Review of Government Policy of Reservation in Promotion with reference to the Hon'ble Gauhati High Court judgments.

As per guidelines laid down by the Apex Court in WP(C) 61/2002 M. Nagaraj & others Vs Union of India and in CA No. 2608/2011 UP Power Corporation Ltd Vs Rajesh Kumar & Ors., the Government of Assam have prescribed procedures as to how to implement the policy of reservation in promotion vide Office Memorandum No TAD/BC/68/2011/Pt-1/146 dated 29/12/14. The Report of the One Man Commission on quantifiable data was accepted by the State Govt. with approval of the State Cabinet. Accordingly, on

the basis of the report the Govt. decided to provide reservation in promotion; these provisions for reservation in promotion were also incorporated in the aforementioned Office Memorandum. However, the report of the Commission was challenged in the Hon'ble Gauhati High Court by the Equality Forum in WP (C) No. 1560/2015. The Hon'ble High Court observed that,

"Para 74though State has made provision for reservation in promotion by enacting the 1978 Act, which was amended in the year 2012, implementation of the same would depend on acquiring of quantifiable data with regard to the 2 (two) compelling reasons, which exercise has to be carried out cadre-wise in the context of the service where the cadre is placed. That having not been done, the report of the One Man Commission would be of no legal consequence and would not enable the State to give effect to the provisions of the 1978 Act as amended in so far reservation in promotion is concerned".

The Government of Assam, after careful examination of the observations of the High Court contained in the judgment dated 23-12-2015, have come to the conclusion that the High Court has not set aside the Government policy of reservation for reserved categories in promotion; rather it strikes down only the basis on which this policy was adopted. This has not ended the continuation of the Government Policy on reservation in promotion. In its ruling the Hon'ble High Court stressed that,

"Para 74it is reiterated that if the State desires to give effect to the provisions of the 1978 Act as amended in the year 2012 by providing for reservation in promotion, it would have to justify the same with the help of quantifiable data to show presence of the 2 (two) compelling reasons, backwardness and inadequacy of representation, cadre-wise in the context of the service where the cadre is placed, which would then have to be harmonized with efficiency in administration as mandated under Article 335".

The basic difficulties in adopting the policy of reservation in promotion were, in fact, in determining the i) backwardness and ii) inadequacy in representation in the cadre. The Hon'ble High Court while explaining the criteria added that-

"Para 69----- "Backwardness of SCs and STs vis-à-vis promotion would have to be determined cadre-wise. If in a particular cadre, SCs and STs are not adequately represented, they may be considered as backward in so far that particular cadre is concerned. Conversely, if in a particular cadre, SCs and STs are adequately represented, then they may not be considered as backward for the purpose of promotion to that particular cadre. Therefore, it is quite evident that the concepts of backwardness

and inadequacy of representation in the context of reservation in promotion are inter-twined."

With a view to bringing the policy of reservation in promotion for reserved categories in line with the directions of the Hon'ble High Court, Government have reviewed the existing procedure of effecting reservation in promotion and accordingly lays down the following guidelines to be followed while considering promotion in any cadre in any establishment-

- i) The policy of reservation in promotion shall continue.
- ii) Each establishment while taking up the process of promotion in a particular cadre of a service, shall examine the representation of SC, ST (P) and ST (H) candidates in the cadre in comparison with the prescribed percentage of reservation and calculate shortfall if any, in the cadre with reference to that particular year. Shortfall of reservation of a particular reserved category in a cadre means the difference between the total number of reserved posts for that category in the cadre and the number of persons of that category holding the posts in the cadre. While calculating the shortfall, all candidates belonging to the same category [SC or ST (P) or ST (H)] shall be taken into account irrespective of the mode of their entry into the cadre i.e. whether on account of seniority-cum-merit or merit cum seniority, as the case may be, or through any other process admissible in law or by way of reservation. If in a particular cadre, SCs and STs are not adequately represented and shortfall is found to exist in the cadre, they may be considered as backward insofar as that particular cadre is concerned. Such shortfall shall be filled up by the concerned category of incumbents within the zone of consideration either on account of seniority- cum-merit / merit-cum-seniority or by way of providing reservation as the case may be, till the prescribed percentage in respect of the said category is achieved.
- iii) If no eligible incumbent belonging to the shortfall category is available within the zone of consideration, this will further substantiate the status of backwardness and inadequate representation of the category in the cadre and therefore the number of posts that are required to meet the calculated shortfall shall be kept vacant and the vacancy shall be carried forward and filled up in the next year. In case, sufficient number of SC or ST(P) or ST(H) candidates fit for promotion against reserved posts are not available and if the posts cannot be allowed to remain vacant on grounds of maintaining efficiency in administration, the Appointing Authority may with full justification, refer the vacancy to the Department of WPT & BC for de-reservation, subject to the condition that no candidate belonging to the category for which the post is reserved is available within the zone of consideration placed before the annual Selection Committee/ Departmental Promotion Committee for two

consecutive years. In other words the concerned Departments may move proposal for de-reservation in the third year.

- iv) If an occasion arises during the promotion process, in which stipulated percentage in respect of reserved category is met, but in the gradation list/ seniority list there are candidates of reserved category who on merit is entitled to the promotion, his/ her case shall be considered for promotion on merit if such candidate has not gained the seniority by way of any accelerated promotion earlier.
- v) As regards the question of maintaining administrative efficiency as required under Article 335 of the Constitution of India, Hon'ble High Court held that, "..... it should be assessed applying objective measurable standards." In that sense, the Annual confidential Reports (ACR)/ Annual Performance Appraisal Reports (APAR) of the incumbent along with the length of service, participation in training programmes concerning job requirements, acquisition of degrees or diplomas on subjects if mandatory to the job, should be considered as the yardstick of measuring efficiency.
- vi) It shall be the responsibility of the concerned appointing authority to provide adequate information concerning the above to the Selection Committee (Department Promotion Committee) which shall evaluate all relevant parameters while making its recommendation.

This shall come into force with immediate effect.

Sd/-

(Rajiv Kumar Bora IAS)

Additional Chief Secretary to the

Govt. of Assam,

WT & BC Department, Dispur

Memo No. TAD/BC/68/2011/Pt-I/207-A
Dispur 3rd August, 2016

Dated

Copy to:

1. The Chairman, Assam Administrative Tribunal, Guwahati, Assam
2. The Chairman, Assam Board of Revenue, Guwahati, Assam
3. All Principal Secretaries/Commissioner & Secretaries /Secretaries to the Govt of Assam.
4. The Commissioner & Secretary to the Chief Minister of Assam
5. The Chief Electoral Officer, Assam, Dispur.
6. The Resident Commissioner, Govt of Assam, Assam House, New Delhi

7. The Secretary to His Excellency the Governor of Assam
8. All Commissioners of Divisions ,Assam
9. All Principal Secretaries to the Autonomous Councils
10. All Deputy Commissioners
11. The Staff Officer to the Chief Secretary of Assam
12. All Sub-divisional Officers (Civil)
13. All Heads of Departments /All Departments of the Secretariat
14. P.S to all Ministers/Ministers of State/ Parliamentary Secretaries.
15. P.S to all Addl. Chief Secretaries to the Govt. of Assam
16. The Director, Assam Govt Press, Guwahati-21.

Joint Secretary to the Government of Assam
WT & BC Department Dispur

**GOVERNMENT OF ASSAM
DEPARTMENT OF WELFARE OF PLAINS TRIBES AND BACKWARD
CLASSES
DISPUR::: ASSAM**

No TAD/BC/68/2011/Pt-I/146

Dated Dispur 29th December ,2014

OFFICE MEMORANDUM

SUBJECT: IMPLEMENTATION OF POST BASED RESERVATION

Consequent upon the amendments made in the Assam Scheduled Castes and Scheduled Tribes (Reservation in Vacancies and Posts) 1978 and acceptance of recommendations of One Man commission constituted by Govt of Assam vide notification no TAD/BC/68/2011/Pt-I/135 dated 24th October,2013 with Sri Harish Sonowal IAS(Rtd) as the Commission to study and acquire quantifiable data on backwardness of Scheduled Castes and Scheduled Tribes, their inadequacy of representation in Govt services and Posts and impact in overall efficiency in public administration, following guidelines have been prescribed in order to implement the post based roster reservation in matter of reservation of posts for Scheduled Castes and Scheduled Tribes(Plains) and Scheduled Tribes (Hills) in direct recruitment and promotions.

PREPARATION OF ROSTERS

- 1.1 The Appointing authority shall prepare the respective rosters based on the principles elaborated below and notify the same with the concurrence of Personnel and Welfare of Plains Tribes and Backward Classes Department.
- 1.2 All vacancy based rosters shall now be replaced by **Post based rosters**. The appointing authority shall prepare a Post based roster for each cadre. While preparing the rosters, the appointing authority shall give effect to the reservation of posts for the Scheduled Castes, Scheduled Tribes (Plains) Scheduled Tribes (Hills) as per the prescribed percentage of reservation as provided in **Section 5 (a)** of the Act.
- 1.3 The prescribed percentage of reservation as per **Section 5(a)** ten (10) percent to the STP, seven (7) percent to SC and five (5) percent to STH.
- 1.4 **Each category of posts shall be treated as a separate cadre.**
- 1.5 The roster shall be prepared for each cadre depending upon the number of posts in the cadre as per the principles underlying the Model 100-point Roster given in the Schedule-I of the Act. **A format for preparing roster Register for cadre having more than 13 posts is placed at Annexure-1.**

- 1.6 In case of small cadres up to 13 posts, the post based roster shall be prepared on the basis of Model 13 Point Roster provided in the Schedule II of the Act. A format for preparing roster Register for cadre having less than 13 posts is placed at Annexure II
- 1.7 **There shall be no reservation in single cadre post.**
- 1.8 The rosters are to be drawn up by each establishment keeping in mind two fundamental principles - that the reservation for the entitled categories is maintained as per the prescribed percentage of reservation and the total reservation should be for **STP, SC and STH** in no case exceed **22%** of the cadre.
- 1.9 The number of points in each roster Register shall be equal to the number of posts in a cadre.
- 1.10 There shall be separate roster Registers for direct recruitment and for promotions.
- 1.11 These rosters are an aid to determine the entitlement of different categories with regard to the quota reserved for them in matters of appointment and promotion. They are not intended to determine seniority in the cadre.
- 1.12 While a cadre is generally to be constructed as the number of posts in particular grade, for the purpose of preparation of roster, it shall comprise posts required to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. To illustrate, in a cadre comprising 100 posts, where the recruitment rules prescribed a ratio of 50: 50 for direct recruitment and promotions, the roster for direct recruitment shall have 50 points and that for promotion shall have 50 points- thus making a total of 100.
- 1.13 Since reservation does not apply to transfer or transfer on deputation, where recruitment rules prescribe a percentage of posts to be filled by this method, such posts shall be excluded while preparing up the rosters.
- 1.14 At the end of the roster, "squeezing" may have to be done for the reserved categories to reach the number of posts to be reserved for them without violating the **22%** for **SC, STP and STH** limit in any cadre or group.
- 1.15 Whenever there is any increase or decrease in the cadre strength, the roster shall be correspondingly expanded or contracted through Govt Notification with the approval of Personnel and WPT & BC Department. The same shall also apply whenever there is a change in recruitment rules which affects the proportion of posts to be filled by a particular mode of recruitment.

OPERATION OF ROSTERS

- 2.1 At the point of initial operation of the roster, it will be necessary to determine the actual representation of the incumbents belonging to different categories in a cadre vis-a-vis the points earmarked for each category vis. **SC/ST/OBC** and **General** in the roster. This may be done by plotting the appointments made against each point of roster starting with the earliest appointee. If the earlier appointee in the cadre happens to be a candidate belonging to the Scheduled Castes against point No. 1 of the roster, the remark "initialised by **SC**" shall be entered'. If the next appointee is a general category candidate, the remark "utilised by general category" shall be made against point No. 2 and so on and so forth till all appointments are adjusted in the respective rosters. In making these adjustments, **SC/ST/candidates** on merit, in direct recruitment, shall be treated as general category candidates.
- 2.2 In case of small cadres (up to 13 posts), all the posts shall be earmarked on the same pattern as in the post based rosters. Initial recruitment /promotion against these points shall be by the category for which the point is earmarked. Replacement of incumbents of posts shall be by rotation as shown horizontally against the cadre strength as applicable in the Model 13 Point Roster provided in the Schedule-II . While operating the relevant roster, utmost care shall have to be taken to ensure that on no occasion prescribed percentage reservation of **22%** is exceeded. If such a situation occurs at any time that prescribed percentage of reservation exceeds **50%**, then the relevant reserved/unreserved point occupying as a result of rotation shall be skipped.
- 2.3 While operating the roster, persons belonging to communities for whom reservation has been made, but who are appointed on merit and not owing to reservation, should not be shown against reserved points. They shall occupy the unreserved points
- 2.4 After completing the adjustment as indicated above, a tally should be made to determine the actual percentages of representation of appointees belonging to the different categories in the cadre and determine if there is any shortfall of reservation in the cadre.
- 2.4.1 (i) **Shortfall of reservation** of a particular reserved category in a cadre means the difference between "the total number of reserved posts for that category in the cadre" and "the number of persons of that category appointed by reservation and holding the posts in the cadre."

(ii) **Backlog reserved vacancies** of a category are those vacancies which were earmarked reserved for that category in an earlier recruitment year but remained unfulfilled in the previous recruitment attempt on account of non availability of suitable candidates belonging to that category and still lying unfulfilled.

2.5 **The appointing authority shall calculate the shortfall of reservation as well as backlog in every cadre and initiate action for filling up the same first before filling up current vacancies of posts.**

2.5.1 After all the shortfall and backlogs of reserved posts being filled up, the post based roster shall operate on the principle of replacement and not as a running account as hitherto. In other words, the points at which reservation to different categories applies are fixed as per the roster and vacancies caused by retirement, etc. of persons occupying those points shall be filled by appointment of persons of the respective categories. To illustrate, if a vacancy caused by retirement or promotion to the point occupied by STP, the same shall be filled up by STP candidate.

2.6 The existing backlog vacancies shall be considered as vacancies released by recruitment, resignation, promotion etc. of the persons belonging in the reserved categories and the same are to be filled by appointment in direct recruitment from the respective categories by special drive so that prescribed percentage of reservation is maintained.

2.7 Excess, in any, would be adjusted through future appointments and the existing appointments would not be disturbed.

SC/ST CANDIDATES APPOINTED ON MERIT:

3.1 In case of direct recruitment and promotions, SC, STP and STH who have been appointed on their merit and owing not to reservation should not be shown against reserved quota. They are to be adjusted against unreserved quota.

3.2 If any unreserved vacancy arises in a cadre and there is SC, STP and STH candidate within the common zone of consideration in the feeder cadre, such candidate cannot be denied promotion on the plea that the post is not reserved. Such candidate shall be considered for promotion along with other candidates treating him as if he belongs to the general category. In case he is selected, he shall be appointed to the post and shall be adjusted against the unreserved post.

3.3 Similarly, SC, ST(P) and ST(H) candidates appointed on their own merit by direct recruitment or promotion and adjusted against unreserved points shall continue to retain their status as SC/ST(P)/ST(H) and shall be eligible to get benefit of reservation in the next or future promotions if any.

3.4 Limit of 22% on reservation for SC/ST shall be computed by excluding such reserved category candidates who are appointed /promoted on their own merit.

DERESERVATION:

In Direct Recruitment

4.1 There shall be no dereservation of posts belonging to reserved category posts in direct recruitment. If a vacancy to a post belonging to reserved category arises in a particular year and the same cannot be filled up due to non availability of reserved category candidate, the same shall remain unfilled and the post shall be carried over to the next year or till such time the same is filled up by respective categories.

In Promotions

4.2 If sufficient number of eligible candidates of SC, STP and STH category are not available for promotion against reserved vacancies in a particular year, the vacancies shall remain unfulfilled and shall be treated as backlog vacancies and shall be filled up in the next year

RESERVATION IN DIRECT RECRUITMENT AND IN PROMOTIONS IN SMALL CADRES:

5.1 When the number of posts in a cadre is 13 or less, the reservation shall be given by rotation and the number of reserved vacancies shall be determined as per L shaped rosters prescribed in Schedule-II of the Act. These L-shaped rosters are nothing but 13- Point rosters wherein reservation shall be provided by rotations.

5.2 Appointing authority therefore shall prepare their rosters on the basis of the L shaped reservation points pertaining to the number of posts in the cadre and give effect to appointment by direct recruitment and promotions accordingly.

DEPARTMENTAL SELECTION/PROMOTION COMMITTEE:

6. Appointing authority shall include a representative of the Department of Welfare of Plains Tribes and Backward Classes not below the rank of Deputy Secretary as a member of the Departmental Selection/Promotion Committee.

7. All administrative departments are requested to initiate immediate action to prepare rosters Registers and operate them according to these guidelines.

8. All existing orders on the subject are deemed to have been amended to the extent herein.
9. These guidelines shall deem to come into effect from the date of commencement of the Act . 27st May, 2013.

MAINTENANCE OF ROSTER REGISTER OF APPOINTMENT:

10. Appointing authority shall maintain the Roster Register as mentioned in Section 5A (i) of the Amendment Act and as per of the Schedule I and II of the Act in respect of every year beginning on the first January and ending the last day of the December of the year in the proforma furnished in Appendix-I&II separately for direct recruitment and promotion.

SUBMISSION OF ANNUAL REPORTS :

11. An Annual report showing the position of appointment of candidates belonging to Scheduled Castes, Scheduled Tribes (Plains) and Scheduled Tribes (Hills) both by direct recruitment and by promotion shall be submitted by each administrative Department to the Department of Welfare of Plain Tribes and Backward Classes in the manner herein below:-

- (1) The annual report shall be for the period from first day of January to the last day of December.
- (2) Appointing authority shall send report by the end of February (latest) every year in the proforma showing the total number of Government employees and the number of Scheduled Castes, Scheduled Tribes (Plains) and Scheduled Tribes (Hills) amongst them as on first January of the year and the number of appointments made during the preceding calendar year. The Appointing authority shall report showing the representation of Scheduled Castes, Scheduled Tribes (Plains) and Scheduled Tribes (Hills) in all cadres as on first day of January of the year and particulars of appointment to the various cadres along with the number of Scheduled Castes, Scheduled Tribes (Plains) and Scheduled Tribes (Hills) so appointed during the preceding year.

LIAISON OFFICERS:

12. The administrative Department shall nominate one Officer not below the rank of Deputy Secretary who shall act as a Liaison officer in respect of matters relating to the representation of Scheduled Castes and Scheduled Tribes (Plains) and Scheduled Tribes (Hills) in all establishments under their administrative control. The Liaison officer shall be responsible for:

- (i) Ensuring compliance by subordinate appointing authorities with the orders and instructions pertaining to the reservation of Scheduled Castes and Scheduled Tribes (Plains) and Scheduled Tribes (Hills) and their benefits admissible to them
- (ii) Ensuring timely submission of Annual reports by each appointing authority under their administrative control and
- (iii) Liaisoning between the respective Department and Department of Welfare of Plains Tribes and Backward classes for furnishing necessary information, answering any queries with regard to matters covered by the reservation Act as and when sought for.

13. All administrative departments are requested to initiate immediate action to prepare rosters and operate them according to these guidelines.
14. All existing orders on the subject are deemed to have been amended to the extent herein.
15. These guidelines shall come into force from the date of commencement of the Act i.e. 27th May, 2013.

Principal Secretary
WPT & BC Department, Dispur.

Memo. No TAD/BC/68/2011/Pt-I/146- Dated Dispur 29th December ,2014

Copy to:

1. The Chairman, Assam Administrative Tribunal, Guwahati, Assam
2. The Chairman, Assam Board of Revenue, Guwahati, Assam
3. All Principal Secretaries/Commissioner & Secretaries /Secretaries to the Govt of Assam.
4. The Commissioner & Secretary to the Chief Minister of Assam
5. The Chief Electoral Officer ,Assam, Dispur
6. The Resident Commissioner, Govt of Assam, Assam House, New Delhi
7. Secretary to His Excellency the Governor of Assam
8. All Commissioners of Divisions ,Assam
9. All Principal Secretaries to the Autonomous Councils

10. All Deputy Commissioners
11. The Staff Officer to the Chief Secretary of Assam
12. All Sub-divisional Officers (Civil)
13. All Heads of Departments /All Departments of the Secretariat
14. The Director, Assam Govt Press, Guwahati-21
15. P.S to all Ministers/Ministers of State/ Parliamentary Secretaries.
16. P.S to all Addl Chief Secretaries to the govt of Assam

Deputy Secretary
WPT & BC Department, Dispur.

ROSTER REGISTER

1. Name of the post:
2. Method of Recruitment: Direct Recruitment / Promotion
3. Number of posts in the cadre (Cadre Strength):
4. Percentage of Reservation prescribed : SCs_____, STs_____.

Sl. No.	Roster Point No.	Name	Date of appointment	Whether belongs to SC/ST/OBC/General	Filled as UR or as reserved for SC/ST OBC	Remarks
1	2	3	4	5	6	7
1	UR					
2	UR					
3	UR					
4	UR					
5	ST(P)-1					
6	UR					
7	UR					
8	SC-1					
9	UR					
10	ST(H)-1					
11	UR					
12	UR					
13	UR					
14	UR					
15	ST(P)-2					
16	UR					
17	UR					
18	UR					
19	UR					

20	UR				
21	UR				
22	SC-2				
23	UR				
24	UR				
25	ST(P)-3				
26	UR				
27	UR				
28	UR				
29	UR				
30	ST(H)-2				
31	UR				
32	UR				
33	UR				
34	UR				
35	ST(P)-4				
36	SC-3				
37	UR				
38	UR				
39	UR				
40	UR				
41	UR				
42	UR				
43	UR				
44	UR				
45	ST(P)-5				
46	UR				
47	UR				
48	UR				
49	UR				
50	ST(H)-3				
51	SC-4				
52	UR				
53	UR				
54	UR				
55	ST(P)-6				
56	UR				
57	UR				

58	UR				
59	UR				
60	UR				
61	UR				
62	UR				
63	UR				
64	UR				
65	ST(P)-7				
66	SC-5				
67	UR				
68	UR				
69	UR				
70	ST(H)-4				
71	UR				
72	UR				
73	UR				
74	UR				
75	ST(P)-8				
76	UR				
77	UR				
78	UR				
79	SC-6				
80	UR				
81	UR				
82	UR				
83	UR				
84	UR				
85	ST(P)-9				
86	UR				
87	UR				
88	UR				
89	UR				
90	ST(H)-5				
91	UR				
92	UR				
93	SC-7				
94	UR				
95	ST(P)-10				

96	UR					
97	UR					
98	UR					
99	UR					
100	UR					

Signature of
appointing authority or
other authorised officer

Annexure-II

ROSTER REGISTER

(Cadres having 13 or less than 13 posts)

1. Name of the post:
2. Method of Recruitment: Direct Recruitment /Promotion
3. Number of posts in the cadre:
4. Percentage of Reservation prescribed: SCs____, STs____

Sl. / Replac ement No.	UR or reserved for SCs/ STs / OBCs	Name	Date of appoint- ment	Whether SC/ST /OBC/ General	Filled as UR or as reserved for SCs/ STs /OBCs	Remar ks
1	2	3	4	5	6	8
1	UR					
2	UR					
3	UR					
4	UR					
5	STP					
6	UR					
7	UR					
8	SC					
9	UR					
10	UR					
11	UR					
12	UR					
13	UR					
14	STH					

Signature of
appointing authority or
other authorised
officer.

Annexure -III

ANNUAL STATEMENT SHOWING THE REPRESENTATION OF SCs, STs AS ON FIRST JANUARY OF THE YEAR..... AND NUMBER OF APPOINTMENTS MADE DURING THE PRECEDING CALENDAR YEAR

1. Name of the Administrative Department:
2. Name of the Subordinate Office/Directorate:
3. Name of the Cadre & Total Cadre Strength:
4. Reservation of post as per prescribed percentage:
STP.....,SC....., STH.....
5. Representation of STP/SC/STH as on 1st January..... ,
STP.....,SC....., STH.....
6. Number of appointments made during the preceding calendar year

By Direct Recruitment			
Name of Cadre and Grade	Total number of Employees	SCs	STs
1	2	3	4
By Promotion			
Name of Cadre and Grade	Total number of Employees	SCs	STs
1	2	3	4

Annexure -IV

CONSOLIDATED ANNUAL STATEMENT SHOWING THE REPRESENTATION OF SC/ST AS ON FIRST JANUARY OF THE YEAR.....AND NUMBER OF APPOINTMENTS MADE DURING THE PRECEDING CALENDAR YEAR

1. Name of the Administrative Department:
2. Name of the Appointing Authority:
3. Total No. of post as per prescribed percentage (all cadres):
ST(P).....,SC..... ST(H).....
4. Representation of ST(P)/SC/ ST(H) (all cadres) as on 1st January.... , ST(P).....,SC...., ST(H)....
5. Number of appointments made during the preceding calendar year

By Direct Recruitment			
Name of Cadre and Grade	Total number of Employees	SCs	STs
1	2	3	4
By Promotion			
Name of Cadre and Grade	Total number of Employees	SCs	STs

1	2	3	4

Signature of Liason
Officer
(Not below the rank of
Deputy Secretary)

THE ASSAM GAZETTE
EXTRAORDINARY
PUBLISHED BY THE AUTHORITY

No. 383 Dispur, Tuesday, 21st August, 2012, 30th Sravana, 1934 (S.E.)

GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
LEGISLATIVE DEPARTMENT : : : LEGISLATIVE BRANCH

NOTIFICATION

The 21st August, 2012

No. LGL. 128/2011/40.- The following Act of the Assam Legislative Assembly which received the assent of the Governor is hereby published for general information.

ASSAM ACT NO. XIX OF 2012
(Received the assent of the Governor on 16th August, 2012)
THE ASSAM SCHEDULED CASTES AND SCHEDULED TRIBES
(RESERVATION OF VACANCIES IN SERVICES AND POSTS)
(AMENDMENT) ACT, 2012

AN
ACT

Further to amend the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978

Preamble : Whereas it is expedient further to amend the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978, hereinafter referred to as the principal Act, in the manner hereinafter appearing;

Assam Act XII of 1979

Short title,
extent and
commencement:

It is hereby enacted in the Sixty-third Year of the Republic of India as follows:

Amendment of
Heading :

Amendment of
Long-title and
Preamble

Amendment of
Section 1

Amendment of
Section 2
Substitution of
section 4

1. (1) This Act may be called the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) (Amendment) Act, 2012.
2. It shall have the like extent as the Principal Act.
3. It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.
2. In the principal Act, in the Heading, for the words "RESERVATION OF VACANCIES IN SERVICES AND POSTS", the words "RESERVATION OF POSTS IN SERVICES" shall be substituted.
3. In the principal Act, in section 1, in sub-section (1), for the words "Reservation of vacancies in services and posts", the word the words "Reservation of posts in services" shall be substituted.
4. In the principal Act, in section 1, in sub-section (1), for the words "Reservation of vacancies in services and posts", the word the words "Reservation of posts in services" shall be substituted.
5. In the principal Act, in section 2, clause (e) shall be deleted.
6. In the principal Act, for the existing section 4, the following shall be substituted, namely :
 - (4) At the commencement of this Act, all appointments to services and posts in the establishments which are to be filled up by direct recruitment shall be regulated in the following manner, namely:
 - (a) Subject to other provisions of this Act, seven percent of the posts in each cadre shall be reserved for the candidates belonging to Scheduled Castes, ten percent for Scheduled Tribes (Plains) and five percent for Scheduled Tribes (Hills). The said percentage shall be worked out by every Appointment authority in relation to the number of posts comprising each cadre in a service. The Appointing authority shall ensure that once the prescribed percentage of reservation meant for the Scheduled Castes, Scheduled Tribes (Plains) and Scheduled Tribes (Hills) in a particular cadre is achieved no further reservation would lie irrespective of the roster points. In other words, in case of conflict between roster and the prescribed percentage, the

later shall prevail:

Provided that the State Government may, from time to time, review the implementation of the reservation policy and take adequate measures including increase of percentage, mentioned in this clause:

Provided for that the candidates belonging to the Scheduled Castes and Scheduled Tribes who qualify for selection on merit shall be included in the general list and not against reserved quota :

Provided also that in respect of the Assam Judicial Service, the percentage shall be seven for the Scheduled Castes and ten for the Scheduled Tribes (Plains) and five for Scheduled Tribes (Hills) in Grade II and III of the Service :

(b) Fees, if any, prescribed for any examinations for selection to any service or post shall be reduced to half in the case of candidates belonging to the Scheduled Castes or Scheduled Tribes.

(c) The members of the Scheduled Castes and the Scheduled Tribes shall be entitled to a concession of five years over the prescribed maximum age limit for appointment to any service or post.

Substitution of
section 5
"Reservation
for Scheduled
Castes and
Scheduled
Tribes in the
posts to be
filled up by
promotion

7. In the principal Act, for section 5, the following shall be substituted, namely:
 - (5) Reservation for members of Scheduled Castes and Scheduled Tribes in posts to be filled up by promotion in any establishment shall be regulated in the following manner, namely:
 - (a) There shall be reservation at seven percent for member of the Scheduled Castes and ten percent for the members of Scheduled Tribes (Plain) and five percent for the members of the Scheduled Tribes (Hills).

Provided that the State Government may, from time to time, review the implementation of the reservation policy and take adequate measures including increase of percentage, mentioned in the clause;

(b) a separate post-based roster for recruitment and promotion for each cadre shall be maintained by every Establishment for reservation of candidates of the Scheduled Castes and the Scheduled Tribes as contained in clause (a) of this section.

Amendment of
section 13

8. In the principal Act, in section 13, in sub-section (2), the existing clause (b) shall be renumbered as clause (c) and the

Insertion of a
new section
5A

following clause shall be inserted as clause (b), namely:
“(b) The manner in which the backlog of the posts reserved for the Scheduled Castes and Scheduled Tribes may be filled up”.

9. In the principal Act, after section 5, the following new section 5A shall be inserted, namely :

5A. The reservation for the members of the Scheduled Castes and the Scheduled Tribes in services or posts in an Establishment shall be given effect to in the following manner, namely :

- (i) A post-based Roster Register shall be maintained to give effect to the reservation of vacancies for Scheduled Castes and Scheduled Tribes. Such roster shall be based on the Model Roster as per Schedule I and II appended to this Act and shall be adopted for the purpose by each Establishment in such manner that the prescribed percentage of reservation is maintained in each cadre;
- (ii) Each Appointing authority shall prepare and notify the roster based on the principles laid down in this Act and maintain Roster Register in a manner containing such number of points as are equivalent to the number of posts in a cadre. In case of any increase or decrease in the cadre strength, the roster shall correspondingly be expanded or contracted;
- (iii) The roster is to be operated on the principal of replacement and not as running account in other words, the points at which reservation for different categories applies are fixed as per the roster and vacancies caused by retirement etc. of persons occupying those points shall be filled up by appointment of persons of the respective categories;
- (iv) Separate rosters are to be maintained for giving effect to reservation in direct recruitment and promotion;
- (v) 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, 100 posts, where 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 50 points shall be drawn up on the lines of the respective rosters;

- (vi) Since reservation does not apply to transfer on deputation or transfer, where the recruitment rules prescribe a percentage of posts to be filled by this method, such posts shall be excluded while preparing the rosters;
- (vii) Appointments of candidates belonging to Scheduled Castes and Scheduled Tribes which were made on merit and not due to reservation are not to be counted towards reservations so far as direct recruitment is concerned. In other words, they are to be treated as general category appointments;
- (viii) For initial adoption of this post-based roster, the existing backlog vacancies in a cadre where the prescribed percentage of reservation for Scheduled Castes and the Scheduled Tribes has not been achieved as per post-based roster prepared under the Amendment Act, shall be considered as vacancies released by recruitment, resignation, promotion etc. of the persons belonging to the said reserved categories and the same are to be filled up by direct recruitment or by promotion of eligible persons from the respective categories by special drive so that the prescribed percentage of reservation is maintained.
- (ix) Before making an appointment by direct recruitment, the Appointment authority shall ascertain by consulting the Roster Register maintained by each Establishment, whether the post is reserved or unreserved and if it is reserved, for whom it is so reserved. Immediately after an appointment is made, the particulars thereof shall be entered in the Roster Register and signed by the Appointing Authority.
- (x) In the Absence of a qualified Scheduled Castes or Scheduled Tribes candidate, as the case may be, in a particular year, the vacancy shall be carried forward and filled up in the next year;
- (xi) Every Establishment shall prepare and notify the roster for each cadre equivalent to the number of

- posts with the concurrence of the Personnel Department and Welfare of Plains Tribe and Backward Classes;
- (xii) The roster shall be maintained separately for permanent and temporary posts;
- (xiii) A vacancy caused due to any reason whatsoever, except termination of service during probation shall be treated as fresh vacancy.
- (xiv) A candidate who claims to be a member of the Scheduled Castes or the Scheduled Tribes shall support his candidature by a Certificate from Deputy Commissioner / Sub-Divisional Officer or from such other authority as may be prescribed by rules made under the Act.

Insertion of Saving saving clause Saving

10. In the principal Act, after section 13, the following new section 14 shall be inserted namely :

14. Notwithstanding anything to the contrary As contained under the provisions under the provisions of this Act, anything done, any action taken or any order made under the provisions of the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978, shall be deemed to have been validly done, taken or made under the corresponding provisions of this Act.

Substitution of existing Schedule

11. In the Principal Act, for the existing Schedule, the following Schedules shall be substituted, namely :

Schedule -I

(See Section 5A)

MODEL 100 POINT ROSTER

1. While preparing the roster, each establishment shall have to keep in mind the number of posts in the cadre and required percentage to be maintained for the Scheduled Castes and Scheduled Tribes in the

cadre so that the prescribed percentage can be achieved.

- The reservation have to be determined with reference to the laid down percentage in the cadre.
- When the prescribed percentage of the reservation in a cadre is achieved, the running accounts have to come to an end.
- Thereafter, the posts shall have to be filled up on the principle of substitution or replacement.

If the total number of posts in a cadre is assumed as 100

Posts, the Model Roster for the same shall be as follows:

Model 100 Point Roster

Sl. No. Post Category should	Share of Representation			Category for which the post be earmarked
	ST(P)	SC	ST(H)	
Percentage	10%	7%	5%	UR
1	0.1	0.07	0.05	UR
2	0.2	0.14	0.1	UR
3	0.3	0.21	0.15	UR
4	0.4	0.28	0.2	UR
5	0.5	0.35	0.25	ST(P)-1
6	0.6	0.42	0.3	UR
7	0.7	0.49	0.35	UR
8	0.8	0.56	0.4	SC-1
9	0.9	0.63	0.45	UR
10	1	0.7	0.5	ST(H)-1
11	1.1	0.77	0.55	UR
12	1.2	0.84	0.6	UR
13	1.3	0.91	0.65	UR
14	1.4	0.98	0.7	UR
15	1.5	1.05	0.75	ST(P)-2
16	1.6	1.12	0.8	UR
17	1.7	1.19	0.85	UR
18	1.8	1.26	0.9	UR
19	1.9	1.33	0.95	UR

20	2	1.4	1	UR
21	2.1	1.47	1.05	UR
22	2.2	1.54	1.1	SC-2
23	2.3	1.61	1.15	UR
24	2.4	1.68	1.2	UR
25	2.5	1.75	1.25	ST(P)-3
26	2.6	1.82	1.3	UR
27	2.7	1.89	1.35	UR
28	2.8	1.96	1.4	UR
29	2.9	2.03	1.45	UR
30	3	2.1	1.5	ST(H)-2
31	3.1	2.17	1.55	UR
32	3.2	2.24	1.6	UR
33	3.3	2.31	1.65	UR
34	3.4	2.38	1.7	UR
35	3.5	2.45	1.75	ST(P)-4
36	3.6	2.52	1.8	SC-3
37	3.7	2.59	1.85	UR
38	3.8	2.66	1.9	UR
39	3.9	2.73	1.95	UR
40	4	2.8	2	UR
41	4.1	2.87	2.05	UR
42	4.2	2.94	2.1	UR
43	4.3	3.01	2.15	UR
44	4.4	3.08	2.2	UR
45	4.5	3.15	2.25	UR
46	4.6	3.22	2.3	UR
47	4.7	3.29	2.35	ST(P)-5
48	4.8	3.36	2.4	UR
49	4.9	3.43	2.45	UR
50	5	3.5	2.5	UR
51	54.1	3.57	2.55	ST(H)-3
52	5.2	3.64	2.6	SC-4
53	5.3	3.71	2.65	UR
54	5.4	3.78	2.7	UR

55	5.5	3.85	2.75	ST(P)-6
56	5.6	3.92	2.8	UR
57	5.7	3.99	2.85	UR
58	5.8	4.06	2.9	UR
59	5.9	4.13	2.95	UR
60	6	4.2	3	UR
61	6.1	4.27	3.05	UR
62	6.2	4.34	3.1	UR
63	6.3	4.41	3.15	UR
64	6.4	4.48	3.2	UR
65	6.5	4.55	3.25	ST(P)-7
66	6.6	4.62	3.3	SC-5
67	6.7	4.69	3.35	UR
68	6.8	4.76	3.4	UR
69	6.9	4.83	3.45	UR
70	7	4.9	3.5	ST(H)-4
71	7.1	4.97	3.55	UR
72	7.2	5.04	3.6	UR
73	7.3	5.11	3.65	UR
74	7.4	5.18	3.7	UR
75	7.5	5.25	3.75	ST(P)-8
76	7.6	5.32	3.8	UR
77	7.7	5.39	3.85	UR
78	7.8	5.46	3.9	UR
79	7.9	5.53	3.95	SC-6
80	8	5.6	4	UR
81	8.1	5.67	4.05	UR
82	8.2	5.74	4.1	UR
83	8.3	5.81	4.15	UR
84	8.4	5.88	4.2	UR
85	8.5	5.95	4.25	ST(P)-9
86	8.6	6.02	4.3	UR
87	8.7	6.09	4.35	UR
88	8.8	6.16	4.4	UR
89	8.9	6.23	4.45	UR

90	9	6.3	4.5	ST(H)-5
91	9.1	6.37	4.55	UR
92	9.2	6.44	4.6	UR
93	9.3	6.51	4.65	SC-7
94	9.4	6.58	4.7	UR
95	9.5	6.65	4.75	ST(P)-10
96	9.6	6.72	4.8	UR
97	9.7	6.79	4.85	UR
98	9.8	6.86	4.9	UR
99	9.9	6.93	4.95	UR
100	10	7	5	UR

OFFICE MEMORANDUM

SCHEDULE-II

[See Section 5A]

MODEL POST BASED ROSTER FOR CADRES HAVING
NUMBER OF POST 13 OR LESS THAN 13

The roster showing 9 posts with one vacancy i.e. the 10th post going to ST(H) will always give a percentage of 30 for reserved categories. Slight variation at one or two points is inevitable for maintaining the prescribed percentage of 22%. As such Model Roster is prepared for cadres having 13 or less posts with 14th post going to ST(H) is prepared and shown below for guidance of each Establishment :

Model Post Based Roster for cadres having number of posts 13 or less than 13 Rotations :

Cadre Strength	Initial Recruitment	1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	1	2	3	4	5 ST P	6	7	8 SC	9	10	11	12	13	14 ST H	
2	2	3	4	5 ST P	6	7	8 SC	9	10	11	12	13	14 ST H		
3	3	4	5 ST P	6	7	8 SC	9	10	11	12	13	14 ST H			
4	4	5 ST P	6	7	8 SC	9	10	11	12	13	14 ST H				
5	5 STP	6	7	8 SC	9	10	11	12	13	14 ST H					
6	6	7	8 SC	9	10	11	12	13	14 ST H						
7	7	8 SC	9	10	11	12	13	14 ST H							
8	8	9	10	11	12	13	14								

Department) issued notification dated 24-10-2013 appointing Shri Harish Sonowal, IAS (Rtd.) as One-Man-Commission to study the and acquire quantifiable date on the compelling conditions of backwardness of Scheduled Castes (SC) and Scheduled Tribes (ST), inadequacy of their representation in various Government services and posts and overall efficiency in public administration as laid down in Article 335 of the Constitution of India in the light of the decision of the Hon'ble Supreme Court in M Nagaraj – Vs – Union of India reported in (2006) 8 SCC 212 and UP Power Corporation Ltd. – Vs – Rajesh Kumar, reported in (2012) 7 SCC 1 as per terms of reference. The One-Man-Commission was requested to submit report expeditiously for examination by the Government and for taking further course of action. In this connection reference was made to two pending cases i.e. WP(C) No. 4034 and 2752 of 2013. The following were the terms of reference of the One-Man-Commission:-

- (1) Whether the social, economic and educational status of SC/ST communities in the State of Assam justifies reservation in promotion to various Government services and posts?
- (2) Whether SCs / STs are adequately represented in various Government services and posts as mandated under Article 16 (4-A) of the Indian Constitution?
- (3) The manner in which overall efficiency in public administration is affected due to Government providing for reservation in promotion to SCs / STs as required under Article 335 of the Indian Constitution and whether there are any adverse effects thereof?
6. Thereafter, subsequent notifications were issued by the Government of Assam in the WPT & BC Department extending the time for submission of report by the One-Man-Commission.
7. Ultimately the One-Man-Commission submitted its report dated 10-03-2014 to the Government of Assam in the WPT & BC Department. The One-Man-Commission concluded that SC & ST communities of Assam are still backward. Their representation in public employment is not adequate and overall efficiency in public administration has not been affected by providing for reservation in promotion to such communities. Therefore, the Commission recommended that reservation in promotion in favour of members of SCs and STs should continue till such time the State Government is satisfied that such groups have advanced to such level at par with the more advanced groups.

8. It appears that the WPT & BC Department had prepared a cabinet memorandum to obtain approval of Cabinet on the recommendation of the One-Man-Commission and sought the views of the Personnel Department on the report of the One-Man-Commission. It further appears that the Principal Secretary to the Government of Assam, Personnel Department submitted his comments on 22-10-2014. It was pointed out that the report of the One-Man-Commission was inadequate and required further elaboration having regard to the promotional cadres.
9. The report of the One-Man-Commission was thereafter placed before the Cabinet and its recommendations were accepted on 02-11-2014. Consequently WPT & BC Department issued Office Memorandum (OM) dated 29-12-2014 laying down guidelines for implementation of post based reservation in promotion.
10. Aggrieved, petitioner has filed the present writ petition for quashing of the report of the One-Man-Commission dated 10-03-2014, Cabinet decision dated 02-11-2014 and the OM dated 29-12-2014. Petitioner further seeks a direction to the respondents to comply with the requirement of Article 16 (\$ -A) of the Constitution of India as explained by the Hon'ble Supreme Court in M Nagaraj (supra) and in UP Power Corporation (supra) before providing for reservation in promotion.
11. Challenge to the report of the One-Man-Commission has been made on various grounds. It is contended that the report has been prepared in a very haphazard and perfunctory manner. The report does not disclose about the methodology adopted while preparing it. No comparable data has been used to examine backwardness of the SCs & STs. Since backwardness is relative term, therefore backwardness of a community has to be examined with reference to a community not perceived to be backward. This exercise was not done. On the other hand, various criteria adopted to judge backwardness, such as, land holding, educational status, health status etc. are inadequate to reach any objective conclusion as to backwardness of a community in the context of reservation in promotion. Moreover, from the tone and tenure of the report, it is evident that the One-Man-Commission had proceeded with a pre-determined mind and therefore the exercise undertaken clearly reflects a mechanical approach. It is contended that the report does not fulfil the requirement mandated by the Hon'ble Supreme Court in M Nagaraj (supra), which is reiterated in UP Power Corporation (supra).

12. Respondent No. 3 has filed affidavit. Locus-standi of the petitioner to file the writ petition has been questioned. It is contended that promotion is an individual right. A person affected because of reservation in promotion would only be entitled to institute a challenge to such promotion. A society like the petitioner cannot institute such a challenge in a representative capacity. It is also contended that the persons who would be affected by the challenge made by the petitioner have also not been made parties in the writ petition. Therefore, the writ petition is also hit by non-joinder of necessary party. On merit, it has been averred that the report of the One-Man-Commission has been prepared to facilitate promotion for SCs and STs. The existence of all the three compelling reasons to justify reservation in promotion viz; backwardness, inadequacy of representation and overall administrative efficiency have been gone into and reflected in the report. Referring to the provisions of Article 16(4-A) of the Constitution, it is stated the said Article provides for reservation in promotion. However, the concerned State will have to show in each case the existence of the three compelling reasons. In the case of the State of Assam, the existence of the three compelling reasons have been indicated in the report of the One-Man-Commission, which was approved by the Cabinet on 02-11-2014. The Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978, which provided for vacancy based reservation, has been amended in the year 2012 to provide for post-based reservation. This Act has not been put to challenge by the petitioner. One-Man-Commission has collected the quantifiable data, vis-à-vis, the three compelling reasons which is admittedly a difficult exercise. It is stated that concept of reservation is based on social backwardness and not on economic backwardness. The report clearly reflects backwardness of SCs and STs in the State of Assam. Existence of backlog vacancies of SCs and STs in promotional cadres is indicative of their inadequate representation in such cadres. Government had considered the views of all the departments including the Personnel Department on the report of the One-Man-Commission and, thereafter, accepted it through the Cabinet decision on 02-11-2014. Contending that no right of the petitioner has been violated, respondent No. 3 seeks dismissal of the writ petition.

13. Respondent Nos. 5 and 6 have filed a common affidavit. In their affidavit, they have traced the leading to insertion of Article 16 (4-A) in the Constitution of India, providing for reservation in promotion in the of SCs and STs, which in the opinion of the State are not adequately represented in the services under the State. It is also stated that the Assam Scheduled Castes and Scheduled Tribes (Reservation of

Vacancies in Services and Posts) Act, 1978 (hereinafter referred to as "the 1978 Act"), has been amended by way of the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) (Amendment) Act, 2012, providing for post-based reservation following the decision in R. K. Sbarwal - Vs - State of Punjab; reported in (1995) 2 SCC 745. Section 5 of the 1978 Act, provides for reservation for SCs and STs in posts to be filled up by way of promotion in the following manner - 7% for SC, 10% for ST(P) and 5% for ST(H). It also provides for a separate post-based roster for each cadre to be operated on the principle of replacement and not as a running account. Referring to the decision of the Apex Court in the case of M Nagaraj (supra), it is stated that Article 16 (4-A) being an enabling provision, it will be governed by 2 (two) compelling reasons, namely, backwardness and inadequacy of representation. The concepts of backwardness and inadequacy of representation are required to be identified and measured on the basis of quantifiable data. This position has been reiterated in the case of UP Power Corporation Limited (supra). The exercise to collect quantifiable data and to form an opinion about the need of reservation in promotion based on such data has been left to the discretion of the State. The opinion so formed by the State being a policy decision cannot be challenged in a Court of Law on the ground of propriety, reasonableness and sufficiency, unless the said opinion or policy decision suffers from the vice of non-application of mind or formulation on literal grounds or being beyond the scope of the statute or being based on irrelevant or extraneous materials. However, the writ petition does not project any such ground to warrant interference in the policy decision taken by the State providing for reservation in promotion. It is also contended that without challenging the vires of the Amendment Act of 2012, it is not open to the petitioner to challenge the process of collection of quantifiable data and the subsequent Office Memorandum dated 29.12.2014. It is contended that the State Legislature had the competence to enact the 1978 Act and the Amendment Act 2012. Respondent Nos. 5 and 6 have also questioned the locus standi of the petitioner to file the related writ petition in a representative character. It is further stated that the report of the One-Man-Commission having received Cabinet approval on 02.11.2014, reflects the subjective satisfaction of the State and in the absence of any grounds as mentioned above, the challenge made to the report of the One-Man-Commission cannot be sustained. The said respondents have asserted that improvement of status of the members of SCs and STs, which have been highlighted by the petitioner does not necessarily mean adequacy of representation in services, which, in any case is based on the subjective opinion of the State. Opinion of the

Personnel Department has been attacked on the ground that it was a lopsided view tinged with bias and was rightly rejected by the Cabinet.

14. An additional affidavit has been filed by the said respondent Nos. 5 and 6. It is stated that the 2 (two) respondents belong to the reserved category, i.e. ST(P) and are serving as Executive Engineer in Water Resources Department, Government of Assam. It is stated that WPT & BC Department by way of a memo dated 27.07.2011 had informed all the departments under the Government of Assam that there were 18,404 backlog vacancies, earmarked for the reserved categories, which were required to be filled up through a special drive. This shows that there is inadequate representation of SCs and STs in the services under the State.

WP(C) No. 2680 of 2015.

15. This petition has been filed by 4 (four) petitioners who are serving as Assistant Engineer (Civil) in the Irrigation Department, Government of Assam and seek promotion to the next higher post of Assistant Executive Engineer (Civil). They are aggrieved by promotion of respondent No. 5 to 27, who belongs to the reserved category, to the post of Assistant Executive Engineer. While challenging their promotion based on the recommendation of the departmental promotion committee dated 11.02.2015, they have also challenged the legality and validity of the Office Memorandum dated 29.12.2014.

16. On 15.05.2015, it was submitted on behalf of the petitioners that challenge to the promotion of respondent No. 5 to 27 from the rank of Assistant Engineer (Civil) to the rank of Assistant Executive Engineer (Civil) in the Irrigation Department had already been decided by this Court in WP(C) No. 810 of 2015. That being the was submitted that petitioners would like to confine the challenge in the writ petition to the legality and of the Office Memorandum dated 29.12.2014.. Since the said Office Memorandum is also under challenge in WP(C) No. 1560 of 2015, the present case was directed to be listed along with WP(C) 1560 of 2015.

17. Petitioners have contended that the Office Memorandum dated 29.12.2014 was issued on the basis of the report submitted by the One-Man-Commission. Referring to the Irrigation Department, Government of Assam, petitioners have averred that in the higher ranks of the said Department, there is more than adequate representation of SCs and STs. Therefore, there is no question of providing reservation to such categories in promotion in the Irrigation Department. The impugned

Office Memorandum dated 29.12.2014 is in violation of the guidelines issued by the Hon;ble Supreme Court in M Nagaraj (supra) and UP Power Corporation Ltd. (supra), which held that reservation for SCs and STs in promotion is permissible provided, they are not adequately represented in the services under the State. The Office Memorandum dated 29.12.2014, has been assailed as being arbitrary and having been prepared without taking into consideration the relevant factors. Petitioners would like to contend that because of continuous reservation in promotion despite adequate representation, there is a higher degree of frustration amongst candidates belonging to unreserved category working in the Irrigation Department, which is affecting their performance and overall administrative efficiency. It is contended that in the State of Assam, reserve category candidates are adequately represented and therefore, continuation of such reservation may not be justified as inadequacy of representation is a compelling reason to justify such reservation. The report of the One-Man-Commission and the Office Memorandum dated 29.12.2014 have also been challenged on the ground of being discriminatory.

18. Heard Mr M K Choudhury, learned Senior Counsel for the petitioner in WP(C) No. 1560 of 2015 and Mr S K Goswami, learned Counsel for the petitioners in WP(C) No. 2680 of 2015. Also heard Mr A C Buragohain, learned Advocate General, Assam, who has produced the record. Mr D K Das, learned Counsel has appeared on behalf of respondent No. 5, 6, 8, 9 and 10. Mr J Payeng, learned Counsel had appeared for respondent No. 7 in WP(C) No. 1560 of 2015. Also heard Mr D Saikia, learned Senior Counsel for respondents No. 5 and 6, Mr H K Mahanta, learned Standing Counsel, Personnel Department and Dr B Ahmed, learned Standing Counsel, Irrigation Department have also been heard.

19. Leading to arguments on behalf of the petitioner in WP(C) No. 1560 of 2015, Mr M K Choudhury, learned Senior Counsel have made extensive reference to the report of the One-Man-Commission, particularly, Annexures - V, VI and VII thereof. He submits that the said report suffers from sample bias. It is based on empirical data and not on comparative data, vis-à-vis, unreserved category. Making a scathing attack on the report, he submits that it is an insincere effort and a mechanical attempt put forward to justify pre-determined conclusions. He submits that there are 58 administrative departments in the State of Assam, out of which only 18 departments had participated in the exercise carried out by the One-Man-Commission. Thus, the report is neither adequate nor extensive. He further submits that major departments of the State Government were not consulted while finalizing the report.

Referring to the provisions of Article 16(4-A) of the Constitution and the decisions of the Apex Court in *M Nagaraj (supra)*, *Suraj Bhan Meena – Vs – State of Rajasthan*; reported in (2011) 1 SCC 467 and *UP Power Corporation Limited (supra)*, he submits that conclusions of the One-Man-Commission are not supported by the data relied upon and a perusal of the report clearly indicates that it was tailor-made and pre-determined. Naturally, such an exercise cannot be a wholesome exercise and is quite inadequate having regard to the objective of the One-Man-Commission. He further submits that Personnel Department of the Government of Assam had given its elaborate opinion suggesting further indepth exercise, but unfortunately, views of the Personnel Department were not taken into account, rather those were completely overlooked. So also views of the Hill Areas Department. Referring to Rule 54 of the Assam Rules of Executive Business, 1968, learned Senior Council for the petitioner, submits that WPT & BC Department did not follow the procedure prescribed under the aforesaid Rules while carrying out the exercise, which has vitiated the decision of the Cabinet approving the report of the One-Man-Commission.

20. Mr S K Goswami, learned Council for the petitioners in WP(C) No. 2680 of 2015, while generally supporting the submission advanced by Mr M K Choudhury, learned Senior Council of the petitioner in WP(C) No. 1560 of 2015, submits that right of promotion is not fundamental right. Article 16 (4-A) of the Constitution is an provision which empowers the State to provide for reservation for SCs and STs in promotion subject to of 2 (two) compelling reasons, namely, backwardness of the community and inadequacy of representation. The 2 (two) compelling reasons will then have to be balanced with the overall administrative requirement of efficiency in service. Only when the State is satisfied about the presence of the above, will it be entitled to go for reservation in promotion. He has also referred to the decision of the Apex Court in *Ajit Singh Januja – Vs – State of Punjab*, reported in (1999) 7 SCC 209.
21. Mr A C Buragohain, learned Advocate General has raised the question of maintainability of the writ petition. He submits that petitioner in WP(C) No. 1560 of 2015 is not an aggrieved person as is understood in law. Petitioner cannot file a writ petition in representative capacity. No legal or Constitutional right of the petitioner has been violated. Moreover, the writ petition is more in the nature of PIL, but without fulfilling the necessary requirements it has been filed. Neither PIL nor an individual writ would be maintainable in this case. Referring to Articles 341 and 342 of the Constitution, learned Advocate General submits that SCs and

STs are creation of Parliament and considering the historical injustice suffered by the said communities and having regard to the mandate of Articles – 15(4) and 15(4-B) of the Constitution, SCs and STs are entitled to reservation. Learned Advocate General further submits that India is a constitutional democracy and the objective is to have an inclusive society to ensure that disadvantaged are marginalized groups are at par with the more developed communities, it is in that background that reservation in promotion is necessary and cannot be static. Villages have been selected randomly and not selectively. The One-Man-Commission had collected adequate materials and based thereon had prepared the report. The report of the One-Man-Commission is a basic document to determine the quantifiable data as per decision of the Apex Court in the case of *M Nagaraj (supra)*, and reiterated in *UP Power Corporation Limited (supra)*. He submits that after acceptance of the report of the One-Man-Commission by the Cabinet, views of the Personnel Department are no longer relevant and have become redundant. He finally submits that challenge made by the petitioners to the report of the One-Man-Commission and the Office Memorandum dated 29.12.2014 is without any substance and is liable to be rejected. .

22. Mr D K Das, learned Council has also questioned the maintainability of the writ petition. He submits that need for reservation in promotion depends upon the subjective satisfaction of the State. The report of the One-Man-Commission has placed the quantifiable data before the State and its acceptance by the State is indicative of the subjective satisfaction of the State about the need to have reservation in promotion. Mr Das further submits that State of Assam had enacted the 1978 Act, which was amended in the year 2012 providing for reservation in promotion to SCs and STs. In view of availability of quantifiable data which justifies making provision for reservation for SCs and STs in promotion, the provisions of the 1978 Act, as amended, have now, become enforceable. Presence of a large number of backlog vacancies in different cadres is indicative of inadequate representation of backward classes thereby justifying reservation in promotion. Contending that the 2 (two) writ petitions are devoid of any substance, he seeks dismissal of the writ petitions.
23. Mr Saikia, learned Senior Council has mainly argued on the maintainability of the writ petition in WP(C) No. 1560 of 2015. He submits that petitioner being a society registered under the provisions of the Societies Registration Act, 1860, it cannot be aggrieved party in a service matter. Therefore, petitioner has no locus standi to file and

maintain the writ petition. In support of his submissions, Mr Saikia has placed reliance on the following decisions:

(2007) 4 SCC 1; Nair Service Society – Vs – State of Kerala;
(2013) 4 SCC 465; Ayaubkhan Noorkhan Pathan – Vs – State of Maharashtra;
(2013) 5 SCC 1; State of Punjab – Vs – Salil Sabhlik & Others.

24. In his reply submissions Mr Choudhury asserts that the writ petition is maintainable. What is under in the writ petition is not an individual promotion but the report of the One-Man-Commission and the consequential Office Memorandum dated 29.12.2014. He has placed reliance on the following decisions:

(2001) 6 SCC 663; Green Park Theaters Associated (P) Ltd. – Vs – Association of Victims of Uphaar Tragedy and Others;
(2004) 1 SCC 755; Ahmedabad Pvt. Primary Teachers' Association – Vs – Administrative Officer and Others;
(2009) 16 SCC 1; Steel Authority of India Limited – Vs – Sutni Sangam and Others;
2010 (2) GLT 673; Meghalaya Wine Dealers Association & Anr. – Vs – State of Meghalaya & Others.

25. Submissions made by learned Council for the parties have received the due consideration of the Court. Record produced by Mr Buragohain, learned Advocate General has also been perused.

26. Since objection as to the maintainability of the writ petition, i.e., WP(C) No. 1560 of 2015 has been raised by the respondents, the same is taken up for adjudication at the outset.

27. As already noticed above, the 2 (two) writ petitions have been heard together.

28. WP(C) No. 1560 of 2015 has been filed by a society called Equality Forum and WP(C) No. 2680 of 2015 has been filed by 4 (four) individual petitioners, who are serving as Assistant Engineer (Civil) in the Irrigation Department, Government of Assam. In the two writ petitions, grievance has been made against the report of the One-Man-Commission and the Office Memorandum dated 29.12.2014, which has been issued pursuant to approval of the report of the One-Man-Commission by the Cabinet. As noticed above, WP(C) No. 1560 of 2015 is the leading case and has been filed by a society called Equality Forum. It is a society registered under

the Societies Registration, 1860. As Per memorandum of association and constitution of the society, its aims and objectives are to provide equality of opportunity and to fight legally for equality of opportunity, to uphold the fundamental rights in the greater interest of public administration, to promote efficiency of its members, to provide all kinds of mass-welfare to all sections of Government employees and corporation etc.

29. At this stage, it may be useful to bear in mind that the subject matter of the writ petition does not relate to any individual case of promotion. In fact, this petition does not challenge any promotion of any member of Sc or ST. On the other hand, what is under challenge is the report of the One-Man-Commission dated 10.03.2014, which was approved by the Cabinet on 02.11.2014 and the consequential Office Memorandum dated 29.12.2014. Though broadly speaking, petitioner seeks intervention of the Court in a matter relating to service jurisprudence, yet this petition is not related to any inter-se-service dispute between 2 (two) individual employees / public servants. Petitioner has stated that it espouses the cause of those Government servants / public servants, who would be prejudicially affected because of reservation being provided to SCs and STs in matters of promotion. The report of the One-Man-Commission as approved by the Cabinet has recommended reservation for SCs and STs in promotion on the basis of which Office Memorandum dated 29.12.2014 has been issued. In such circumstances, Court is of the view that petitioner would have the locus to challenge the legality and validity of the report of the One-Man-Commission and the consequential Office Memorandum dated 29.12.2014. Moreover, the connected writ petition, i.e., WP(C) No. 2680 of 2015 has been filed by 4 (four) Government servants serving as Assistant Engineer (Civil) in the Irrigation Department. As per their case projected in the writ petition, they could not be promoted to the next higher rank because of reservation for SCs and STs. Accordingly, they have challenged the report of the One-Man-Commission and the consequential Office Memorandum. Since both the writ petition have been heard together, it would neither be just nor proper to non-suit the petitioner in WP(C) No. 1560 of 2015 on the ground of lack of standing.

30. In Scheduled Castes and Scheduled Tribes Officers' Welfare Council – Vs – State of Uttar Pradesh and Another; reported in (1997) 1 SCC 701, the petitioner was an association of SC and ST Officers serving in the Health Department in the State of Uttar Pradesh. The Association had highlighted the grievance of the SC and ST Officers, who were aggrieved by issuance of a memo by the State of Uttar Pradesh dated 28.07.1986, increasing the minimum service for promotion from Medical Officer

to Deputy Chief Medical Officer and from Deputy Chief Medical Officer to Chief Medical Officer on the ground that it was a pretext and subterfuge to deny promotion to the eligible Officers belonging to SCs and STs. The writ petition was not only entertained by the Hon'ble Supreme Court but was not allowed by quashing the offending memo. The State was directed to consider the case of the 3 (three) officers belonging to SC and ST category and if found fit, to promote them or any other eligible officer, if necessary by creating supernumerary posts. That was a writ petition filed by an association challenging the legality and validity of a Government memo on the ground that it came in the way of promotion of eligible officers belonging to SCs and STs.

31. In Nair Service Society (supra), the writ petition was filed by Nair Service Society, initially registered under the Travancore Companies Act, 1914, and thereafter, under Companies Act, 1956. The question which fell for consideration in the said proceeding was as regards vis-à-vis the report of the Justice K K Narendran Commission and acceptance thereof by the State of Kerala by issuing notification dated 27.05.2000. The Apex Court made it clear at the outset that it was not possible to dismiss the writ petition summarily on the ground of lack of locus standi on the part of the petitioner, i.e., Nair Service Society. It was noticed that the said society had raised the question of reservation for backward classes again and again. The Apex Court held that when the question of such grave importance was brought to the notice of the Court, having regard to the principle underlying the purport and object for which the creamy layer was sought to be excluded, it could not shut its eyes and refuse to determine the question. In the said proceeding, the Apex Court set aside the report of the Narendran Commission and directed the State to appoint a fresh Commission to go into all aspects of the matter.
32. In (2013) 10 SCC 308; Himachal Pradesh Scheduled Tribes Employees Federation - Vs - Himachal Pradesh Samanaya Varg Karamchari Kalayan Mahasangh, writ petition was filed before the High Court of Himachal Pradesh by the respondent questioning the legality and validity of the Government instructions dated 07.09.2007, providing for reservation in promotion with consequential seniority in favour of SCs and STs in all classes of posts in services under the State. The writ petition was allowed and instructions dated 07.09.2007 were quashed. It is against this order of the High Court that Himachal Pradesh Scheduled Tribes Employees Federation approached the Apex Court. On an interlocutory application filed by the appellant, the Apex Court directed the State of Himachal Pradesh to take a final decision to provide reservation in promotion to SCs and STs and to bring about certainty and

clarity in the matter on the basis of data already collected. It is thus evident that when questions of grave importance, such as those related to reservation in public services, are brought before the court, adjudication is not declined on technical pleas such as locus standi of the petitioner.

33. It may also be mentioned at this stage that the petitioner in WP(C) No. 1560 of 2015, had earlier filed writ petition before this Court, being WP(C) No. 4034 of 2013, which has been referred to in the Government Notification dated 24.10.2013 appointing One-Man-Commission. WP(C) No. 4034 of 2013 was heard along with WP(C) No. 2752 of 2013 filed by one Md Shakeel Saadullah and another. It was admitted for final hearing on 07.08.2013 with the direction that interim order passed on 30.05.2013 in WP(C) No. 2752 of 2013 would be treated to be the interim order in both the cases and would continue till further orders. Interim order dated 30.05.2013 was to the effect that State would not take any action in violation of the law laid down by the Apex Court in UP Power Corporation Limited (supra). On 14.10.2014, when WP(C) No. 4034 of 2013 was called upon for hearing, it was submitted by the learned Advocate General of the State that the Cabinet would soon take a decision on the question of quantified data pending consideration before it. Thereafter, the Cabinet approved the recommendation of the One-Man-Commission. As noticed above, in the Government notification dated 24.10.2013 appointing the One-Man-Commission, specific reference was made to WP(C) No. 4034 of 2013 filed by the petitioner.
34. Having regard to the above and considering the seriousness of the issue having wide ramification in the services under the State, Court is of the view that it should not decline adjudication of the 2 (two) writ petitions on the preliminary objection raised by the respondents. Accordingly, the preliminary objection relating to maintainability of the 2 (two) writ petitions is hereby rejected.
35. Having answered the preliminary objection as above, the merit of the challenge may now be To have the issue in a proper perspective, it would be apposite to briefly narrate the constitutional and provisions together with the judicial pronouncements on the subject.
36. Issue in this case relates to reservation in promotion for SCs and STs in public service under the State. Article 46 of the Constitution of India, which is one of the directive principles of State Policy provides that State shall promote with special care the educational and economic interests of the weaker sections of the people, particularly, SCs and STs and shall protect them from social injustice and all forms of exploitation.

37. Article 16, which is a species of Article 14, mandates equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Under Article 16(4), the State has the liberty to make provision for reservation of appointments or posts in favour of any backward class of citizens, which in the opinion of the State is not adequately represented in the services under the State. By virtue of the provisions contained in Article 16 (4) of the Constitution, benefit of reservation to SCs and STs in initial appointment were extended to promotion as well. This position continued till the judgement of the Apex Court in *Indra Sawhney – Vs – Union of India*; reported in 1992 Suppl. (3) SCC 217, which held that Article 16(4) provided for reservation only in initial appointment and did not provide for reservation in promotion. However, it was clarified that the said decision would have only prospective operation and not effect the promotions already made. In respect of those services, where reservation was provided in promotion, it was declared that such reservation may continue for a period of 5 (five) years.

38. Following the above decision in *Indra Sawhney (supra)*, Parliament enacted the Constitution (77th Amendment) Act, 1995, inserting Article 16 (4-A) in the Constitution. The said Article 16 (4-A) underwent further amendment brought in by Constitution (85th Amendment) Act, 2001. As a result of the above 2 (two) amendments, Article 16 (4-A) of the Constitution now reads as under:-

“(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion with consequential seniority to any class or classes in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

39. In the meanwhile, the Apex Court delivered judgement in 3 (three) cases having considerable bearing on the subject of reservation in promotion, which necessitated the above amendments, particularly, the 85th Amendment. In *R K Sabharwal (supra)*, the Apex Court held that social reservation in favour of SCs and STs were post-based reservation with inbuilt concept of replacement and not vacancy based. In *Union of India – Vs – Virpal Singh Chauhan*; reported in (1995) 6 SCC 684, it was held that though the reserve category candidates were entitled to accelerated promotion, they were not entitled to consequential seniority. In other words, though the reserve category candidates would get the benefit of accelerated promotion by virtue of reservation, their inter-se-seniority

vis-à-vis the general category candidates on promotion would regain their seniority by application of the catch up rule. This view was reiterated in *Ajit Singh (1)* and *Ajit Singh (2)*.

40. It was with the view to overcome the above decisions, which the Parliament was of the opinion had adversely affected the interest of the Government servants belonging to SCs and STs that the 85th Amendment had to be brought in giving benefit of consequential seniority in addition to accelerated promotion to the SCs and STs.

41. Sub-Article (4-A) as it stands today provides that equality of opportunity as mandated by Article 16 shall not prevent the State from making any provision for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of SCs and STs, if in the opinion of the State they are not adequately represented in the services under the State.

42. At this stage, a brief reference to Article 335 of the Constitution may be made. Article 335 provides that claims of the members of SCs and STs in the making of appointments to services and posts in connection with of the Union or of a State shall be taken into consideration consistently with the maintenance of efficiency in administration. As per the proviso, nothing in Article 335 would prevent in making of any provision in favour of SCs and STs for relaxation in qualifying marks in any examination or lowering the standards of evaluation for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

43. Constitutional validity of the Constitution (77th Amendment) Act, 1995, the Constitution (85th Amendment) Act, 2001 amongst others came up for consideration before the Apex Court in the case of *M Nagaraj (supra)*. The Constitution Bench of the Apex Court while upholding the constitutional validity of the aforesaid amending acts, however, held that Article 16 (4-A) is an enabling provision. If the State wants to provide reservation for SCs and STs in matters of promotion it has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. More about this in the later part of the judgement. At this stage, it would suffice to note that before providing for reservation in promotion, the State must examine and make assessment of the backwardness of the class and inadequacy of representation of that class in public employment, which must be consistent with the requirement of overall administrative efficiency by

collecting quantifiable data. This position has been reiterated in the subsequent cases of Suraj Bhaan Meena (supra) & Uttar Pradesh Power Corporation Limited (supra).

44. In so far the State of Assam is concerned, the State had enacted the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978, providing for reservation of vacancies in services and posts for members of SCs and STs. Section 5 of the said Act provided for reservation for SCs and STs in vacancies to be filled up by promotion in the manner indicated therein. There would be reservation to the extent of 7% for SC, 10% for ST(P) and 5% for ST(H). For this purpose, a roster of 20 (twenty) vacancies was provided. Rules have also been framed by the State Government to give effect to the provisions of the said Act.
45. Following the judgement in R K Sabharwal (supra), which ruled that reservation would be post-based and not vacancy based, the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) (Amendment) Act, 2012, has been enacted, amending the 1978 Act whereby instead of reservation in vacancies it has now been made reservation in posts though the percentage of reservation has been maintained. A separate post-based model of 100 point roster has also been provided.
46. In the meanwhile, a Division Bench of this Court in two cases including one filed by the petitioner, as mentioned above, had made it clear that State would not take action in violation of the law laid down by the Hon'ble Supreme Court in UP Power Corporation Limited (supra).
47. In a separate proceeding relating to reservation in promotion in the Irrigation Department (MC No. 726 of 2014 in WP(C) No. 707 of 2014), this Court held that there was no quantifiable data before the State regarding the 3 (three) constitutional requirements, namely, backwardness of the class, inadequacy of representation in public services and overall efficiency in administration in the event of reservation in promotion. It was held that in the absence of such quantifiable data question of forming any opinion by the State to invoke the enabling provision of Article 16(4-A) would not arise. Accordingly, it was held that till the exercise of collection of quantifiable data relating to the three constitutional requirements as mandated in M Nagaraj (supra) and Uttar Pradesh Corporation Limited (supra) and formation of opinion by the State based on the quantifiable data so collected that the enabling provision of Article 16(4-A) is to be invoked was carried out,

the 1978 Act as amended in 2012 in so far it provides for reservation in promotion would remain in a dormant state.

48. At this stage, it will be useful to refer to the report of the One-Man-Commission. As already noticed above, the One-Man-Commission was constituted by the Government of Assam vide notification dated 24.10.2013 to study and acquire quantifiable data on the compelling conditions of backwardness of SCs and STs, inadequacy of their representation in various Government services and posts and overall efficiency in public administration because of reservation in promotion in the light of the decisions of the Apex Court in M Nagaraj (supra) and UP Power Corporation Limited (supra) on the 3 (three) terms of reference mentioned in the said notification. The substance of are available in Annexures-V, VI and VII thereto.
49. Annexure – V deals with quantifiable data of backwardness of SCs and STs. The Commission made an of the demographic pattern of SCs and STs in the State of Assam noting that SCs comprise of 8.17 % of the total population of the State, whereas, STs constitute 15.91 % of the total population of the State. The Commission referring to the decision of the Apex Court in Indra Sawhney – Vs – Union of India, proceeded on the premise that the concept of creamy layer do not apply to SCs and STs. All SCs and STs are deemed to be backward and there cannot be further determination of backwardness amongst them. The Commission proceeded to hold that it is not the individual but the community as a whole that has to be taken into account to determine backwardness. Therefore, there is no burden on the part of the State to ascertain backwardness of SCs and STs. Nonetheless, the Commission examined backwardness of the 2 (two) communities on the yardstick of several indicators like economic status, access to education and health facilities etc. The Commission observed that SCs and STs of Assam predominantly live in rural areas. Referring to STs, it is stated that nearly 14.1 % live below poverty line. Though their main means of livelihood is cultivation, despite cultivating and occupying land for decades the tribal population does not have ownership over the land. Therefore, they have no legal right over their land. They do not get compensation when their lands are acquired by Government. They cannot avail loan for increasing productivity of the land. Riverine tribal population is subjected to perennial floods and erosion making a sizeable portion of such population landless and forced to become farm labourers. Referring to Dhemaji and Majuli, it is stated that some people have to spend nearly six months every year on embankments due to flood and erosion.

- 49.1 In case of SCs, it is stated that 27.7 % of them live below poverty line though a large population of SCs are occupation based particularly relating to fishery and pottery making. Because of lack of market and age old prejudice towards certain caste based occupations, many of the SCs have left their traditional occupations. Referring to the studies undertaken by National Sample Survey Organization, the Commission has pointed out extremely limited degree of land ownership. Proportion of households possessing less than 1 (one) hectare of land amongst STs is 45.3 % and amongst SCs, it is 72.3 %.
- 49.2 Referring to access to education, the Commission reports that schooling within easy access has been relatively poor for SC and ST children as compared to the general population areas. Where SCs and STs are predominant, there are very few primary schools in the neighbourhood. Percentage of school drop-out is very high amongst SC and ST children. Scheme like mid-day meal appears to have failed to lure children to school. Drop-out rate of SC and ST children in Assam is relatively higher as compared to the all India drop-out rate. As per statistics, the drop-out rate in Class I to VIII among STs is 77.11 % as compared to all India rate of 62.48 % and in Class IX, it is 86.36 % as compared to the all India rate of 86.55 %. Drop-out rate in Class I to VIII in respect of SCs is at par with the all India rate of 69.53 % and in Class IX, it is 83.84 % as compared to all India rate of 75.68 %. Referring to a study conducted by the Assam Institute of Research for Tribals and Scheduled Castes, the Commission reports that there is high drop-out rate among STs as one climbs the academic ladder. It is because educational is not available within their reach. Education becomes a costly affair as high schools and colleges are located at a distance. Quality of education received by SCs and STs cannot be compared to the education received in urban and general areas because of lack of quality schools, colleges and teachers. Due to non-availability of quality education in SC and ST areas, students of these communities fall to compete with students of other communities. In this connection, reference has been made to performance in matriculation examination and admission into some prominent educational institutions. Only 2.5 % of SC population and 2.3 % ST population are graduates. As a result, number of qualified persons in these communities is negligible.
- 49.3 Referring to health and sanitation, it is stated that SCs and STs have very limited access to health facilities. The areas where they live lack basic health amenities. Being located in isolated and far-flung areas, these areas are prone to diseases like malaria, typhoid, cholera, diarrhoea, tuberculosis etc. Many of the tribal villages in the hilly areas have no

motorable road communication and can be reached only on foot. Though health centres have been established, these centres remain functionless because of absence of doctors and health workers.

- 49.4 The commission also reports that SC and ST households lag behind in terms of having water facilities. Drinking water is a major problem faced by those communities. Only 33.06% of SC households and 30.91% of ST households have drinking water facilities.
- 49.5 It is also stated that SC and ST communities suffer from lack of basic sanitation facilities. The idea of having toilets within the house or in the vicinity is still a new concept for such communities even after so many years of independence. Referring to a survey conducted by the WPT & BC Department, it is stated that manual scavenging is still prevalent in Assam. There are 8434 numbers of identified manual scavengers in Assam as on 2012, with heavy concentration in Kamrup district.
- 49.6 SCs and STs also suffer from lack of housing. Even though there are schemes like Indira Awas Yojana (IAY), in reality such schemes do not seem to reach these communities due to lack of monitoring.
- 49.7 Persistent backwardness amongst the tribal population is primarily responsible for deep-rooted superstitions beliefs leading to inhuman practice like witch hunting, which is particularly prevalent in tribal dominated pockets.
- 49.8 Because of such under-development, according to the Commission, it has led to resentment amongst the tribal populace. State Government is trying to address the problem by creating autonomous councils. It is stated that creation of such councils suggests that the Government has realized the need to take affirmative action for development of SCs and STs.
- 49.9 The Commission also considered the status of 7(seven) villages on sample basis inhabited by SC and ST people including 2 (Two) villages of Nowapara and Teteliguri, both near the State capital. The report states that despite being situated near the State capital hardly at a distance of 24 and 17 kilometres, respectively, the condition of the 2 (two) villages is most pathetic. There is lack of roads, education, health facilities etc. It is stated that economic condition of the people of the 2 (two) villages is deplorable. Because of economic compulsion and ignorance, villagers have been exploited by other general community people by purchasing

their land at throw away price. Same is the position, if not worse, in the case of the other villages.

49.10 Finally, the One-Man-Commission concluded that SCs and STs are economically, socially and educationally backward. They, particularly the STs, reside mostly in the foot-hills, hamlets and river-banks due to their historical background, geographical isolation and shyness of contact. They have unequal access to important indicators of progress like education and health. Despite efforts by the Government, it appears that there has been failure to deliver the benefits of development to SCs and STs.

50 Annexure – VI deals with quantifiable data on inadequacy of representation of SCs and STs in various Government services and posts. Reference has been made to the 1978 Act, which provides for reservation to SCs and STs both in direct recruitment and in promotion. It is stated that despite providing reservation of SCs and STs in public employment, still, there exists huge backlog vacancies meant for SCs and STs. It is stated that reservation policy has not been implemented in its true spirit by various Government Departments leading to de-reservation of a number of posts earmarked for SCs and STs. Backlog vacancies as on 2006 were reported to be 18,084, for which special recruitment drive had to be carried out. As per report of the WPT & BC Department, as on 01.04.2013, the total shortfall against vacancies earmarked for SCs and STs was 5493. Therefore, the Commission has taken the view that inadequacy of representation for SCs and STs in public employment still exists and the Government departments have failed to take affirmative action to remove such inadequacy.

50.1 The Commission examined the roster registers of some departments like Home-Guards, Directorate of Agriculture, Public Health Engineering Department, Sports and Youth Welfare, Panchayat and Rural Development, Tourism, Health and Family Welfare etc., but it has been stated that many of the major departments had not furnished data relating to various cadres in their respective departments to the Commission. Consequently, the shortfall vacancy in those departments could not be accounted for. Making an analysis of the available data, the Commission concluded that there are huge shortfall vacancies meant for SCs and STs in various cadres, which have unfilled since long time. It is however, observed that SC and ST employees, who are working in various cadres are there only because of reservation.

51 Annexure – VII deals with quantifiable data on overall efficiency of public administration due to reservation in Government services and posts. The One-Man-Commission noted that it is the duty of the State to take into consideration the claims of SCs and STs in matters of appointment subject to the condition laid down in Article 335. While holding that the controversy relating to overlapping of provisions of Article 16 (4) and 335 was settled in the case of Indra Sawhney (supra) by laying down that reservation is not necessarily anti-meritorian because efficiency is not identical with merit in an examination, the Commission put a question to itself as to how to measure efficiency. Observing that efficiency of a person cannot be qualified, the Commission stated that there are several aspects of efficiency and referred to the observations of Justice O Chinnappa Reddy in K C Vasanth Kumar – Vs – State of Karnataka; reported in [1985 (Supp.) SCC 714]. Declaring that there is no place for inefficiency in public administration, the Commission has reported that feedbacks received from various departments do not reflect that reservation for SCs and STs in promotion have affected administrative efficiency. In every administrative department, there is a mechanism in place to consider promotion. There is selection board / departmental promotion committee in every department with laid down criteria to be considered while making selection for promotion. In matters of promotion, there is no relaxation of eligibility criteria for SCs and STs. Annual Confidential Reports (ACRs) form the basis for assessing merit and efficiency of the person under consideration for promotion. Assessment is made on the basis of ACR gradings. Therefore, the Commission has stated that in Assam, there is no relaxation or lowering of marks for SCs and STs at the time of promotion. The One-Man-Commission sought for the views of various departments on the following aspects:-

- (i) Departmental action initiated against SC & ST employees for dereliction of duty;
- (ii) Withholding of promotion of SC/ST employees to higher grades for inefficiency;
- (iii) Adverse reports received against SC and ST employees for inefficiency or dereliction of duty;
- (iv) Special training programme organized exclusively for SC/ST employees to enhance their efficiency in Government services.

51.1 The Commission has stated that from the reports received there is neither any statistical evidence nor any example of negative impact on the administration due to reservation being provided to SCs and STs in promotion at various levels.

51.2 The Commission also noted that considering the past meritorious service of reserve category officials of the State, they were posted as Governor of State, Chief Secretary and Member of Assam Information Commission. Many such officials have been re-engaged after retirement due to their efficiency in service.

51.3 According to the One-Man-Commission, considering the smooth running of State administration and consistent growth of Assam, reservation in promotion to SCs and STs has had no adverse impact on the efficiency of public administration. Most of the revenue earning departments have sizeable SC and ST employees and have been performing satisfactorily over the years. In departments like PWD, Irrigation and Health and Family Welfare, important posts are being held by reserve category officers. Work in these departments has not suffered due to presence of SC and ST employees at various levels on account of reservation. Reference has been made to SC and ST members of the Assam Legislative Assembly and Parliament, stating that because of their merit and efficiency they have been instrumental in moulding policies of the Government. Therefore, the One-Man-Commission concluded that despite existence of SC and ST quota in recruitment as well as in promotion in Government departments, it does not appear that the administrative efficiency of various departments have been affected at all, rather there has been significant improvement in key developmental indicators. Therefore, the Commission took the view that in spite of providing reservation in appointments and promotions, the overall administrative efficiency of Government Departments as provided under Article 335 has not been compromised at all.

However, after examining the position in some of the cadres in Agriculture Department, Public Health Engineering Department, Sports and Youth Welfare Department etc., the Commission concluded that there is ... adequacy of representation of SCs and STs in the services under the State. Referring to the backlog vacancies of SCs and STs as of 2006, being 18,804, the Commission noted that there still exists huge backlog vacancies meant for SCs and STs. Like in previous requirement, here also the Commission took the view that inadequacy of representation of SCs and STs in public employment still exists because the Government departments have failed to take affirmative action to eliminate the same. However, the Commission contradicted itself when it stated that as per statistics provided by the WPT & BC Department, as on 01.04.2013, the shortfall of SCs and STs was 5493, which shows that between 2006 and 2013, the backlog vacancies for SCs and STs had

drastically come down. Moreover, the Commission is silent as to whether this shortfall pertained to only the promotional cadres or all the cadres including those required to be filled up by way of direct recruitment. Again, the commission contradicted itself by stating that SCs are well represented in the cadres of Junior Engineer and Senior Grade Junior Engineer in the Public Health Engineering Department. Likewise, it is stated that ST(H) is well represented in the cadre of Assistant Engineer. Again, in the cadre of Executive Engineer, it is stated that SCs are well represented.

58. What is noticed from the above is that the One-Man-Commission made a general overview of the reservation position in the services under the State Government and based on the backlog position and the situation in some departments, came to the conclusion that there is inadequate representation of SCs and STs in Government services. What the Commission failed to keep in mind while carrying out the aforesaid exercise was that inadequacy of representation of SCs and STs in the services under the State was required to be assessed in the context of promotional cadres. In various services under different departments certain posts are required to be filled up by direct recruitment, whereas, as one progresses in the upward hierarchy in the pyramidal structure of such services, the higher cadres are required to be filled up by way of promotion. It is in respect of such cadres in the services that inadequacy of representation of SCs and STs were required to be considered.

59. At this stage, it may be useful to refer to the views of the Personnel Department on the note prepared by the WPT and BC Department on the report of the One-Man-Commission for obtaining approval of the Cabinet. Cabinet memorandum was prepared by the WPT and BC Department and circulated under Rule 17 of the Assam Rules of Executive Business. The Judicial Department took the stand that WPT and BC Department may obtain the specific views of the Personnel Department on the findings of the Commission concerning efficiency in administration and backwardness as well the methodology followed in determining the same. It was further opined that it would be better to obtain the views of the learned Advocate General, Assam as the matter related to implementation of Supreme Court directives. This is how the matter was placed before the Personnel Department. On the issue of Backwardness, the Personnel Department noted that the report was not comprehensive because key indicators like literacy level, out of school children, infant mortality rate, women empowerment, per capita income generation etc., were not taken into account. Moreover, backwardness was examined taking SC and ST communities as a whole, but there was

no assessment of backwardness of individual SC and ST communities. In respect of inadequacy of representation in promotional cadres, it was noticed that the Commission had examined only some cadres, both direct recruitment and promotional cadres in few departments. Personnel Department pointed out that while examining the status of inadequacy in a cadre, basic requirement is the data on 3(three) aspects, i.e., cadre strength, men in position and the categories of men in position. Only then a correct picture of inadequacy of representation would be available/ Personnel Department pointed out that in respect of inadequacy of representation in promotional cadres, the One-Man-Commission was bound by the conditions laid down in Article 16 (4-A) of the Constitution, which enables the State to provide for reservation in promotion. This would inevitably confine the exercise undertaken by the One-Man-Commission to the promotional cadres only. While referring to the reliance placed by the Commission with regard to the Backlog vacancies, Personnel Department stated that in the State of Assam, there are around 800 promotional cadres. A detailed analysis of the promotional cadres in various Government services on the question of inadequate representation would have made the report of the Commission an authentic document useful for guidance of selection committees / departmental promotion committees. Therefore, Personnel Department was of the view that further effort was required on this aspect as the Commission had not made available quantifiable data in respect of inadequacy of representation in promotional cadres.

.... to collect quantifiable data showing backwardness of the class and inadequacy of representation of that public employment in addition to compliance to Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely”.

62. Thus, it was held that the State is not bound to provide reservation for SCs and STs in matters of promotion. However, if the State wishes to make such a provision, which is permissible under Article 16(4-A) and 16(4-B), the State has to collect the quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment. In addition, the State must also ensure compliance of Article 335. In other words, before providing for reservation in promotion, the State must examine and make an assessment of the backwardness and inadequacy of representation which must be consistent with overall administrative efficiency. These three i.e., backwardness of the class, inadequacy of representation of that class in public

employment and maintenance of efficiency of administration have been held by the Hon'ble Supreme Court in M Nagaraj (supra) as constitutional requirements which are required to be fulfilled / satisfied before providing for reservation to SCs and STs in promotion.

63. Whether there should be reservation for SCs and STs in promotion in services under the State or not is a matter of policy. But if the State wants to make such provision, which is empowered to do by virtue of the enabling provision of Article 16 (4-A), it must satisfy the twin tests of backwardness of the class and inadequacy of representation of that class in the public service or services which must then be harmonized with the maintenance of overall efficiency in administration. These three factors have been held to be constitutional requirements. The State must form its opinion whether to provide for reservation to SCs and STs in promotion or not keeping in mind the above three requirements based on the quantifiable data. Until this is done, the State would be precluded from invoking the enabling provision. In M Nagaraj (supra), the Constitution Bench specially declared that if the two compelling reasons of backwardness and inadequacy of representation do not exist, then the enabling provision cannot come into force; the State can make provision for reservation in promotion only if the above two circumstances exist. Even then also, it must keep in mind maintenance of efficiency in administration which has been held to be a constitutional limitation on the discretion of the State to make provision for reservation in promotion. Question as to whether the State concerned has identified and valued the circumstances justifying it to make reservation is to be decided “case-wise” the Court has got to be satisfied that the State has exercised its opinion in making reservation in promotion for SCs and STs and for which the State concerned will have to place before the Court the requisite quantifiable data in “each case” and satisfy the Court that such reservation has become necessary on account of inadequacy of representation of SCs and STs in a particular class or classes of posts without affecting the general efficiency of service.

64. The decision rendered by the Constitution Bench in M Nagaraj (supra) was extensively referred to and relied upon in the subsequent case of Suraj Bhan Meena (supra). In that case, notification of the Rajasthan Government providing for consequential seniority to the members of SC and ST following accelerated promotion was interfered with by the Rajasthan High Court. The question which was considered by the Supreme Court was whether the amended provision of Article 16 (4-A) of the constitution intended that those belonging to the SC and ST communities, who had been promoted against reserved quota would also

be entitled to consequential seniority on account of such promotion or would catch-up rule prevail. Referring to various decisions of the Supreme Court from Indra Sawhney (supra) to M Nagaraj (supra), it was held that the State is not bound to make reservation for SCs and STs in matters of promotion, but the State could collect quantifiable data touching upon backwardness of the applicants and inadequacy of representation of that class in public employment for the purpose of compliance with Article 335 of the Constitution. It has been held that the position after the decision in M Nagaraj (supra), is that reservation of posts in promotion is dependent on the inadequacy of representation of members of SCs and STs and subject to the condition of ascertaining as to whether such reservation was at all required. As no exercise was undertaken to acquire quantifiable data regarding inadequacy of representation of SCs and STs in public services, the Apex Court held that the Rajasthan High Court had rightly quashed the Government notification providing promotion and consequential seniority to SCs and STs on promotion.

65. Finally, the Hon'ble Supreme Court in UP Power Corporation Limited (supra), after in-depth analysis of M Nagaraj (supra), called out the following principles which are quoted here under:
- (i) Vesting of the power by an enabling provision may be constitutionally valid and yet "exercise of power" by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure the backwardness and inadequacy keeping in mind the efficiency of service as required under Article 335.
 - (ii) Article 16(4) which protects the interests of certain sections of the society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonized because they are restatements of the principle of equality under Article 14.
 - (iii) Each post gets marked for the particular category of candidates to be appointed against it and any subsequent vacancy has to be filled by that category candidate.
 - (iv) The appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class / group is adequately represented in the service. The cadre strength as a unit also ensures that the upper ceiling limit of 50% is not violated. Further, roster has to be post-specific and not vacancy based.

- (v) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4-A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4-A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4). Therefore Clause (4-A) will be governed by the two compelling reasons – "backwardness" and "inadequacy of representation", as mentioned in Article 16(4). If the said two reasons do not exist, then the enabling provision cannot be enforced.
- (vi) If the ceiling limit on the carry over of unfilled vacancies is removed, the other alternative time factor comes in and in that event, the timescale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the timescale is not kept, then posts will continue to remain vacant for years which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact situation.
- (vii) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case.
- (viii) The constitutional limitation under Article 335 is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case.
- (ix) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercise depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment.
- (x) Article 16(4), therefore, creates a field enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons and do not exist in Article 16(1). it is only when these reasons are satisfied that a State gets the power to provide reservation in the matter of employment".

66. The Hon'ble Supreme Court declared that it was of the firm view that a fresh exercise in the light of the Constitution Bench judgement in *M Nagaraj* (supra) is a categorical imperative. It has been clarified that Articles 16(4-A) and 16(4-B) are enabling provisions which enable the State to make provision for reservation in promotion for SCs and STs subject to fulfilment of the conditions precedent which are constitutional requirements.

67. Thus, from a careful analysis of the pronouncements of the Apex Court in *M Nagaraj* (supra), *Suraj Bhan Meena* (supra) and *Uttar Pradesh Power Corporation Limited* (supra), what is discernible is that the quantifiable data regarding backwardness and inadequacy of representation has to be acquired in respect of the promotional cadres. It has been stated and re-stated by the Apex Court that the requisite quantifiable data would be scrutinized in each case. In other words, quantifiable data has to be both service and cadre specific. What the One-Man-Commission has done is that it has made a general statement about backwardness of SCs and STs and has not provided quantifiable data either on backwardness or on inadequacy of representation having regard to the promotional posts. Whether there is adequate representation or not has to be decided cadre-wise having regard to the service where the cadre is placed. Once it is found that in a particular cadre there is adequate representation of SCs and STs, providing for reservation to such communities in promotion to such cadre would not be justified.

68. It is true that following the law laid down by the Apex Court in *Indra Sawhney*, SCs and STs are deemed to be backward. It is further true that the concept of creamy layer is not applicable to SCs and STs. However, having said that, Court is of the considered opinion that the above factors would be relevant only at the time of initial recruitment. At the time of promotion, in the event reservation is sought to be introduced, then the assessment of backwardness of the said communities having regard to their representation in the promotional cadre(s) would have to be carried out.

69. Backwardness of SCs and STs vis-à-vis promotion would have to be determined cadre-wise. If in a particular cadre, SCs and STs are not adequately represented, they may be considered as backward in so far that particular cadre is concerned. Conversely, if in a particular cadre, SCs and STs are adequately represented, then they may be considered as backward for the purpose of promotion to that particular cadre. Therefore, it is quite evident that the concept of backwardness and

inadequacy of representation in the context of reservation in promotion are inter-twined.

70. The Full Bench of the High Court of Tripura in *Jayanta Chakraborty & Ors. – Vs – State of Tripura & Ors.* [WP(C) No. 189/2011 and others connected cases] decided on 09-04-2015 has taken the following view:-

“ backwardness of SCs and STs in the context of promotion in Government service will be closely interlinked to their inadequacy of representation in that particular Government service. We are of the view that this backwardness would directly related to the inadequacy of representation of the SCs and STs in the promotional cadres. In case, the SCs and STs are adequately represented in the cadre whether by means of reservation or on the basis of merit, then they cease to be backward for the purposes of getting benefit of reservation in promotion and this will have to be determined on cadre to cadre basis”.

I am in respectful agreement with the above view of the Tripura High Court.

71. The factum of SCs and STs being appointed /promoted against the open / unreserved posts in the State services is also a relevant factor to be considered while ascertaining both backwardness and inadequacy of representation.

72. Ascertainment of backwardness and inadequacy of representation of SCs and STs in the promotional cadres based on quantifiable data is a continuous process and cannot be onetime exercise. As pointed out by the Apex Court, the situation has to be assessed and reviewed on each occasion when reservation in promotion is contemplated.

73. There is one more aspect, which needs to be mentioned. While examining the question of overall efficiency in the administration because of reservation in promotion, what is seen from the report of the One-Man-Commission is that it has made an observation that there is no relaxation of eligibility at par with the unreserved candidates and only then can they be promoted against posts earmarked for a particular category. In the understanding of the Court what Article 335 visualizes its impact on overall efficiency in the administration because of reservation in promotion. What is, therefore, required to be assessed is the effect on administrative efficiency due to the presence of reserve category candidates in the cadre because of accelerated promotion on account of reservation in promotion. Whether the presence of the reserve

category candidates in the particular cadre on account of accelerated promotion due to reservation has impacted the administration adversely is required to be assessed by applying objective measurable standards. No doubt, it is difficult task but nonetheless it has to be carried out if the State desires to provide for reservation in promotion.

74. As held in M Nagaraj (supra), implementation of the scheme of reservation in promotion and collection of quantifiable data for the same to form an opinion on backwardness and inadequacy of representation and to harmonize the same with the constitutional limitation of efficiency in administration under Article 335 is a categorical imperative. Collection of data and the opinion based thereon rendered by the One-Man-Commission do not conform to the norms laid down by the Apex court in M Nagaraj. Therefore, there can be no manner of doubt that the exercise carried out by the One-Man-Commission does not fulfil the mandate laid down in M Nagaraj (supra). The Cabinet memorandum prepared by the WPT & BC Department while forwarding the recommendation of the One-Man-Commission to the Cabinet for approval also completely missed the point by stating in paragraph 8 thereof that the general established fact is that SCs and STs are comparatively lagging behind the general category in many areas like justice, social, economic and political fields; otherwise, the reservation provision would not have come into existence in the Constitution. Therefore, according to the WPT & BC Department, further analytical study in this regard in the name of collecting quantifiable data would be denial of justice to the SCs and STs. I am afraid the WPT & BC Department had completely misdirected itself and had totally overlooked the mandate of the Apex Court in M Nagaraj, which has vitiated the Cabinet memorandum and the consequent approval of the Cabinet to such recommendation. Though State has made provision for reservation in promotion by enacting the 1978 Act, which was amended in the year 2012, implementation of the same would depend on acquiring of quantifiable data with regard to 2 (two) compelling reasons, which exercise has to be carried out cadre-wise in the context of the service where the cadre is placed. That having not been done the report of the One-Man-Commission would be of no legal consequence and would not enable the State to give effect to the provisions of the 1978 Act as amended in so far reservation in promotion is concerned. At the cost of repetition, it is reiterated that if the state desires to give effect to the provisions of the 1978 Act as amended in the year 2012 by providing for reservation in promotion, it would have to justify the same with the help of quantifiable data to show presence of the 2(two) compelling reasons, backwardness and inadequacy of representation, cadre-wise in the

context of the service where the cadre is placed, which would then have to be harmonized with efficiency in administration as mandated under Article 335.

75. Both the writ petitions are accordingly allowed to the extent indicated above. However there shall be no order as to cost(s).

(Annexure)

JUDICIAL REVIEW

(Judgements of three important leading cases are incorporated in this sections. All the judgments are taken from <https://www.indiakanoon.org>.)

R.K. Sabharwal and Others Vs State of Punjab and Others
Writ Petition (Civil) No. 79 of 1979
1995-LIC-1618-SC
1995-(001)-CLR-0719-SC
1995-(001)-LLN-0810-SC
1995-(001)-SLR-0791-SC
1995-(001)-Scale-0685-SC
1995-(002)-SCC-0745-SC
1995-(003)-SLJ-0227-SC
1995-(029)-ATC-0481-SC
1995-(070)-FLR-0985-SC
1995-AIR-1371-SC

Kuldip Singh
S. Mohan
M. K. Mukherjee
B. L. Hansaria
S. B. Majmudar

10.02.1995

1. The petitioners and respondents 4, 5 and 6 are members of the Punjab Service of Engineers (Class I) (the Service) in the Irrigation Department of the State of Punjab. The respondents are members of the Scheduled Castes whereas the petitioners belong to the general category. The conditions of service of the members of the Service are governed by the Rules called the Punjab Service of Engineers Class I P. W. D.(I. B.) Rules, 1964 (the Rules). The Punjab Government by the instructions dated May 4, 1974 provided reservations for the Scheduled Castes and Backward Classes in promotions to and within Class I and II services under the State Government. It was laid down under the said instructions that 16 percent of the posts to be filled by promotion were to be reserved for members of the Scheduled Castes and Backward Classes (14 percent for the Scheduled Caste and 2 per cent for the Backward Classes) subject to the conditions that the persons to be considered must possess the minimum necessary qualifications and they should have satisfactory record of service. The instructions further provided as under:

"(i) In a lot of 100 vacancies occurring from time to time, those falling at serial numbers mentioned below should be treated as reserved for the members of Scheduled Castes; 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87, 91 and so on. Vacancies falling at serial numbers 26 and 76 should be treated as reserved for the members of Backward Classes.

(ii) The reservation prescribed shall be given effect in accordance with a roster to be maintained in each Department. The roster will be implemented in the form of a running account from year to year." Rule 9 of the Rules which provides for promotion within the service reads as under:

"Promotion within service : (1) Subject to the provisions of sub-rules 2 and 3 members of the Service shall be eligible for promotion to any of the posts in the service, namely , Executive Engineers, Superintending Engineers and Chief Engineers :

Provided that a Member of the service in whose case the qualifications mentioned in clause (a) of rule 6 have been waived, shall not be eligible for promotion to the post of Superintending Engineer or above till he has acquired the necessary qualification. Explanation: Once an officer has been appointed a member of the Service, his promotion within it from one rank to another shall be regarded as promotion within the same cadre.

(2) Promotions shall be made by selection on the basis of merit and suitability in all respects and no member of the Service shall have any claim to such promotion as a matter of right or mere seniority.

(3) A member of the Service shall not be eligible for promotion to the rank of-
(a) Executive Engineer unless he has rendered five years service as an Assistant Executive Engineer; Provided that an officer who has rendered six years or more service as an Assistant Executive Engineer shall unless he is considered unsuitable for promotion, be given preference for such promotion over an eligible Class II Officer;

(b) Superintending Engineer, unless he has rendered seven years service as an Executive Engineer;

(c) Chief Engineer, unless he has rendered three years service as Superintending Engineer; Provided that , if it appears to be necessary to promote an officer in public interest, the Government may, for reasons to be recorded in writing, either generally for a specified period or in any individual case reduce the period specified in clauses (a), (b) and (c) to such extent as it may deem proper."

It is stated in writ petition that the petitioners are at serial Nos. 19, 23, 26, 29, 30, 31, 34 and 38 of the seniority list of the service whereas the respondents are at serial Nos. 46, 140, and 152. Respondent-Rattan Singh was promoted to the rank of Chief Engineer against the post reserved for the Scheduled Castes by superseding 36 senior colleagues including the petitioners. Similarly, respondents Surjit Singh and Om Prakash were promoted as Superintending Engineers against the reserve vacancies by superseding 82 and 87 senior colleagues respectively. According to the petitioners at the time of promotion of these respondents the petitioners were already working as Superintending Engineers for several years. It is further averred in the petition that respondents 4, 5 and 6 were in fact working as Executive Engineers when the petitioners were holding the posts of Superintending Engineers.

2. On the above facts the petitioners have challenged the reservation policy on several grounds but Mr. Harish Salve learned counsel for the petitioners, has confined the arguments to the following two points:

(1) The object of reservation is to provide adequate representation to the Scheduled

Castes/Tribes and Backward Classes in services and as such any mechanism provided to achieve that end must have nexus to the object sought to be achieved. The precise argument is that for working out the percentage of reservation the promotees/appointees belonging to the Scheduled Castes and Backward Classes whether appointed against the general category posts or against the reserve posts are to be counted. In other words if more than 14% of the Scheduled Caste candidates are appointed/promoted in a cadre on their own merit/seniority by competing with the general category candidates then the purpose of reservations in the said cadre having been achieved the Government instructions providing reservation would become inoperative.

(2) Once the posts earmarked for the Scheduled Castes/Tribes and Backward Classes on the roster are filled the reservation is complete. Roster cannot operate any further and it should be stopped. Any post falling vacant, in a cadre thereafter, is to be filled from the category reserve or general due to retirement etc. of whose member the post fell vacant.

3. Adverting to the first point Mr. Harish Salve the Mr. Rajiv Dhawan, learned counsel representing the petitioners, have contended that the total number of promotes/appointees belonging to the reserve categories in a cadre are to be counted to work-out the prescribed percentage of reservation. According to the learned counsel the reserve categories can take advantage of the reservation made in their favour till their representation in the Service- including those appointed against general category posts- reaches the prescribed percentage. For working out the percentage the promotees /appointees belonging to reserve categories in the Service, whether on the reserve posts or general category posts, are to be counted. Support is sought from the judgment of the Punjab and Haryana High Court in *Joginder Singh Sethi v. Punjab Government*, ((1982) 2 SLR 307 (P&H)). In the said case 22% reservation was provided for the members of Scheduled Castes/ Tribes and Backward Classes. In the cadre strength of 202 posts the Scheduled Castes candidates were entitled to 42 posts. There were already 47 members of the said category in the cadre but out of them 10 were promoted on the basis of seniority-cum-merit against the general category posts. There being only 37 persons who had been promoted against the reserved posts 4 more Scheduled Castes were sought to be promoted against the reserve vacancies. The High Court quashed the promotion on the ground that the cadre was already having more than 22% persons from the reserve categories. We are of the view that the High Court in *Joginder Singh Sethi's* case fell into a patent error. The said case was subsequently considered by a Full Bench of Punjab & Haryana High Court in *Jaswant Singh v. Secretary to Government of Punjab*,

Education Department((1989) 4 SLR 257 (P&H)). The Full Bench did not agree with the ratio in *Joginder Singh Sethi's* case and reversed the same.

4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their numbers cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular backward class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a backward class has to be filled by way of appointment / promotion of the members of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions / Rules providing certain percentage of reservations for the backward classes are operative the same have to be followed. Despite any number of appointees / promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and reject the same.

5. We see considerable force in the second contention raised by the learned counsel for the petitioners. The reservation provided under the impugned Government instructions are to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Scheduled Tribes and Backward classes get their percentage of reserved posts. The concept of

"running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts..." are reserved for members of the Scheduled Caste 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 Caste. 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 two expressions make it clear that there must be a 'post' in existence 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, than 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".

8. The quoted observations clearly illustrate that the rule of 50% a year as a unit and not the entire strength of the cadre has been adopted to protect the rights of the general category under Clause (1) of Article 16 of the Constitution of India. These observations in *Indra Sawhney's case* [1992 Supp (3) SCC 217: 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 : AIR 1993 SC 477] are only in relation to posts which are filled initially in a cadre. The operation of a roster, for filling the cadre-strength, by itself ensures that the reservation remains within the 50%

limit. Indra Sawhney's case is not the authority for the point that the roster survives after the cadre-strength is full and the percentage of reservation is achieved.

9. A Division Bench of the Allahabad High Court in J.C. Malik v. Union of India and others, [(1978) 1 SLR 844(All)] interpreted Railway Board's circular dated 20.04.1970 providing 15% reservation for the Scheduled Castes. The High Court held that the percentage of reservation is in respect of the appointment to the posts in a cadre. On the basis of the material placed before the High Court it reached the conclusion that if the reservation is permitted in the vacancies after all the posts in a cadre are filled then serious consequences would ensue and the general category is likely to suffer considerably. We see no infirmity in the view taken by the High Court.

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 Castes/ Scheduled Tribes 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 Back ward 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 there by 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 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.

12. The writ petition is, therefore, disposed of in the above terms.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE / ORIGINAL JURISDICTION

CASE NO.:
Writ Petition (civil) 61 of 2002

PETITIONER:
M. Nagaraj & Others Petitioners

RESPONDENT:
Union of India & Others Respondents

DATE OF JUDGMENT: 19/10/2006

BENCH:

Y.K. SABHARWAL, K.G. BALAKRISHNAN & S.H. KAPADIA C.K.

THAKKER P.K. BALASUBRAMANYAN

JUDGMENT: J U D G M E N T with WP (C) Nos.62, 81, 111, 134, 135, 206, 226, 227, 255, 266, 269, 279, 299, 294, 295, 298, 250, 319, 375, 386, 387, 320, 322, 323, 338, 234, 340, 423, 440, 453, 460, 472, 482, 483, 484, 485, 550, 527 and 640 of 2002, SLP (C) Nos. 4915-4919 of 2003, W.P. (C) Nos.153/2003, C.P. (C) No. 404/2004 in W.P.(C) No. 255/2002, C.P. (C) No.505/2002 in WP (C) No.61/2002, C.P. (C) No.553/2002 in WP (C) No.266/2002, C.P. (C) No.570/2002 in WP (C) No.255/2002, C.P. (C) No.122/2003 in WP (C) No.61/2002, C.P. (C) No.127/2003 in WP (C) No.61/2002, C.P. (C) o.85/2003 in WP (C) No.255/2002, W.P. (C) Nos. 313 and 381 of 2003, CIVIL APPEAL Nos. 12501-12503/1996, SLP (C) No.754/1997, WP (C) No.460 of 2003, CIVIL APPEAL Nos. 7802/2001 and 7803/2001, W.P. (C) No.469/2003, SLP (C) No.19689/1996, WP (C) No. 563/2003, WP (C) No.2/2003, WP (C) Nos. 515, 519 and 562 of 2004, WP (C) No. 413 of 1997, WP (C) No.286 of 2004 and SLP (C) No.14518 of 2004.

KAPADIA, J.

The width and amplitude of the right to equal opportunity in public employment, in the context of reservation, broadly falls for consideration in these writ petitions under Article 32 of the Constitution. FACTS IN WRIT PETITION (CIVIL) NO.61 OF 2002: The facts in the above writ petition, which is the lead petition, are as follows.

Petitioners have invoked Article 32 of the Constitution for a writ in the nature of certiorari to quash the Constitution (Eighty-Fifth Amendment) Act, 2001 inserting Article 16(4A) of the Constitution retrospectively from 17.6.1995 providing reservation in promotion with consequential seniority as being unconstitutional and violative of the basic structure. **According to the petitioners**, the impugned amendment reverses the decisions of this Court in the case of Union of India and others v. Virpal Singh Chauhan and others, Ajit Singh Januja and others v. State of Punjab and others (Ajit Singh-I), Ajit Singh and others (II) v. State of Punjab and others, Ajit Singh and others (III) v. State of Punjab and others, Indra Sawhney and others v. Union of India, and M. G. Badappanavar and another v. State of Karnataka and others. Petitioners say that the Parliament has appropriated the judicial power to itself and has acted as an appellate authority by reversing the judicial pronouncements of this Court by the use of power of amendment as done by the impugned amendment and is, therefore, violative of the basic structure of the Constitution. The said amendment is, therefore, constitutionally invalid and is liable to be set aside.

Petitioners have further pleaded that the amendment also seeks to alter the fundamental right of equality which is part of the basic structure of the Constitution. Petitioners say that the equality in the context of Article 16(1) connotes "accelerated promotion" so as not to include consequential seniority. Petitioners say that by attaching consequential seniority to the accelerated promotion, the impugned amendment violates equality in Article 14 read with Article 16(1). Petitioners further say that by providing reservation in the matter of promotion with consequential seniority, there is impairment of efficiency. Petitioners say that in the case of Indra Sawhney⁵ decided on 16.11.1992, this Court has held that under Article 16(4), reservation to the backward classes is permissible only at the time of initial recruitment and not in promotion. Petitioners say that contrary to the said judgment delivered on 16.11.1992, the Parliament enacted the Constitution (Seventy-Seventh Amendment) Act, 1995. **By the said amendment, Article 16(4A) was inserted, which reintroduced reservation in promotion.** The Constitution (Seventy-Seventh Amendment) Act 1995 is also challenged by some of the petitioners. Petitioners say that if accelerated seniority is given to the roster-point promotees, the consequences would be disastrous. A roster-point promotee in the graduate stream would reach the 4th level by the time he attains the age of 45 years. At the age of 49, he would reach the highest level and stay there for nine years. On the other hand, the general merit promotee would reach the 3rd level out of 6 levels at the

age of 56 and by the time, he gets eligibility to the 4th level, he would have retired from service.

Petitioners say that the consequences of the impugned 85th Amendment which provides for reservation in promotion, with consequential seniority, would result in reverse discrimination in the percentage of representation of the reserved category officers in the higher cadre.

BROAD ISSUES IN WRIT PETITION No.527 OF 2002: The broad issues that arise for determination in this case relate to the:

1. Validity
2. Interpretation
3. Implementation

of (i) the Constitution (Seventy-Seventh Amendment) Act, 1995, the Constitution (Eighty-First Amendment) Act, 2000, the Constitution (Eighty-Second Amendment) Act,

2000, and the Constitution (Eighty-Fifth Amendment) Act, 2001; and, (ii) Action taken in pursuance thereof which seek to reverse decisions of the Supreme Court in matters relating to promotion and their application with retrospective effect.

ARGUMENTS: The substance of the arguments advanced on behalf of the petitioners briefly is as follows:

Equality is a part of the basic structure and it is impossible to conceive of the Constitution without equality as one of its central components. That, equality is the basic feature referred to in the preamble to our Constitution. Petitioners further submit that Article 16 is integral to equality; that, Article 16 has to be read with Article 14 and with several Articles in Part-IV. According to the petitioners, the Constitution places an important significance on public employment and the rule of equality, inasmuch as, and a specific guarantee is given under Article 16 protecting equality principles in public employment. In this connection, reliance is also placed on the provisions of Part XIV to show that the Constitution makers had given importance to public employment by making a special provision in the form of Part XIV providing certain rights and protection to the office holders in the services of the Union and the States. These provisions are Articles 309, 311, 315, 316, 317 and 318 to 323. Special provisions have also been made in Article 323-A which permits establishment of tribunals as special and adjudicatory mechanism. That, Article 335 recognizes the importance of efficiency in administration and the various provisions of the Constitution indicate that public employment was and is even today of central

concern to the Constitution. It is urged that equality in matters of public employment cannot be considered as merely an abstract concept.

Petitioners say that over the years, this Court has delivered many decisions laying down that principles of 'equality' and 'affirmative action' are the pillars of our Constitution. These judgments also provide conclusions based on principles which gave meaning to equality both as an individual right and as group expectations.

It is submitted that clause (4) of Article 16 is an instance of the classification implicit and permitted by Article 16(1) and that this view of equality did not dilute the importance of Article 16(1) or Article 16(2) but merely treated Article 16(4) as an instance of the classification; that this relationship of sub-clauses within Article 16 is not an invitation for reverse discrimination and that, equality of opportunity cannot be overruled by affirmative action. It is submitted that "equality in employment" consists of equality of opportunity [Article 16(1)], anti-discrimination [Article 16(2)], special classification [Article 16(3)], affirmative action [Article 16(4)] which does not obliterate equality but which stands for classification within equality, and lastly, efficiency [Article 335]. As regards the words 'nothing in this article' in Article 16(4), it is urged that these words cannot wipe out Article 16(1) and, therefore, they have a limited meaning. It is urged that the said words also occur in Articles 16(4A) and 16(4B). It is urged that equality in the Constitution conceives the individual right to be treated fairly without discrimination in the matter of equality of opportunity. It also conceives of affirmative action in Article 15(4) and Article 16(4). It enables classification as a basis for enabling preferences and benefits for specific beneficiary groups and that neither classification nor affirmative action can obliterate the individual right to equal opportunity. Therefore, a balance has to be evolved to promote equal opportunities while protecting individual rights. It is urged that as an individual right in Article 16(1), enforceability is provided for whereas "group expectation" in Article 16(4) is not a fundamental right but it is an enabling power which is not coupled with duty. It is submitted that if the structural balance of equality in the light of the efficiency is disturbed and if the individual right is encroached upon by excessive support for group expectations, it would amount to reverse discrimination

On the question of power of amendment, it is submitted that the limited power of amendment cannot become an unlimited one. A limited amendment power is one of the basic features of our Constitution and, therefore, limits on that power cannot be destroyed. Petitioners submit that Parliament cannot under Article 368 expand its amending power so as to acquire for itself the right to abrogate the Constitution and if the width of the amendment invites abrogation of the basic structure then such amendment must fail. Reliance is placed in this

connection on the judgment in *Minerva Mills Ltd. and others v. Union of India* and others. On the question of balancing of fundamental rights vis-à-vis directive principles, it is submitted that directive principles cannot be used to undermine the basic structure principles underlying fundamental rights including principles of equality, fundamental freedoms, due process, religious freedom and judicial enforcement.

On the question of balancing and structuring of equality in employment, **it is urged that quotas are subject to quantitative limits and qualitative exclusions**; that, there is a distinction between quota limits (example 15% to SCs) and ceiling-limits/maximum permissible reservation limits (example 50%) which comes under the category of quantitative limits. However, quotas are also subject to qualitative exclusions like creamy layer. It is urged that in numerous judgments and in particular in *Indra Sawhney*⁵, *M.G. Badaappanavar*⁶, *Ajit Singh (II)*³, the equality of opportunity in public employment is clarified in order to structure and balance Articles 16(1) and 16(4).

In answer to the respondents' contentions that Articles 16(4A) and 16(4B) and the changes to Article 335 are merely enabling provisions and that in a given case if the exercise undertaken by the appropriate Government is found to be arbitrary, this Court will set it right, it is contended that ingressing the basic structure is a per se violation of the Constitution. In this connection, it is alleged that the basis for impugned amendments is to overrule judicial decisions based on holistic interpretation of the Constitution and its basic values, concepts and structure. In this connection, it is urged that the 77th Amendment introducing Article 16(4A) has the effect of nullifying the decision in the case of *Indra Sawhney*⁵; that, the 81st Amendment introducing Article 16(4B) has been brought in to nullify the effect of the decision in *R.K. Sabharwal & Others v. State of Punjab* and others, in which it has been held that carry forward vacancies cannot be filled exceeding 50% of the posts. Petitioners say that similarly the Constitution (Eighty-Second Amendment) Act, 2000 introducing the proviso to Article 335 has been introduced to nullify the effect of the decision in the case of *Indra Sawhney*⁵ and a host of other cases, which emphasize the importance of maintaining efficiency in administration. It is submitted that, the 85th Amendment adding the words 'with consequential seniority' in Article 16(4A) has been made to nullify the decision in *Ajit Singh (II)*³.

Accordingly it is urged that the impugned amendments are violative of the basic structure and the fundamental values of the Constitution articulated in the preamble and encapsulated in Articles 14, 16 and 19; that, they violate the fundamental postulates of equality, justice, rule of law and secularism as enshrined in the Constitution and that they violate the fundamental role of the Supreme Court as interpreter of the Constitution.

That, the impugned amendments create an untrammled, unrestrained and unconstitutional regime of reservations which destroys the judicial power and which undermines the efficacy of judicial review which is an integral part of rule of law. It is argued that, Articles 14 and 16 have to be read with Article 335 as originally promulgated; that, the impugned amendments invade the twin principles of efficiency, merit and the morale of public services and the foundation of good governance. It is urged vehemently that the impugned amendments open the floodgates of disunity, disharmony and disintegration.

On behalf of the respondents, following arguments were advanced. The power of amendment under Article 368 is a 'constituent' power and not a 'constituted power'; that, there are no implied limitations on the constituent power under Article 368; that, the power under Article 368 has to keep the Constitution in repair as and when it becomes necessary and thereby protect and preserve the basic structure. In such process of amendment, if it destroys the basic feature of the Constitution, the amendment will be unconstitutional. Constitution, according to the respondents, is not merely what it says. It is what the last interpretation of the relevant provision of the Constitution given by the Supreme Court which prevails as a law.

The interpretation placed on the Constitution by the Court becomes part of the Constitution and, therefore, it is open to amendment under Article 368. An interpretation placed by the Court on any provision of the Constitution gets inbuilt in the provisions interpreted. Such articles are capable of amendment under Article 368. Such change of the law so declared by the Supreme Court will not merely for that reason alone violate the basic structure of the Constitution or amount to usurpation of judicial power. This is how Constitution becomes dynamic. Law has to change. It requires amendments to the Constitution according to the needs of time and needs of society. It is an ongoing process of judicial and constituent powers, both contributing to change of law with the final say in the judiciary to pronounce on the validity of such change of law effected by the constituent power by examining whether such amendments violate the basic structure of the Constitution. On every occasion when a constitutional matter comes before the Court, the meaning of the provisions of the Constitution will call for interpretation, but every interpretation of the Article does not become a basic feature of the Constitution. That, there are no implied limitations on the power of the Parliament under Article 368 when it seeks to amend the Constitution. However, an amendment will be invalid, if it interferes with or undermines the basic structure. The validity of the amendment is not to be decided on the touchstone of Article 13 but only on the basis of violation of the basic features of the Constitution.

It is further submitted that amendments for giving effect to the directive principles cannot offend the basic structure of the Constitution. On the contrary,

the amendments which may abrogate individual rights but which promote Constitutional ideal of 'justice, social, economic and political' and the ideal of 'equality of status' are not liable to be struck down under Article 14 or Article 16(1) and consequently, such amendments cannot violate the basic structure of the Constitution. That, the amendments to the Constitution which are aimed at removing social and economic disparities cannot offend the basic structure. It is urged that the concepts flowing from the preamble to the Constitution constitute the basic structure; that, basic structure is not found in a particular Article of the Constitution; and except the fundamental right to live in Article 21 read with Article 14, no particular Article in Part-III is a basic feature. Therefore, it is submitted that equality mentioned in Articles 14 and 16 is not to be equated to the equality which is a basic feature of the Constitution.

It is submitted that the principle of balancing of rights of the general category and reserved category in the context of Article 16 has no nexus to the basic feature of the Constitution. It is submitted that basic feature consists of constitutional axioms like constitutional supremacy, and democratic form of government, secularism, separation of powers etc.

Respondents contend that Article 16(4) is a part of the Constitution as originally enacted. The exercise of the power by the delegate under Article 16(4) will override Article 16(1). It is not by virtue of the power of the delegate, but it is by virtue of constituent power itself having authorized such exercise by the delegate under Article 16(4), that article 16(1) shall stand overruled. The only limitation on the power of delegate is that it should act within four corners of Article 16(4), namely, backward classes, which in the opinion of the State are not adequately represented in public employment. If this condition precedent is satisfied, a reservation will override Article 16(1) on account of the words 'nothing in this Article shall prevent the State'. It is urged that jurisprudence relating to public services do not constitute basic feature of the Constitution. That, the right to consideration for promotion in service matters is not a basic feature.

It is lastly submitted that Articles 16(4A) and 16(4B) are only enabling provisions; that, the constitutionality of the enabling power in Articles 16(4A) and 16(4B) is not to be tested with reference to the exercise of the power or manner of exercise of such power and that the impugned amendments have maintained the structure of Articles 16(1) to 16(4) intact. In this connection, it is submitted that the impugned amendments have retained reservations at the recruitment level in conformity with the judgment in Indra Sawhney⁵, which has confined Article 16(4) only to initial appointments; that Article 16(4A) is a

special provision which provides for reservation for promotion only to SCs and STs. It is urged that if SCs/STs and OBCs are lumped together, OBCs will take away all the vacancies and, therefore, Article 16(4A) has been inserted as a special provision. That, in *Indra Sawhney*⁵, the focus was on Backward Classes and not on SCs/STs and, therefore, there was no balancing of rights of three groups, namely, general category, other backward classes and scheduled castes/scheduled tribes. It is, therefore, contended that under Article 16(4A), reservation is limited. It is not to the extent of 50% but it is restricted only to SCs and STs, and, therefore, the "risk element" pointed out in *Indra Sawhney*⁵ stands reduced. To carve out SCs/STs and make a separate classification is not only constitutional, but it is a constitutional obligation to do so under Article 46. That, Article 16(4) is an overriding provision over Article 16(1) and if Article 16(4) cannot be said to constitute reverse discrimination then Article 16(4A) also cannot constitute reverse discrimination.

It is next submitted that this Court has taken care of the interests of the general category by placing a ceiling on filling-up of vacancies only to a maximum of 50% for reservation. The said 50% permitted by this Court can be reserved in such manner as the appropriate Government may deem fit. It is urged that if it is valid to make reservation at higher levels by direct recruitment, it can also be done for promotion after taking into account the mandate of Article 335.

It is next submitted that the amendment made by Article 16(4B) makes an exception to 50% ceiling-limit imposed by *Indra Sawhney*⁵, by providing that the vacancies of previous years will not be considered with the current year's vacancies. In this connection, it was urged that Article 16(4B) applies to reservations under Article 16(4) and, therefore, if reservation is found to be within reasonable limits, the Court would uphold such reservations depending upon the facts of the case and if reservation suffers from excessiveness, it may be invalidated. Therefore, the enabling power under Article 16(4B) cannot be rendered invalid.

For the above reasons, respondents submit that there is no infirmity in the impugned constitutional amendments.

KEY ISSUE:

It is not necessary for us to deal with the above arguments serially. The arguments are dealt with by us in the following paragraphs subject-wise.

The key issue, which arises for determination in this case is, whether by virtue of the impugned constitutional amendments, the power of the Parliament

is so enlarged so as to obliterate any or all of the constitutional limitations and requirements?

STANDARDS OF JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS:

Constitution is not an ethereal legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and consequently to be adapted to the various crisis of human affairs. Therefore, a purposive rather than a strict literal approach to the interpretation should be adopted. A Constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that constitutional provision does not get fossilized but remains flexible enough to meet the newly emerging problems and challenges.

This principle of interpretation is particularly apposite to the interpretation of fundamental rights. It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any constitution by reason of basic fact that they are members of the human race. These fundamental rights are important, as they possess intrinsic value. Part-III of the Constitution does not confer fundamental rights. It confirms their existence and gives them protection. Its purpose is to withdraw certain subjects from the area of political controversy to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. Every right has content. Every foundational value is put in Part-III as fundamental right as it has intrinsic value. The converse does not apply. A right becomes a fundamental right because it has foundational value. Apart from the principles, one has also to see the structure of the Article in which the fundamental value is incorporated. Fundamental right is a limitation on the power of the State. A Constitution, and in particular that of it which protects and which entrenches fundamental rights and freedoms to which all persons in the State are to be entitled is to be given a generous and purposive construction. In the case of *Sakal Papers (P) Ltd. & Others v. Union of India* and others this Court has held that while considering the nature and content of fundamental rights, the Court must not be too astute to interpret the language in a literal sense so as to whittle them down. The Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure. An instance of literal and narrow interpretation of a vital fundamental right in the Indian Constitution is the early decision of the Supreme Court in the case of *A.K. Gopalan v. State of Madras*.

Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except according to procedure established by law.

The Supreme Court by a majority held that 'procedure established by law' means any procedure established by law made by the Parliament or the legislatures of the State. The Supreme Court refused to infuse the procedure with principles of natural justice. It concentrated solely upon the existence of enacted law. After three decades, the Supreme Court overruled its previous decision in A.K. Gopalan¹⁰ and held in its landmark judgment in Maneka Gandhi v. Union of India and another that the procedure contemplated by Article 21 must answer the test of reasonableness. The Court further held that the procedure should also be in conformity with the principles of natural justice. This example is given to demonstrate an instance of expansive interpretation of a fundamental right. The expression 'life' in Article 21 does not connote merely physical or animal existence. The right to life includes right to live with human dignity. This Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part-III on the principle that certain unarticulated rights are implicit in the enumerated guarantees. For example, freedom of information has been held to be implicit in the guarantee of freedom of speech and expression. In India, till recently, there is no legislation securing freedom of information. However, this Court by a liberal interpretation deduced the right to know and right to access information on the reasoning that the concept of an open government is the direct result from the right to know which is implicit in the right of free speech and expression guaranteed under Article 19(1)(a). The important point to be noted is that the content of a right is defined by the Courts. The final word on the content of the right is of this Court. Therefore, constitutional adjudication plays a very important role in this exercise. The nature of constitutional adjudication has been a subject matter of several debates. At one extreme, it is argued that judicial review of legislation should be confined to the language of the constitution and its original intent. At the other end, non-interpretivism asserts that the way and indeterminate nature of the constitutional text permits a variety of standards and values. Others claim that the purpose of a Bill of Rights is to protect the process of decision-making.

The question which arises before us is regarding nature of the standards of judicial review required to be applied in judging the validity of the constitutional amendments in the context of the doctrine of basic structure. The concept of a basic structure giving coherence and durability to a Constitution has certain intrinsic force. This doctrine has essentially developed from the constitution. This development is the emergence of the constitutional right. It is not based on literal wordings.

Union of India & Others etc., the basic question of constitutional policies of a State

would be a valid ground for the exercise of the central power under Article 356, that is, imposition of the President's rule. In that case, secularism was held to be an essential feature of the Constitution and part of its basic structure. A State Government may be dismissed not because it violates any particular provision of the Constitution but because it acts against a vital principle enacting and giving coherence to a number of particular provisions, example: Articles 14, 15 and 25. In S.R. Bommai¹², the Court clearly based its conclusion not so much on violation of particular constitutional provision but on this generalized ground i.e. evidence of a pattern of action directed against the principle of secularism.

Therefore, it is important to note that the recognition of a basic structure in the context of amendment provides an insight that there are, beyond the words of particular provisions, systematic principles underlying and connecting the provisions of the Constitution. These principles give coherence to the Constitution and make it an organic whole. These principles are part of Constitutional law even if they are not expressly stated in the form of rules. An instance is the principle of reasonableness which connects Articles 14, 19 and 21. Some of these principles may be so important and fundamental, as to qualify as 'essential features' or part of the 'basic structure' of the Constitution, that is to say, they are not open to amendment. However, it is only by linking provisions to such overarching principles that one would be able to distinguish essential from less essential features of the Constitution

The point, which is important to be noted, is that principles of federalism, secularism, reasonableness and socialism etc. are beyond the words of a particular provision. They are systematic and structural principles underlying and connecting various provisions of the Constitution. They give coherence to the Constitution. They make the Constitution an organic whole. They are part of constitutional law even if they are not expressly stated in the form of rules.

For a constitutional principle to qualify as an essential feature, it must be established that the said principle is a part of the constitutional law binding on the legislature. Only thereafter, the second step is to be taken, namely, whether the principle is so fundamental as to bind even the amending power of the Parliament, i.e. to form a part of the basic structure. The basic structure concept accordingly limits the amending power of the Parliament. To sum up: in order to qualify as an essential feature, a principle is to be first established as part of the constitutional law and as such binding on the legislature. Only then, it can be examined whether it is so fundamental as to bind even the amending power of the Parliament i.e. to form part of the basic structure of the Constitution. This is the standard of judicial review of constitutional amendments in the context of the doctrine of basic structure.

The Supreme Court by a majority held that 'procedure established by law' means any procedure established by law made by the Parliament or the legislatures of the State. The Supreme Court refused to infuse the procedure with principles of natural justice. It concentrated solely upon the existence of enacted law. After three decades, the Supreme Court overruled its previous decision in *A.K. Gopalan*¹⁰ and held in its landmark judgment in *Maneka Gandhi v. Union of India* and another that the procedure contemplated by Article 21 must answer the test of reasonableness. The Court further held that the procedure should also be in conformity with the principles of natural justice. This example is given to demonstrate an instance of expansive interpretation of a fundamental right. The expression 'life' in Article 21 does not connote merely physical or animal existence. The right to life includes right to live with human dignity. This Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part-III on the principle that certain unarticulated rights are implicit in the enumerated guarantees. For example, freedom of information has been held to be implicit in the guarantee of freedom of speech and expression. In India, till recently, there is no legislation securing freedom of information. However, this Court by a liberal interpretation deduced the right to know and right to access information on the reasoning that the concept of an open government is the direct result from the right to know which is implicit in the right of free speech and expression guaranteed under Article 19(1)(a). The important point to be noted is that the content of a right is defined by the Courts. The final word on the content of the right is of this Court. Therefore, constitutional adjudication plays a very important role in this exercise. The nature of constitutional adjudication has been a subject matter of several debates. At one extreme, it is argued that judicial review of legislation should be confined to the language of the constitution and its original intent. At the other end, non-interpretivism asserts that the way and indeterminate nature of the constitutional text permits a variety of standards and values. Others claim that the purpose of a Bill of Rights is to protect the process of decision-making.

The question which arises before us is regarding nature of the standards of judicial review required to be applied in judging the validity of the constitutional amendments in the context of the doctrine of basic structure. The concept of a basic structure giving coherence and durability to a Constitution has a certain intrinsic force. This doctrine has essentially developed from the German Constitution. This development is the emergence of the constitutional principles in their own right. It is not based on literal wordings.

In *S.R. Bommai & Others etc. v. Union of India & Others etc.*, the basic structure concept was resorted to although no question of constitutional amendment was involved in that case. But this Court held that policies of a State Government directed against an element of the basic structure of the Constitution

would be a valid ground for the exercise of the central power under Article 356, that is, imposition of the President's rule. In that case, secularism was held to be an essential feature of the Constitution and part of its basic structure. A State Government may be dismissed not because it violates any particular provision of the Constitution but because it acts against a vital principle enacting and giving coherence to a number of particular provisions, example: Articles 14, 15 and 25. In *S.R. Bommai*¹², the Court clearly based its conclusion not so much on violation of particular constitutional provision but on this generalized ground i.e. evidence of a pattern of action directed against the principle of secularism.

Therefore, it is important to note that the recognition of a basic structure in the context of amendment provides an insight that there are, beyond the words of particular provisions, systematic principles underlying and connecting the provisions of the Constitution. These principles give coherence to the Constitution and make it an organic whole. These principles are part of Constitutional law even if they are not expressly stated in the form of rules. An instance is the principle of reasonableness which connects Articles 14, 19 and 21. Some of these principles may be so important and fundamental, as to qualify as 'essential features' or part of the 'basic structure' of the Constitution, that is to say, they are not open to amendment. However, it is only by linking provisions to such overarching principles that one would be able to distinguish essential from less essential features of the Constitution

The point, which is important to be noted, is that principles of federalism, secularism, reasonableness and socialism etc. are beyond the words of a particular provision. They are systematic and structural principles underlying and connecting various provisions of the Constitution. They give coherence to the Constitution. They make the Constitution an organic whole. They are part of constitutional law even if they are not expressly stated in the form of rules.

For a constitutional principle to qualify as an essential feature, it must be established that the said principle is a part of the constitutional law binding on the legislature. Only thereafter, the second step is to be taken, namely, whether the principle is so fundamental as to bind even the amending power of the Parliament, i.e. to form a part of the basic structure. The basic structure concept accordingly limits the amending power of the Parliament. To sum up: in order to qualify as an essential feature, a principle is to be first established as part of the constitutional law and as such binding on the legislature. Only then, it can be examined whether it is so fundamental as to bind even the amending power of the Parliament i.e. to form part of the basic structure of the Constitution. This is the standard of judicial review of constitutional amendments in the context of the doctrine of basic structure.

As stated above, the doctrine of basic structure has essentially emanated from the German Constitution. Therefore, we may have a look at common constitutional provisions under German Law which deal with rights, such as, freedom of press or religion which are not mere values, they are justifiable and capable of interpretation. The values impose a positive duty on the State to ensure their attainment as far as practicable. The rights, liberties and freedoms of the individual are not only to be protected against the State, they should be facilitated by it. They are to be informed. Overarching and informing of these rights and values is the principle of human dignity under the German basic law. Similarly, **secularism is the principle which is the overarching principle of several rights and values under the Indian Constitution.** Therefore, axioms like secularism, democracy, reasonableness, social justice etc. are overarching principles which provide linking factor for principle of fundamental rights like Articles 14, 19 and 21. These principles are beyond the amending power of the Parliament. They pervade all enacted laws and they stand at the pinnacle of the hierarchy of constitutional values. For example, under the German Constitutional Law, human dignity under Article 1 is inviolable. It is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away. It cannot give. It simply is. Every human being has dignity by virtue of his existence. The Constitutional Courts in Germany, therefore, see human dignity as a fundamental principle within the system of the basic rights. This is how the doctrine of basic structure stands evolved under the German Constitution and by interpretation given to the concept by the Constitutional Courts.

Under the Indian Constitution, the word 'federalism' does not exist in the preamble. However, its principle (not in the strict sense as in U.S.A.) is delineated over various provisions of the Constitution. In particular, one finds this concept in separation of powers under Articles 245 and 246 read with the three lists in the seventh schedule to the Constitution.

To conclude, the theory of basic structure is based on the concept of constitutional identity. The basic structure jurisprudence is a pre-occupation with constitutional identity. In *Kesavananda Bharati Sripadagalvaru and others v. State of Kerala* and another, it has been observed that 'one cannot legally use the constitution to destroy itself'. It is further observed 'the personality of the constitution must remain unchanged'. Therefore, this Court in *Kesavananda Bharati*¹³, while propounding the theory of basic structure, has relied upon the doctrine of constitutional identity. The word 'amendment' postulates that the old constitution survives without loss of its identity despite the change and it continues even though it has been subjected to alteration. This is

the constant theme of the opinions in the majority decision in *Kesavananda Bharati*¹³. To destroy its identity is to abrogate the basic structure of the Constitution. This is the principle of constitutional sovereignty. Secularism in India has acted as a balance between socio-economic reforms which limits religious options and communal developments. The main object behind the theory of the constitutional identity is continuity and within that continuity of identity, changes are admissible depending upon the situation and circumstances of the day.

Lastly, constitutionalism is about limits and aspirations. According to Justice Brennan, interpretation of the Constitution as a written text is concerned with aspirations and fundamental principles. In his Article titled 'Challenge to the Living Constitution' by Herman Belz, the author says that the Constitution embodies aspiration to social justice, brotherhood and human dignity. It is a text which contains fundamental principles. Fidelity to the text qua fundamental principles did not limit judicial decision-making. The tradition of the written constitutionalism makes it possible to apply concepts and doctrines not recoverable under the doctrine of unwritten living constitution. To conclude, as observed by Chandrachud, CJ, in *Minerva Mills Ltd.*⁷, 'the Constitution is a precious heritage and, therefore, you cannot destroy its identity'.

Constitutional adjudication is like no other decision-making. There is a moral dimension to every major constitutional case; the language of the text is not necessarily a controlling factor. Our constitution works because of its generalities, and because of the good sense of the Judges when interpreting it. It is that informed freedom of action of the Judges that helps to preserve and protect our basic document of governance

IS EQUALITY A PART OF THE FUNDAMENTAL FEATURES OR THE BASIC STRUCTURE OF THE CONSTITUTION?

At the outset, it may be noted that equality, rule of law, judicial review and separation of powers are distinct concepts. They have to be treated separately, though they are intimately connected. There can be no rule of law if there is no equality before the law; and rule of law and equality before the law would be empty words if their violation was not a matter of judicial scrutiny or judicial review and judicial relief and all these features would lose their significance if judicial, executive and legislative functions were united in only one authority, whose dictates had the force of law. The rule of law and equality before the law are designed to secure among other things justice both social and economic. **Secondly,** a federal Constitution with its distribution of legislative powers between Parliament and State legislatures involves a limitation on legislative powers and this requires an authority other than Parliament and State Legislatures to ascertain whether the limits are transgressed and to prevent such

violation and transgression. As far back as 1872, Lord Selbourne said that the duty to decide whether the limits are transgressed must be discharged by courts of justice. Judicial review of legislation enacted by the Parliament within limited powers under the controlled constitution which we have, has been a feature of our law and this is on the ground that any law passed by a legislature with limited powers is ultra vires if the limits are transgressed. The framers conferred on the Supreme Court the power to issue writs for the speedy enforcement of those rights and made the right to approach the Supreme Court for such enforcement itself a fundamental right. **Thus, judicial review is an essential feature of our constitution** because it is necessary to give effect to the distribution of legislative power between Parliament and State legislatures, and is also necessary to give practicable content to the objectives of the Constitution embodied in Part-III and in several other Articles of our Constitution.

In the case of *Minerva Mills*⁷, Chandrachud, C.J., speaking for the majority, observed that Articles 14 and 19 do not confer any fanciful rights. They confer rights which are elementary for the proper and effective functioning of democracy. They are universally regarded by the universal Declaration of Human Rights. If Articles 14 and 19 are put out of operation, Article 32 will be rendered nugatory. In the said judgment, the majority took the view that the principles enumerated in Part-IV are not the proclaimed monopoly of democracies alone. They are common to all polities, democratic or authoritarian. Every State is goal-oriented and every State claims to strive for securing the welfare of its people. The distinction between different forms of Government consists in the fact that a real democracy will endeavor to achieve its objectives through the discipline of fundamental freedoms like Articles 14 and 19. Without these freedoms, democracy is impossible. If Article 14 is withdrawn, the political pressures exercised by numerically large groups can tear the country apart by leading it to the legislation to pick and choose favored areas and favorite classes for preferential treatment.

From these observations, which are binding on us, the principle which emerges is that "equality" is the essence of democracy and, accordingly a basic feature of the Constitution. This test is very important. Free and fair elections per se may not constitute a basic feature of the Constitution. On their own, they do not constitute basic feature. However, free and fair election as a part of representative democracy is an essential feature as held in the *Indira Nehru Gandhi v. Raj Narain* (Election case). Similarly, federalism is an important principle of constitutional law. The word 'federalism' is not in the preamble. However, as stated above, its features are delineated over various provisions of the Constitution like Articles 245, 246 and 301 and the three lists in the seventh schedule to the Constitution.

However, there is a difference between formal equality and egalitarian equality which will be discussed later on.

The theory of basic structure is based on the principle that a change in a thing does not involve its destruction and destruction of a thing is a matter of substance and not of form. Therefore, one has to apply the test of overarching principle to be gathered from the scheme and the placement and the structure of an Article in the Constitution. For example, the placement of Article 14 in the equality code; the placement of Article 19 in the freedom code; the placement of Article 32 in the code giving access to the Supreme Court. Therefore, the theory of basic structure is the only theory by which the validity of impugned amendments to the Constitution is to be judged.

WORKING TEST IN THE MATTER OF APPLICATION OF THE DOCTRINE OF BASIC STRUCTURE:

Once it is held that fundamental rights could be abridged but not destroyed and once it is further held that several features of the Constitution can not be destroyed, the concept of 'express limitation' on the amending power loses its force for a precise formulation of the basic feature of the Constitution and for the courts to pronounce on the validity of a constitutional amendment.

A working test has been evolved by Chandrachud, J. in the *Election Case*¹⁴, in which the learned Judge has rightly enunciated, with respect, that "for determining whether a particular feature of the Constitution is a part of its basic structure, one has per force to examine in each individual case the place of the particular feature in the scheme of the Constitution, its object and purpose and the consequences of its denial on the integrity of the Constitution as a fundamental instrument of the country's governance."

Applying the above test to the facts of the present case, it is relevant to note that the concept of 'equality' like the concept of 'representative democracy' or 'secularism' is delineated over various Articles. Basically, Part-III of the Constitution consists of the equality code, the freedom code and the right to move the courts. It is true that equality has several facets. However, each case has to be seen in the context of the placement of an Article which embodies the foundational value of equality.

CONCEPT OF RESERVATION:

Reservation as a concept is very wide. Different people understand reservation to mean different things. One view of reservation as a generic concept is that reservation is anti-poverty measure. There is a different view which says that reservation is merely providing a right of access and that it

is not a right to redressal. Similarly, affirmative action as a generic concept has a different connotation. Some say that reservation is not a part of affirmative action whereas others say that it is a part of affirmative action.

Our Constitution has, however, incorporated the word 'reservation' in Article 16(4) which word is not there in Article 15(4). Therefore, the word 'reservation' as a subject of Article 16(4) is different from the word 'reservation' as a general concept. Applying the above test, we have to consider the word 'reservation' in the context of Article 16(4) and it is in that context that Article 335 of the Constitution which provides for relaxation of the standards of evaluation has to be seen. We have to go by what the Constitution framers intended originally and not by general concepts or principles. Therefore, schematic interpretation of the Constitution has to be applied and this is the basis of the working test evolved by Chandrachud, J. in the Election Case¹⁴.

JUSTICE, SOCIAL, ECONOMIC AND POLITICAL IS PROVIDED NOT ONLY IN PART-IV (DIRECTIVE PRINCIPLES) BUT ALSO IN PART-III (FUNDAMENTAL RIGHTS):

India is constituted into a sovereign, democratic republic to secure to all its citizens, fraternity assuring the dignity of the individual and the unity of the nation. The sovereign, democratic republic exists to promote fraternity and the dignity of the individual citizen and to secure to the citizens certain rights. This is because the objectives of the State can be realized only in and through the individuals. Therefore, rights conferred on citizens and non-citizens are not merely individual or personal rights. They have a large social and political content, because the objectives of the Constitution cannot be otherwise realized. Fundamental rights represent the claims of the individual and the restrictions thereon are the claims of the society. Article 38 in Part-IV is the only Article which refers to justice, social, economic and political. However, the concept of justice is not limited only to directive principles. There can be no justice without equality. Article 14 guarantees the fundamental right to equality before the law on all persons. Great social injustice resulted from treating sections of the Hindu community as 'untouchable' and, therefore, Article 17 abolished untouchability and Article 25 permitted the State to make any law providing for throwing open all public Hindu religious temples to untouchables. Therefore, provisions of Part-III also provide for political and social justice.

This discussion is important because in the present case, we are concerned with reservation. Balancing a fundamental right to property vis-à-vis Articles 39(b) and 39(c) as in *Kesavananda Bharati*¹³ and *Minerva Mills*⁷ cannot be equated with the facts of the present case. In the present case, we are concerned with the right of an individual of equal opportunity on one hand and

preferential treatment to an individual belonging to a backward class in order to bring about equal level-playing field in the matter of public employment. Therefore, in the present case, we are concerned with conflicting claims within the concept of 'justice, social, economic and political', which concept as stated above exists both in Part-III and Part-IV of the Constitution. Public employment is a scarce commodity in economic terms. As the supply is scarce, demand is chasing that commodity. This is reality of life. The concept of 'public employment' unlike right to property is socialistic and, therefore, falls within the preamble to the Constitution which states that WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC.

Similarly, the preamble mentions the objective to be achieved, namely, justice, social, economic and political. Therefore, the concept of 'equality of opportunity' in public employment concerns an individual, whether that individual belongs to general category or backward class. The conflicting claim of individual right under Article 16(1) and the preferential treatment given to a backward class has to be balanced. Both the claims have a particular object to be achieved. The question is of optimization of these conflicting interests and claims.

EQUITY, JUSTICE AND MERIT:

The above three concepts are independent variable concepts. The application of these concepts in public employment depends upon quantifiable data in each case. Equality in law is different from equality in fact. When we construe Article 16(4), it is equality in fact which plays the dominant role. Backward classes seek justice. General class in public employment seeks equity. The difficulty comes in when the third variable comes in, namely, efficiency in service. In the issue of reservation, we are being asked to find a stable equilibrium between justice to the backwards, equity for the forwards and efficiency for the entire system. Equity and justice in the above context are hard-concepts.

However, if you add efficiency to equity and justice, the problem arises in the context of the reservation. This problem has to be examined, therefore, on the facts of each case. Therefore, Article 16(4) has to be construed in the light of Article 335 of the Constitution. Inadequacy in representation and backwardness of Scheduled Caste and Scheduled Tribes are circumstances which enable the State Government to act under Article 16(4) of the Constitution. However, as held by this Court the limitations on the discretion of the government in the matter of reservation under Article 16(4) as well as Article 16(4A) come in the form of Article 335 of the Constitution.

Merit is not a fixed absolute concept. Amartya Sen, in a book, Meritocracy and Economic Inequality, edited by Kenneth Arrow, points out that merit is a dependent idea and its meaning depends on how a society defines a desirable act. An act of merit in one society may not be the same in another. The difficulty is that there is no natural order of 'merit' independent of our value system. The content of merit is context-specific. It derives its meaning from particular conditions and purposes. The impact of any affirmative action policy on 'merit' depends on how that policy is designed. Unfortunately, in the present case, the debate before us on this point has taken place in an empirical vacuum. The basic presumption, however, remains that it is the State who is in the best position to define and measure merit in whatever ways they consider it to be relevant to public employment because ultimately it has to bear the costs arising from errors in defining and measuring merit. Similarly, the concept of "extent of reservation" is not an absolute concept and like merit it is context-specific.

The point which we are emphasizing is that ultimately the present controversy is regarding the exercise of the power by the State Government depending upon the fact-situation in each case. Therefore, 'vesting of the power' by an enabling provision may be constitutionally valid and yet 'exercise of the power' by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure backwardness and inadequacy keeping in mind the efficiency of service as required under Article 335

RESERVATION AND AFFIRMATIVE ACTION:

Equality of opportunity has two different and distinct concepts. There is a conceptual distinction between a non-discrimination principle and affirmative action under which the State is obliged to provide level-playing field to the oppressed classes. Affirmative action in the above sense seeks to move beyond the concept of non-discrimination towards equalizing results with respect to various groups. Both the conceptions constitute "equality of opportunity".

It is the equality "in fact" which has to be decided looking at the ground reality. Balancing comes in where the question concerns the extent of reservation. **If the extent of reservation goes beyond cut-off point then it results in reverse discrimination.** Anti-discrimination legislation has a tendency of pushing towards de facto reservation. Therefore, a numerical benchmark is the surest immunity against charges of discrimination.

Reservation is necessary for transcending caste and not for perpetuating it. Reservation has to be used in a limited sense otherwise it will perpetuate casteism in the country. Reservation is under-written by a special justification. Equality in Article 16(1) is individual-specific whereas reservation in Article 16(4) and Article 16(4A) is enabling. The discretion of the State is, however,

subject to the existence of "backwardness" and "inadequacy of representation" in public employment. Backwardness has to be based on objective factors whereas inadequacy has to factually exist. This is where judicial review comes in. However, whether reservation in a given case is desirable or not, as a policy, is not for us to decide as long as the parameters mentioned in Articles 16(4) and 16(4A) are maintained. As stated above, equity, justice and merit (Article 335)/efficiency are variables which can only be identified and measured by the State. Therefore, in each case, a contextual case has to be made out depending upon different circumstances which may exist State wise.

EXTENT OF RESERVATION:

Social justice is one of the sub-divisions of the concept of justice. It is concerned with the distribution of benefits and burdens throughout a society as it results from social institutions property systems, public organisations etc.

The problem is what should be the basis of distribution? Writers like Raphael, Mill and Hume define 'social justice' in terms of rights. Other writers like Hayek and Spencer define 'social justice' in terms of deserts. Socialist writers define 'social justice' in terms of need. Therefore, there are three criteria to judge the basis of distribution, namely, rights, deserts or need. These three criteria can be put under two concepts of equality "formal equality" and "proportional equality". "Formal equality" means that law treats everyone equal and does not favor anyone either because he belongs to the advantaged section of the society or to the disadvantaged section of the society. Concept of "proportional equality" expects the States to take affirmative action in favor of disadvantaged sections of the society within the framework of liberal democracy

Under the Indian Constitution, while basic liberties are guaranteed and individual initiative is encouraged, the State has got the role of ensuring that no class prospers at the cost of other class and no person suffers because of drawbacks which is not his but social.

The question of extent of reservation involves two questions:

1. Whether there is any upper limit beyond which reservation is not permissible?

2. Whether there is any limit to which seats can be reserved in a particular year; in other words the issue is whether the percentage limit applies only on the total number of posts in the cadre or to the percentage of posts advertised every year as well?

The question of extent of reservation is closely linked to the issue whether Article 16(4) is an exception to Article 16(1) or is Article 16(4) an application of Article 16(1). If Article 16(4) is an exception to Article 16(1) then it needs to be given a limited application so as not to eclipse the general rule in Article 16(1). But if Article 16(4) is taken as an application of Article 16(1) then the two articles have to be harmonized keeping in view the interests of certain sections of the society as against the interest of the individual citizens of the society.

Maximum limit of reservation possible Word of caution against excess reservation was first pointed out in *The General Manager, Southern Railway and another v. Rangachari Gajendragadkar, J.* giving the majority judgment said that reservation under Article 16(4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. A reasonable balance must be struck between the claims of backward classes and claims of other employees as well as the requirement of efficiency of administration.

However, the question of extent of reservation was not directly involved in *Rangachari15*. It was directly involved in *M.R. Balaji & Ors. V. The State of Mysore & Ors.* with reference to Article 15(4). In this case, 60% reservations under Article 15(4) was struck down as excessive and unconstitutional. *Gajendragadkar, J.* observed that special provision should be less than 50 per cent, how much less would depend on the relevant prevailing circumstances of each case.

But in *State of Kerala and another v. N.M. Thomas and others Krishna Iyer, J.* expressed his concurrence to the views of *Fazal Ali, J.* who said that although reservation cannot be so excessive as to destroy the principle of equality of opportunity under clause (1) of Article 16, yet it should be noted that the Constitution itself does not put any bar on the power of the Government under Article 16(4). If a State has 80% population which is backward then it would be meaningless to say that reservation should not cross 50%.

However, in *Indra Sawhney5* the majority held that the rule of 50% laid down in *Balaji16* was a binding rule and not a mere rule of prudence. Giving the judgment of the Court in *Indra Sawhney5*, *Reddy, J.* stated that Article 16(4) speaks of adequate representation not proportionate representation although proportion of population of backward classes to the total population would certainly be relevant. He further pointed out that Article 16(4) which protects interests of certain sections of society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be

harmonised because they are restatements of principle of equality under Article 14. (emphasis added)

Are reserved category candidates free to contest for vacancies in general category

In *Indra Sawhney5* *Reddy, J.* noted that reservation under Article 16(4) do not operate on communal ground. Therefore if a member from reserved category gets selected in general category, his selection will not be counted against the quota limit provided to his class. Similarly, in *R.K. Sabharwal8* the Supreme Court held that while general category candidates are not entitled to fill the reserved posts; reserved category candidates are entitled to compete for the general category posts. The fact that considerable number of members of backward class have been appointed/promoted against general seats in the State services may be a relevant factor for the State Government to review the question of continuing reservation for the said class.

Number of vacancies that could be reserved *Wanchoo, J.* who had given dissenting judgment in *Rangachari15* observed that the requirement of Article 16(4) is only to give adequate representation and since Constitution-makers intended it to be a short-term measure it may happen that all the posts in a year may be reserved. He opined that reserving a fixed percentage of seats every year may take a long time before inadequacy of representation is overcome. Therefore, the Government can decide to reserve the posts. After having reserved a fixed number of posts the Government may decide that till those posts are filled up by the backward classes all appointments will go to them if they fulfil the minimum qualification. Once this number is reached the Government is deprived of its power to make further reservations. Thus, according to *Wanchoo, J.* the adequacy of representation has to be judged considering the total number of posts even if in a single year or for few years all seats are reserved provided the scheme is short-term.

The idea given by *Wanchoo, J.* in *Rangachari15* did not work out in practice because most of the time even for limited number of reservations, every year qualified backward class candidates were not available. This compelled the government to adopt carry-forward rule. This carry-forward rule came in conflict with *Balaji16* ruling. In cases where the availability of reserved category candidates is less than the vacancies set aside for them, the Government has to adopt either of the two alternatives:

(1) the State may provide for carrying on the unfulfilled vacancies for the next year or next to the next year, or

(2) instead of providing for carrying over the unfulfilled vacancies to the coming years, it may provide for filling of the vacancies from the general quota candidates and carry forward the unfilled posts by backward classes to the next year quota.

But the problem arises when in a particular year due to carry forward rule more than 50% of vacancies are reserved. In *T. Devadasan v. Union of India* and another, this was the issue. Union Public Service Commission had provided for 17% reservation for Scheduled Castes and Scheduled Tribes. In case of non-availability of reserved category candidates in a particular year the posts had to be filled by general category candidates and the number of such vacancies were to be carried forward to be filled by the reserved category candidate next year. Due to this, the rule of carry forward reservation in a particular year amounted to 65% of the total vacancies. The petitioner contended that reservation was excessive which destroyed his right under Article 16(1) and Article 14. The court on the basis of decision in *Balaji*¹⁶ held the reservation excessive and, therefore, unconstitutional. It further stated that the guarantee of equality under Article 16(1) is to each individual citizen and to appointments to any office under the State. It means that on every occasion for recruitment the State should see that all citizens are treated equally. In order to effectuate the guarantee each year of recruitment will have to be considered by itself.

Thus, majority differed from *Wanchoo's, J.* decision in *Rangachari*¹⁵ holding that a cent percent reservation in a particular year would be unconstitutional in view of *Balaji*¹⁶ decision. *Subba Rao, J.* gave dissenting judgment. He relied on *Wanchoo's, J.* judgment in *Rangachari*¹⁵ and held that Article 16(4) provides for adequate representation taking into consideration entire cadre strength. According to him, if it is within the power of the State to make reservations then reservation made in one selection or spread over many selections is only a convenient method of implementing the provision of reservation. Unless it is established that an unreasonably disproportionate part of the cadre strength is filled up with the said castes and tribes, it is not possible to contend that the provision is not one of reservation but amounts to an extinction of the fundamental right

In the case of *Thomas*¹⁷ under the Kerala State and Subordinate Services Rules, 1950 certain relaxation was given to Scheduled Caste and Scheduled Tribe candidates passing departmental tests for promotions. For

promotion to upper division clerks from lower division clerks the criteria of seniority-cum-merit was adopted. Due to relaxation in merit qualification in 1972, 34 out of 51 vacancies in upper division clerks went to Scheduled Caste candidates. It appeared that the 34 members of SC/ST had become senior most in the lower grade. The High Court quashed the promotions on the ground that it was excessive. The Supreme Court upheld the promotions. *Ray, C.J.* held that the promotions made in services as a whole is nowhere near 50% of the total number of the posts. Thus, the majority differed from the ruling of the court in *Devadasan*¹⁹ basically on the ground that the strength of the cadre as a whole should be taken into account. *Khanna, J.* in his dissenting opinion made a reference to it on the ground that such excessive concession would impair efficiency in administration.

In *Indra Sawhney*⁵, the majority held that 50% rule should be applied to each year otherwise it may happen that (if entire cadre strength is taken as a unit) the open competition channel gets choked for some years and meanwhile the general category candidates may become age barred and ineligible. The equality of opportunity under Article 16(1) is for each individual citizen while special provision under Article 16(4) is for socially disadvantaged classes. Both should be balanced and neither should be allowed to eclipse the other.

However, in *R.K. Sabharwal*⁸ which was a case of promotion and the issue in this case was operation of roster system, the Court stated that entire cadre strength should be taken into account to determine whether reservation up to the required limit has been reached. With regard to ruling in *Indra Sawhney* case⁵ that reservation in a year should not go beyond 50% the Court held that it applied to initial appointments. The operation of a roster, for filling the cadre strength, by itself ensures that the reservation remains within the 50% limit. In substance the court said that presuming that 100% of the vacancies have been filled, each post gets marked for the particular category of candidate to be appointed against it and any subsequent vacancy has to be filled by that category candidate. The Court was concerned with the possibility that reservation in entire cadre may exceed 50% limit if every year half of the seats are reserved. The Constitution (Eighty-first Amendment) Act, 2000 added Article 16(4B) which in substance gives legislative assent to the judgment in *R.K. Sabharwal*⁸.

CATCH-UP RULE IS THE SAID RULE A CONSTITUTIONAL REQUIREMENT UNDER ARTICLE 16(4):

One of the contentions advanced on behalf of the petitioners is that the impugned amendments, particularly, the Constitution (Seventy-Seventh Amendment) and (Eight-Fifth Amendment) Acts, obliterate all constitutional limitations on the amending power of the Parliament. That the width of these impugned amendments is so wide that it violates the basic structure of equality enshrined in the Constitution.

The key issue which arises for determination is whether the above "catch-up" rule and the concept of "consequential seniority" are constitutional requirements of Article 16 and of equality, so as to be beyond the constitutional amendatory process. In other words, whether obliteration of the "catch-up" rule or insertion of the concept of "consequential seniority code", would violate the basic structure of the equality code enshrined in Articles 14, 15 and 16.

The concept of "catch-up" rule appears for the first time in the case of Virpal Singh Chauhan¹. In the category of Guards in the Railways, there were four categories, namely, Grade 'C', Grade 'B', Grade 'A' and Grade 'A' Special. The initial recruitment was made to Gr. 'C'. Promotion from one grade to another was by seniority-cum-suitability. The rule of reservation was applied not only at the initial stage of appointment to Grade 'C' but at every stage of promotion. **The percentage reserved for SC was 15% and for ST, it was 7.5%.** To give effect to the rule of reservation, a forty-point roster was prepared in which certain points were reserved for SCs and STs respectively. Subsequently, a hundred-point roster was prepared reflecting the same percentages. In 1986, general candidates and members of SCs/STs came within Grade 'A' in Northern-Railway.

On 1.8.1986, the Chief Controller promoted certain general candidates on ad hoc basis to Grade 'A' Special. Within three months, they were reverted and SCs and STs were promoted. This action was challenged by general candidates as arbitrary and unconstitutional before the tribunal. The general candidates asked for three reliefs, namely, (a) to restrain the Railways from filling-up the posts in higher grades in the category of Guards by applying the rule of reservation; (b) to restrain the Railway from acting upon the seniority list prepared by them; and (c) to declare that the general candidates were alone

entitled to be promoted and confirmed in Grade 'A' Special on the strength of their seniority earlier to the reserved category employees. The contention of the general candidates was that once the quota prescribed for the reserved group is satisfied, the forty-point roster cannot be applied because that roster was prepared to give effect to the rule of reservation. It was contended by the general candidates that accelerated promotion may be given but the Railways cannot give consequential seniority to reserved category candidates in the promoted category. (Emphasis added). In this connection, the general category candidates relied upon the decisions of the Allahabad and Madhya Pradesh High Courts. It was contended by the general candidates that giving consequential seniority in addition to accelerated promotion constituted conferment of double benefit upon the members of the reserved category and, therefore, violated the rule of equality in Article 16(1). It was further urged that accelerated promotion-cum-accelerated seniority is destructive of the efficiency of administration inasmuch as by this means the higher echelons of administration would be occupied entirely by members of reserved categories. This was opposed by the reserved category candidates who submitted that for the purposes of promotion to Grade 'A' Special, the seniority list pertaining to Grade 'A' alone should be followed; that, the administration should not follow the seniority lists maintained by the administration pertaining to Grade 'C' as urged by the general candidates and since SCs and STs were senior to the general candidates in Grade 'A', the seniority in Grade 'A' alone should apply. In short, the general candidates relied upon the 'catch-up' rule, which was opposed by the members of SC/ST. They also relied upon the judgment of this Court in R.K. Sabharwal⁸.

This Court gave following reasons for upholding the decision of the tribunal. Firstly, it was held that a rule of reservation as such does not violate Article 16(4). Secondly, this Court opined, that there is no uniform method of providing reservation. The extent and nature of reservation is a matter for the State to decide having regard to the facts and requirements of each case. It is open to the State, if so advised, to say that while the rule of reservation shall be applied, the candidate promoted earlier by virtue of rule of reservation/roster shall not be entitled to seniority over seniors in the feeder category and that it is open to the State to interpret the 'catch-up' rule in the service conditions governing the promotions [See: para 24]. Thirdly, this Court did not agree with the view expressed by the tribunal [in Virpal Singh Chauhan¹] that a harmonious reading of clauses (1) to (4) of Article 16 should mean that a reserved category candidate promoted earlier than his senior general category candidates in the

feeder grade shall necessarily be junior in the promoted category to such general category. This Court categorically ruled, vide para 27, that such catch-up principle cannot be said to be implicit in clauses (1) to (4) of Article 16 (emphasis supplied). Lastly, this Court found on facts that for 11 vacancies, 33 candidates were considered and they were all SC/ST candidates. Not a single candidate belonged to general category. It was argued on behalf of the general candidates that all top grades stood occupied exclusively by the reserved category members, which violated the rule of equality underlying Articles 16(1), 16(4) and 14. This Court opined that the above situation arose on account of faulty implementation of the rule of reservation, as the Railways did not observe the principle that reservation must be in relation to 'posts' and not 'vacancies' and also for applying the roster even after the attainment of the requisite percentage reserved for SCs/STs. In other words, this Court based its decision only on the faulty implementation of the rule by the Railways which the Court ordered to be rectified.

The point which we need to emphasize is that the Court has categorically ruled in Virpal Singh Chauhan¹ that the 'catch-up' rule is not implicit in clauses (1) to (4) of Article 16. Hence, the said rule cannot bind the amending power of the Parliament. It is not beyond the amending power of the Parliament.

In Ajit Singh (I)², the controversy which arose for determination was whether after the members of SCs/STs for whom specific percentage of posts stood reserved having been promoted against those posts, was it open to the administration to grant consequential seniority against general category posts in the higher grade. The appellant took a clear stand that he had no objection if members of SC/ST get accelerated promotions. The appellant objected only to the grant of consequential seniority. Relying on the circulars issued by the administration dated 19.7.1969 and 8.9.1969, the High Court held that the members of SCs/STs can be promoted against general category posts on basis of seniority. This was challenged in appeal before this Court. The High Court ruling was set aside by this Court on the ground that if the 'catch-up' rule is not applied then the equality principle embodied in Article 16(1) would stand violated. This Court observed that the 'catch-up' rule was a process adopted while making appointments through direct recruitment or promotion because merit cannot be ignored. This Court held that for attracting meritorious candidate a balance has to be struck while making provisions for reservation. It was held that the promotion is an incident of service. It was observed that

seniority is one of the important factors in making promotion. It was held that right to equality is to be preserved by preventing reverse discrimination. Further, it was held that the equality principle requires exclusion of extra-weightage of roster-point promotion to a reserved category candidate (emphasis supplied). This Court opined that without 'catch-up' rule giving weightage to earlier promotion secured by roster-point promotee would result in reverse discrimination and would violate equality under Articles 14, 15 and 16. Accordingly, this Court took the view that the seniority between the reserved category candidates and general candidates in the promoted category shall be governed by their panel position. Therefore, this Court set aside the factor of extra-weightage of earlier promotion to a reserved category candidate as violative of Articles 14 and 16(1) of the Constitution.

Therefore, in Virpal Singh Chauhan¹, this Court has said that the 'catch-up' rule insisted upon by the Railways though not implicit in Articles 16(1) and 16(4), is constitutionally valid as the said practice/process was made to maintain efficiency. On the other hand, in Ajit Singh (I)², this Court has held that the equality principle excludes the extra-weightage given by the Government to roster-point promotees as such weightage is against merit and efficiency of the administration and that the Punjab Government had erred in not taking into account the said merit and efficiency factors.

In the case of Ajit Singh (II)³, three interlocutory applications were filed by State of Punjab for clarification of the judgment of this Court in Ajit Singh (I)². The limited question was whether there was any conflict between the judgments of this Court in Virpal Singh Chauhan¹ and Ajit Singh (I)² on one hand and vis-à-vis the judgment of this Court in Jagdish Lal and others v. State of Haryana and others. The former cases were decided in favour of general candidates whereas latter was a decision against the general candidates. Briefly, the facts for moving the interlocutory applications were as follows. The Indian Railways following the law laid down in Virpal Singh Chauhan¹ issued a circular on 28.2.1997 to the effect that the reserved candidates promoted on roster-points could not claim seniority over the senior general candidates promoted later on. The State of Punjab after following Ajit Singh (I)² revised their seniority list and made further promotions of the senior general candidates following the 'catch-up' rule. Therefore, both the judgments were against the reserved candidates. However, in the later judgment of this Court in the case of Jagdish Lal²⁰, another three-Judge bench took the view that under the general

rule of service jurisprudence relating to seniority, the date of continuous officiation has to be taken into account and if so, the roster-point promotees were entitled to the benefit of continuous officiation. In Jagdish Lal²⁰, the bench observed that the right to promotion was a statutory right while the rights of the reserved candidates under Article 16(4) and Article 16(4A) were fundamental rights of the reserved candidates and, therefore, the reserved candidates were entitled to the benefit of continuous officiation.

Accordingly, in Ajit Singh (II)³, three points arose for consideration:

(i) Can the roster point promotees count their seniority in the promoted category from the date of their continuous officiation vis-à-vis general candidates, who were senior to them in the lower category and who were later promoted to the same level?

(ii) Have Virpal¹ and Ajit Singh (I)² have been correctly decided and has Jagdish Lal²⁰ been correctly decided?

(iii) Whether the catch-up principles are tenable?

At the outset, this Court stated that it was not concerned with the validity of constitutional amendments and, therefore, it proceeded on the assumption that Article 16(4A) is valid and is not unconstitutional. Basically, the question decided was whether the 'catch-up' principle was tenable in the context of Article 16(4). It was held that the primary purpose of Article 16(4) and Article 16(4A) is to give due representation to certain classes in certain posts keeping in mind Articles 14, 16(1) and 335; that, Articles 14 and 16(1) have prescribed permissive limits to affirmative action by way of reservation under Articles 16(4) and 16(4A) of the Constitution; that, Article 335 is incorporated so that efficiency of administration is not jeopardized and that Articles 14 and 16(1) are closely connected as they deal with individual rights of the persons. They give a positive command to the State that there shall be equality of opportunity of all citizens in public employment. It was further held that Article 16(1) flows from Article 14. It was held that the word 'employment' in Article 16(1) is wide enough to include promotions to posts at the stage of initial level of recruitment. It was observed that Article 16(1) provides to every employee otherwise eligible for promotion fundamental right to be considered for promotion. The right to equal opportunity means the right to be considered for promotion. The right to be considered for promotion was not a statutory right. It was held that Articles

16(4) and 16(4A) did not confer any fundamental right to reservation. That they are only enabling provisions. Accordingly, in Ajit Singh (II)³, the judgment of this Court in Jagdish Lal²⁰ case was overruled. However, in the context of balancing of fundamental rights under Article 16(1) and the rights of reserved candidate under Articles 16(4) and 16(4A), this Court opined that Article 16(1) deals with a fundamental right whereas Articles 16(4) and 16(4A) are only enabling provisions and, therefore, the interests of the reserved classes must be balanced against the interests of other segments of society. As a remedial measure, the Court held that in matters relating to affirmative action by the State, the rights under Articles 14 and 16 are required to be protected and a reasonable balance should be struck so that the affirmative action by the State does not lead to reverse discrimination.

Reading the above judgments, we are of the view that the concept of 'catch-up' rule and 'consequential seniority' are judicially evolved concepts to control the extent of reservation. The source of these concepts is in service jurisprudence. These concepts cannot be elevated to the status of an axiom like secularism, constitutional sovereignty etc. It cannot be said that by insertion of the concept of 'consequential seniority' the structure of Article 16(1) stands destroyed or abrogated. It cannot be said that 'equality code' under Article 14, 15 and 16 is violated by deletion of the 'catch-up' rule. These concepts are based on practices. However, such practices cannot be elevated to the status of a constitutional principle so as to be beyond the amending power of the Parliament. Principles of service jurisprudence are different from constitutional limitations. Therefore, in our view neither the 'catch-up' rule nor the concept of 'consequential seniority' are implicit in clauses (1) and (4) of Article 16 as correctly held in Virpal Singh Chauhan¹.

Before concluding, we may refer to the judgment of this court in M.G. Badappanavar⁶. In that case the facts were as follows. Appellants were general candidates. They contended that when they and the reserved candidates were appointed at Level-1 and junior reserved candidates got promoted earlier on the basis of roster-points to Level-2 and again by way of roster-points to Level-3, and when the senior general candidate got promoted to Level-3, then the general candidate would become senior to the reserved candidate at Level-3. At Level-3, the reserved candidate should have been considered along with the senior general candidate for promotion to Level-4. In support of their contention, appellants relied upon the judgment of the Constitution Bench in Ajit Singh (II)³. The

above contentions raised by the appellants were rejected by the tribunal. Therefore, the general candidates came to this Court in appeal. This Court found on facts that the concerned Service Rule did not contemplate computation of seniority in respect of roster promotions. Placing reliance on the judgment of this Court in Ajit Singh (I)² and in Virpal Singh¹, this court held that roster promotions were meant only for the limited purpose of due representation of backward classes at various levels of service and, therefore, such roster promotions did not confer consequential seniority to the roster-point promotee. In Ajit Singh (II)³, the circular which gave seniority to the roster-point promotees was held to be violative of Articles 14 and 16. It was further held in M. G. Badappanavar⁶ that equality is the basic feature of the Constitution and any treatment of equals as unequals or any treatment of unequals as equals violated the basic structure of the Constitution. For this proposition, this Court placed reliance on the judgment in Indra Sawhney⁵ while holding that if creamy layer among backward classes were given some benefits as backward classes, it will amount to equals being treated unequals. Applying the creamy layer test, this Court held that if roster-point promotees are given consequential seniority, it will violate the equality principle which is part of the basic structure of the Constitution and in which event, even Article 16(4A) cannot be of any help to the reserved category candidates. This is the only judgment of this Court delivered by three-Judge bench saying that if roster-point promotees are given the benefit of consequential seniority, it will result in violation of equality principle which is part of the basic structure of the Constitution. Accordingly, the judgment of the tribunal was set aside.

The judgment in the case of M. G. Badappanavar⁶ was mainly based on the judgment in Ajit Singh (I)² which had taken the view that the departmental circular which gave consequential seniority to the 'roster-point promotee', violated Articles 14 and 16 of the Constitution. In none of the above cases, the question of the validity of the constitutional amendments was involved. Ajit Singh (I)², Ajit Singh (II)³ and M. G. Badappanavar⁶ were essentially concerned with the question of 'weightage'. Whether weightage of earlier accelerated promotion with consequential seniority should be given or not to be given are matters which would fall within the discretion of the appropriate Government, keeping in mind the backwardness, inadequacy and representation in public employment and overall efficiency of services. The above judgments, therefore, did not touch the questions which are involved in the present case.

SCOPE OF THE IMPUGNED AMENDMENTS

Before dealing with the scope of the constitutional amendments we need to recap the judgments in Indra Sawhney⁵ and R.K. Sabharwal⁸. In the former case the majority held that 50% rule should be applied to each year otherwise it may happen that the open competition channel may get choked if the entire cadre strength is taken as a unit. However in R.K. Sabharwal⁸, this court stated that the entire cadre strength should be taken into account to determine whether the reservation up to the quota-limit has been reached. It was clarified that the judgment in Indra Sawhney⁵ was confined to initial appointments and not to promotions. The operation of the roster for filling the cadre strength, by itself, ensure that the reservation remains within the ceiling-limit of 50%.

In our view, appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that upper ceiling-limit of 50% is not violated. Further, roster has to be post-specific and not vacancy based.

With these introductory facts, we may examine the scope of the impugned constitutional amendments.

The Supreme Court in its judgment-dated 16.11.92 in Indra Sawhney⁵ stated that reservation of appointments or posts under Article 16(4) is confined to initial appointment and cannot extend to reservation in the matter of promotion. Prior to the judgment in Indra Sawhney⁵ reservation in promotion existed. The Government felt that the judgment of this court in Indra Sawhney⁵ adversely affected the interests of SCs and STs in services, as they have not reached the required level. Therefore, the Government felt that it was necessary to continue the existing policy of providing reservation in promotion confined to SCs and STs alone. We quote herein below Statement of Objects and Reasons with the text of the Constitution (Seventy-Seventh Amendment) Act, 1995 introducing clause (4A) in Article 16 of the Constitution: "THE CONSTITUTION (SEVENTY-SEVENTH AMENDMENT) ACT, 1995 STATEMENT OF OBJECTS AND REASONS The Scheduled Castes and the Scheduled Tribes have been enjoying the facility of reservation in promotion since 1955. The Supreme Court in its judgment dated 16th November 1992 in the case of Indra Sawhney v. Union of India⁵, however, observed that reservation of appointments or posts under Article 16(4) of the Constitution is confined to initial appointment

and cannot extent to reservation in the matter of promotion. This ruling of the Supreme Court will adversely affect the interests of the Scheduled Castes and the Scheduled Tribes. Since the representation of the Scheduled Castes and the Scheduled Tribes in services in the States have not reached the required level, it is necessary to continue the existing dispensation of providing reservation in promotion in the case of the Scheduled Castes and the Scheduled Tribes. In view of the commitment of the Government to protect the interests of the Scheduled Castes and the Scheduled Tribes, the Government have decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this, it is necessary to amend Article 16 of the Constitution by inserting a new clause (4A) in the said Article to provide for reservation in promotion for the Scheduled Castes and the Scheduled Tribes.

2. The Bill seeks to achieve the aforesaid object. THE CONSTITUTION (SEVENTY-SEVENTH AMENDMENT) ACT, 1995 [Assented on 17th June, 1995, and came into force on 17.6.1995] An Act further to amend the Constitution of India BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:-

1. Short title.- This Act may be called the Constitution (Seventy-seventh Amendment) Act, 1995.

2. Amendment of Article 16. - In Article 16 of the Constitution, after clause (4), the following clause shall be inserted, namely: - "(4A) Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

The said clause (4A) was inserted after clause (4) of Article 16 to say that nothing in the said Article shall prevent the State from making any provision for reservation in matters of promotion to any class(s) of posts in the services under the State in favour of SCs and STs which, in the opinion of the States, are not adequately represented in the services under the State.

Clause (4A) follows the pattern specified in clauses (3) and (4) of Article 16. Clause (4A) of Article 16 emphasizes the opinion of the States in the matter of adequacy of representation. It gives freedom to the State in an appropriate case depending upon the ground reality to provide for reservation in matters of promotion to any class or classes of posts in the services. The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4). Therefore, clause (4A) will be governed by the two compelling reasons "backwardness" and "inadequacy of representation", as, mentioned in Article 16(4). If the said two reasons do not exist then the enabling provision cannot come into force. The State can make provision for reservation only if the above two circumstances exist. Further in *Ajit Singh (II)*³, this court has held that apart from 'backwardness' and 'inadequacy of representation' the State shall also keep in mind 'overall efficiency' (Article 335). Therefore, all the three factors have to be kept in mind by the appropriate Government by providing for reservation in promotion for SCs and STs.

After the Constitution (Seventy-Seventh Amendment) Act, 1995, this court stepped in to balance the conflicting interests. This was in the case of *Virpal Singh Chauhan*¹ in which it was held that a roster-point promotee getting the benefit of accelerated promotion would not get consequential seniority. As such, consequential seniority constituted additional benefit and, therefore, his seniority will be governed by the panel position. According to the Government, the decisions in *Virpal Singh*¹ and *Ajit Singh (I)*² bringing in the concept of "catch-up" rule adversely affected the interests of SCs and STs in the matter of seniority on promotion to the next higher grade.

In the circumstances, clause (4A) of Article 16 was once again amended and the benefit of consequential seniority was given in addition to accelerated promotion to the roster-point promotees. Suffice it to state that, the Constitution (Eighty-Fifth Amendment) Act, 2001 was an extension of clause (4A) of Article 16. Therefore, the Constitution (Seventy-Seventh Amendment) Act, 1995 has to be read with the Constitution (Eighty-Fifth Amendment) Act, 2001.

We quote herein below Statement of Objects and Reasons with the text of the Constitution (Eighty-Fifth Amendment) Act, 2001: "THE CONSTITUTION (EIGHTY-FIFTH

AMENDMENT) ACT, 2001 STATEMENT OF OBJECTS AND REASONS

The Government servants belonging to the Scheduled Castes and the Scheduled Tribes had been enjoying the benefit of consequential seniority on their promotion on the basis of rule of reservation. The judgments of the Supreme Court in the case of Union of India v. Virpal Singh Chauhan (1995) 6 SCC 684 and Ajit Singh Januja (No.1) v. State of Punjab AIR 1996 SC 1189, which led to the issue of the O.M. dated 30th January, 1997, have adversely affected the interest of the Government servants belonging to the Scheduled Castes and Scheduled Tribes category in the matter of seniority on promotion to the next higher grade. This has led to considerable anxiety and representations have also been received from various quarters including Members of Parliament to protect the interest of the Government servants belonging to Scheduled Castes and Scheduled Tribes.

2. The Government has reviewed the position in the light of views received from various quarters and in order to protect the interest of the Government servants belonging to the Scheduled Castes and Scheduled Tribes, it has been decided to negate the effect of O.M. dated 30th January 1997 immediately. Mere withdrawal of the O.M. dated 30th will not meet the desired purpose and review or revision of seniority of the Government servants and grant of consequential benefits to such Government servants will also be necessary. This will require amendment to Article 16(4A) of the Constitution to provide for consequential seniority in the case of promotion by virtue of reservation. It is also necessary to give retrospective effect to the proposed constitutional amendment to Article 16(4A) with effect from the date of coming into force of Article 16(4A) itself, that is, from the 17th day of June, 1995.

3. The Bill seeks to achieve the aforesaid objects. THE CONSTITUTION (EIGHTY-FIFTH AMENDMENT) ACT, 2001. The following Act of Parliament received the assent of the President on the 4th January, 2002 and is published for general information:-

An Act further to amend the Constitution of India. BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows: -

1. Short title and commencement. - (1) This Act may be called the Constitution (Eighty-fifth Amendment) Act, 2001. (2) It shall be deemed to have come into force on the 17th day of June 1995.

2. Amendment of Article 16. - In Article 16 of the Constitution, in clause (4A), for the words "in matters of promotion to any class", the words in matters of promotion, with consequential seniority, to any class" shall be substituted."

Reading the Constitution (Seventy-Seventh Amendment) Act, 1995 with the Constitution (Eighty-Fifth Amendment) Act, 2001, clause (4A) of Article 16 now reads as follows:

"(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favor of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State."

The question in the present case concerns the width of the amending powers of the Parliament. The key issue is whether any constitutional limitation mentioned in Article 16(4) and Article 335 stand obliterated by the above constitutional amendments.

In R.K. Sabharwal⁸, the issue was concerning operation of roster system. This court stated that the entire cadre strength should be taken into account to determine whether reservation up to the required limit has been reached. It was held that if the roster is prepared on the basis of the cadre strength that by itself would ensure that the reservation would remain within the ceiling-limit of 50%. In substance, the court said that in the case of hundred-point roster each post gets marked for the category of candidate to be appointed against it and any subsequent vacancy has to be filled by that category candidate alone (replacement theory).

The question, which remained in controversy, however, was concerning the rule of 'carry-forward'. In Indra Sawhney⁵ this court held that the number of

vacancies to be filled up on the basis of reservation in a year including the 'carry-forward' reservations should in no case exceed the ceiling-limit of 50%.

However, the Government found that total reservation in a year for SCs, STs and OBCs combined together had already reached 49% and if the judgment of this court in Indra Sawhney⁵ had to be applied it became difficult to fill "backlog vacancies". According to the Government, in some cases the total of the current and backlog vacancies was likely to exceed the ceiling-limit of 50%. Therefore, the Government inserted clause (4B) after clause (4A) in Article 16 vide the Constitution (Eighty-First Amendment) Act, 2000.

By clause (4B) the "carry-forward"/"unfilled vacancies" of a year is kept out and excluded from the overall ceiling-limit of 50% reservation. The clubbing of the backlog vacancies with the current vacancies stands segregated by the Constitution (Eighty-First Amendment) Act, 2000. Quoted herein below is the Statement of Objects and Reasons with the text of the Constitution (Eighty-First Amendment) Act, 2000: "THE CONSTITUTION (EIGHTY FIRST AMENDMENT) ACT, 2000 (Assented on 9th June, 2000 and came into force 9.6.2000)

STATEMENT OF OBJECTS AND REASONS Prior to August 29, 1997, the vacancies reserved for the Scheduled Castes and the Scheduled Tribes, which could not be filled up by direct recruitment on account of non-availability of the candidates belonging to the Scheduled Castes or the Scheduled Tribes, were treated as "Backlog Vacancies". These vacancies were treated as a distinct group and were excluded from the ceiling of fifty per cent reservation. The Supreme Court of India in its judgment in the Indra Sawhney versus Union of India held that the number of vacancies to be filled up on the basis of reservations in a year including carried forward reservations should in no case exceed the limit of fifty per cent. As total reservations in a year for the Scheduled Castes, the Scheduled Tribes and the other Backward Classes combined together had already reached forty-nine and a half per cent and the total number of vacancies to be filled up in a year could not exceed fifty per cent., it became difficult to fill the "Backlog Vacancies" and to hold Special Recruitment Drives. Therefore, to implement the judgment of the Supreme Court, an Official Memorandum dated August 29, 1997 was issued to provide that the fifty per cent limit shall apply to current as well as "Backlog Vacancies" and for discontinuation of the Special Recruitment Drive. Due to the adverse effect of

the aforesaid order dated August 29, 1997, various organisations including the Members of Parliament represented to the central Government for protecting the interest of the Scheduled castes and the Scheduled Tribes. The Government, after considering various representations, reviewed the position and has decided to make amendment in the constitution so that the 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 (4A) of Article 16 of the Constitution, shall be considered 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. This amendment in the Constitution would enable the State to restore the position as was prevalent before August 29, 1997. The Bill seeks to achieve the aforesaid object.

THE CONSTITUTION (EIGHTY-FIRST AMENDMENT) ACT, 2000

(Assented on 9th June, 2000 and came into force 9.6.2000)

An Act further to amend the Constitution of India. BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows: -

1. Short title: This Act may be called the Constitution (Eighty-first Amendment) Act, 2000.

2. Amendment of Article 16: In Article 16 of the Constitution, after clause (4A), the following clause shall be inserted, namely: - "(4B) 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 (4A) 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."

The Constitution (Eighty-First Amendment) Act, 2000 gives, in substance, legislative assent to the judgment of this Court in R.K. Sabharwal⁸. Once it is held that each point in the roster indicates a post which on falling vacant has to be filled by the particular category of candidate to be appointed

against it and any subsequent vacancy has to be filled by that category candidate alone then the question of clubbing the unfilled vacancies with current vacancies do not arise. Therefore, in effect, Article 16(4B) grants legislative assent to the judgment in R.K. Sabharwal⁸. If it is within the power of the State to make reservation then whether it is made in one selection or deferred selections, is only a convenient method of implementation as long as it is post based, subject to replacement theory and within the limitations indicated hereinafter.

As stated above, clause (4A) of Article 16 is carved out of clause (4) of Article 16. Clause (4A) provides benefit of reservation in promotion only to SCs and STs. In the case of S. Vinod Kumar and another v. Union of India and others this court held that relaxation of qualifying marks and standards of evaluation in matters of reservation in promotion was not permissible under Article 16(4) in view of Article 335 of the Constitution. This was also the view in Indra Sawhney⁵.

By the Constitution (Eighty-Second Amendment) Act, 2000, a proviso was inserted at the end of Article 335 of the Constitution which reads as under: "Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."

This proviso was added following the benefit of reservation in promotion conferred upon SCs and STs alone. This proviso was inserted keeping in mind the judgment of this court in Vinod Kumar²¹ which took the view that relaxation in matters of reservation in promotion was not permissible under Article 16(4) in view of the command contained in Article 335. Once a separate category is carved out of clause (4) of Article 16 then that category is being given relaxation in matters of reservation in promotion. The proviso is confined to SCs and STs alone. The said proviso is compatible with the scheme of Article 16(4A).

INTRODUCTION OF "TIME" FACTOR IN VIEW OF ARTICLE 16(4B)

As stated above, Article 16(4B) lifts the 50% cap on carry-over vacancies (backlog vacancies). The ceiling-limit of 50% on current vacancies continues to remain. In working-out the carry-forward rule, two factors are required to be kept in mind, namely, unfilled vacancies and the time factor. This position needs to be explained. On one hand of the spectrum, we have unfilled vacancies; on the other hand, we have a time-spread over number of years over which unfilled vacancies are sought to be carried-over. These two are alternating factors and, therefore, if the ceiling-limit on the carry-over of unfilled vacancies is removed, the other alternative time-factor comes in and in that event, the time-scale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the time-scale is not kept then posts will continue to remain vacant for years, which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the time-cap depending upon the fact-situation. What is stated hereinabove is borne out by Service Rules in some of the States where the carry-over rule does not extend beyond three years?

WHETHER IMPUGNED CONSTITUTIONAL AMENDMENTS VIOLATES THE PRINCIPLE OF BASIC STRUCTURE:

The key question which arises in the matter of the challenge to the constitutional validity of the impugned amending Acts is - whether the constitutional limitations on the amending power of the Parliament are obliterated by the impugned amendments so as to violate the basic structure of the Constitution.

In the matter of application of the principle of basic structure, twin tests have to be satisfied, namely, the 'width test' and the test of 'identity'. As stated hereinabove, the concept of the 'catch-up' rule and 'consequential seniority' are not constitutional requirements. They are not implicit in clauses (1) and (4) of Article 16. They are not constitutional limitations. They are concepts derived from service jurisprudence. They are not constitutional principles. They are not axioms like, secularism, federalism etc. Obliteration of these concepts or insertion of these concepts do not change the equality code indicated by Articles 14, 15 and 16 of the Constitution. Clause (1) of Article 16 cannot prevent the State from taking cognizance of the compelling interests of backward classes in the society. Clauses (1) and (4) of Article 16 are restatements of the principle of equality under Article 14. Clause (4) of Article 16 refers to affirmative action by

way of reservation. Clause (4) of Article 16, however, states that the appropriate Government is free to provide for reservation in cases where it is satisfied on the basis of quantifiable data that backward class is inadequately represented in the services. Therefore, in every case where the State decides to provide for reservation there must exist two circumstances, namely, 'backwardness' and 'inadequacy of representation'. As stated above equity, justice and efficiency are variable factors. These factors are context-specific. There is no fixed yardstick to identify and measure these three factors; it will depend on the facts and circumstances of each case. These are the limitations on the mode of the exercise of power by the State. None of these limitations have been removed by the impugned amendments. If the concerned State fails to identify and measure backwardness, inadequacy and overall administrative efficiency then in that event the provision for reservation would be invalid. These amendments do not alter the structure of Articles 14, 15 and 16 (equity code). The parameters mentioned in Article 16(4) are retained. Clause (4A) is derived from clause (4) of Article 16. Clause (4A) is confined to SCs and STs alone. Therefore, the present case does not change the identity of the Constitution. The word "amendment" connotes change. The question is whether the impugned amendments discard the original constitution. It was vehemently urged on behalf of the petitioners that the Statement of Objects and Reasons indicate that the impugned amendments have been promulgated by the Parliament to overrule the decision of this court. We do not find any merit in this argument. Under Article 141 of the Constitution the pronouncement of this court is the law of the land. The judgments of this court in Virpal Singh¹, Ajit Singh (I)², Ajit Singh (II)³ and Indra Sawhney⁵, were judgments delivered by this court which enunciated the law of the land. It is that law which is sought to be changed by the impugned constitutional amendments. The impugned constitutional amendments are enabling in nature. They leave it to the States to provide for reservation. It is well-settled that the Parliament while enacting a law does not provide content to the "right". The content is provided by the judgments of the Supreme Court. If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335 then this court will certainly set aside and strike down such legislation. Applying the "width test", we do not find obliteration of any of the constitutional limitations. Applying the test of "identity", we do not find any alteration in the existing structure of the equality code. As stated above, none of the axioms like secularism, federalism etc. which are overarching principles have been violated

by the impugned constitutional amendments. Equality has two facets "formal equality" and "proportional equality". Proportional equality is equality "in fact" whereas formal equality is equality "in law". Formal equality exists in the Rule of Law. In the case of proportional equality the State is expected to take affirmative steps in favour of disadvantaged sections of the society within the framework of liberal democracy. Egalitarian equality is proportional equality.

The criterion for determining the validity of a law is the competence of the law-making authority. The competence of the law-making authority would depend on the ambit of the legislative power, and the limitations imposed thereon as also the limitations on mode of exercise of the power. Though the amending power in Constitution is in the nature of a constituent power and differs in content from the legislative power, the limitations imposed on the constituent power may be substantive as well as procedural. Substantive limitations are those which restrict the field of the exercise of the amending power. Procedural limitations on the other hand are those which impose restrictions with regard to the mode of exercise of the amending power. Both these limitations touch and affect the constituent power itself, disregard of which invalidates its exercise. [See: *Kihoto Hollohan v. Zachillhu & Others*].

Applying the above tests to the present case, there is no violation of the basic structure by any of the impugned amendments, including the Constitution (Eighty-Second) Amendment Act, 2000. The constitutional limitation under Article 335 is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on facts of each case. In our view, the field of exercise of the amending power is retained by the impugned amendments, as the impugned amendments have introduced merely enabling provisions because, as stated above, merit, efficiency, backwardness and inadequacy cannot be identified and measured in vacuum. Moreover, Article 16(4A) and Article 16(4B) fall in the pattern of Article 16(4) and as long as the parameters mentioned in those articles are complied-with by the States, the provision of reservation cannot be faulted. Articles 16(4A) and 16(4B) are classifications within the principle of equality under Article 16(4).

In conclusion, we may quote the words of Rubinfeld: "ignoring our commitments may make us rationale but not free. It cannot make us maintain our constitutional identity".

ROLE OF ENABLING PROVISIONS IN THE CONTEXT OF ARTICLE 14:

The gravamen of Article 14 is equality of treatment. Article 14 confers a personal right by enacting a prohibition which is absolute. By judicial decisions, the doctrine of classification is read into Article 14. Equality of treatment under Article 14 is an objective test. It is not the test of intention. Therefore, the basic principle underlying Article 14 is that the law must operate equally on all persons under like circumstances. [Emphasis added]. Every discretionary power is not necessarily discriminatory. According to the Constitutional Law of India, by H.M. Seervai, 4th Edn. 546, equality is not violated by mere conferment of discretionary power. It is violated by arbitrary exercise by those on whom it is conferred. This is the theory of 'guided power'. This theory is based on the assumption that in the event of arbitrary exercise by those on whom the power is conferred would be corrected by the Courts. This is the basic principle behind the enabling provisions which are incorporated in Articles 16(4A) and 16(4B). Enabling provisions are permissive in nature. They are enacted to balance equality with positive discrimination. The constitutional law is the law of evolving concepts. Some of them are generic others have to be identified and valued. The enabling provisions deal with the concept, which has to be identified and valued as in the case of access vis-à-vis efficiency which depends on the fact-situation only and not abstract principle of equality in Article 14 as spelt out in detail in Articles 15 and 16. Equality before the law, guaranteed by the first part of Article 14, is a negative concept while the second part is a positive concept which is enough to validate equalizing measures depending upon the fact-situation.

It is important to bear in mind the nature of constitutional amendments. They are curative by nature. Article 16(4) provides for reservation for backward classes in cases of inadequate representation in public employment. Article 16(4) is enacted as a remedy for the past historical discriminations against a social class. The object in enacting the enabling provisions like Articles 16(4), 16(4A) and 16(4B) is that the State is empowered to identify and recognize the compelling interests. If the State has quantifiable data to show backwardness and inadequacy then the State can make reservations in promotions keeping in mind maintenance of efficiency which is held to be a constitutional limitation on the discretion of the State in making reservation as indicated by Article 335. As stated above, the concepts of efficiency, backwardness, inadequacy of

representation are required to be identified and measured. That exercise depends on availability of data. That exercise depends on numerous factors. It is for this reason that enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment. This is amply demonstrated by the various decisions of this Court discussed hereinabove. Therefore, there is a basic difference between 'equality in law' and 'equality in fact' (See: 'Affirmative Action' by William Darity). If Articles 16(4A) and 16(4B) flow from Article 16(4) and if Article 16(4) is an enabling provision then Articles 16(4A) and 16(4B) are also enabling provisions. As long as the boundaries mentioned in Article 16(4), namely, backwardness, inadequacy and efficiency of administration are retained in Articles 16(4A) and 16(4B) as controlling factors, we cannot attribute constitutional invalidity to these enabling provisions. However, when the State fails to identify and implement the controlling factors then excessiveness comes in, which is to be decided on the facts of each case. In a given case, where excessiveness results in reverse discrimination, this Court has to examine individual cases and decide the matter in accordance with law. This is the theory of 'guided power'. We may once again repeat that equality is not violated by mere conferment of power but it is breached by arbitrary exercise of the power conferred.

APPLICATION OF DOCTRINE OF "GUIDED POWER" ARTICLE 335 :

Applying the above tests to the proviso to Article 335 inserted by the Constitution (Eighty-Second Amendment) Act, 2000, we find that the said proviso has a nexus with Articles 16(4A) and 16(4B). Efficiency in administration is held to be a constitutional limitation on the discretion vested in the State to provide for reservation in public employment. Under the proviso to Article 335, it is stated that nothing in Article 335 shall prevent the State to relax qualifying marks or standards of evaluation for reservation in promotion. This proviso is also confined only to members of SCs and STs. This proviso is also conferring discretionary power on the State to relax qualifying marks or standards of evaluation. Therefore, the question before us is whether the State could be empowered to relax qualifying marks or standards for reservation in matters of promotion. In our view, even after insertion of this proviso, the limitation of overall efficiency in Article 335 is not obliterated. Reason is that

"efficiency" is variable factor. It is for the concerned State to decide in a given case, whether the overall efficiency of the system is affected by such relaxation. If the relaxation is so excessive that it ceases to be qualifying marks then certainly in a given case, as in the past, the State is free not to relax such standards. In other cases, the State may evolve a mechanism under which efficiency, equity and justice, all three variables, could be accommodated. Moreover, Article 335 is to be read with Article 46 which provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the scheduled castes and scheduled tribes and shall protect them from social injustice. Therefore, where the State finds compelling interests of backwardness and inadequacy, it may relax the qualifying marks for SCs/STs. These compelling interests however have to be identified by weighty and comparable data.

In conclusion, we reiterate that the object behind the impugned Constitutional amendments is to confer discretion on the State to make reservations for SCs/STs in promotions subject to the circumstances and the constitutional limitations indicated above.

TESTS TO JUDGE THE VALIDITY OF THE IMPUGNED STATE ACTS

As stated above, the boundaries of the width of the power, namely, the ceiling-limit of 50% (the numerical benchmark), the principle of creamy layer, the compelling reasons, namely, backwardness, inadequacy of representation and the overall administrative efficiency are not obliterated by the impugned amendments. At the appropriate time, we have to consider the law as enacted by various States providing for reservation if challenged. At that time we have to see whether limitations on the exercise of power are violated. The State is free to exercise its discretion of providing for reservation subject to limitation, namely, that there must exist compelling reasons of backwardness, inadequacy of representation in a class of post(s) keeping in mind the overall administrative efficiency. It is made clear that even if the State has reasons to make reservation, as stated above, if the impugned law violates any of the above substantive limits on the width of the power the same would be liable to be set aside. Are the impugned amendments making an inroad into the balance struck by the judgment of this court in the case of Indra Sawhney5:

Petitioners submitted that equality has been recognized to be a basic feature of our Constitution. To preserve equality, a balance was struck in Indra Sawhney5 so as to ensure that the basic structure of Articles 14, 15 and 16 remains intact and at the same time social upliftment, as envisaged by the Constitution, stood achieved. In order to balance and structure the equality, a ceiling-limit on reservation was fixed at 50% of the cadre strength, reservation was confined to initial recruitment and was not extended to promotion. Petitioners further submitted that in Indra Sawhney5, vide para 829 this Court has held that reservation in promotion was not sustainable in principle. Accordingly, petitioners submitted that the impugned constitutional amendments makes a serious inroad into the said balance struck in the case of Indra Sawhney5 which protected equality as a basic feature of our Constitution. We quote hereinbelow paragraph 829 of the majority judgment in the case of Indra Sawhney5 which reads as follows:

"829. It is true that Rangachari15 has been the law for more than 30 years and that attempts to re-open the issue were repelled in Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India and others. It may equally be true that on the basis of that decision, reservation may have been provided in the matter of promotion in some of the Central and State services but we are convinced that the majority opinion in Rangachari15, to the extent it holds, that Article 16(4) permits reservation even in the matter of promotion, is not sustainable in principle and ought to be departed from. However, taking into consideration all the circumstances, we direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion - be it Central Services or State Services, or for that matter services under any corporation, authority or body falling under the definition of 'State' in Article 12-such reservations shall continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise modify or re-issue the relevant Rules to ensure the achievement of the objective of Article 16(4). If any authority thinks that for ensuring adequate representation of 'backward class of citizens' in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it do so. (emphasis supplied)

What are the outer boundaries of the amendment process in the context of Article 16 is the question which needs to be answered. Equality is the basic feature of the Constitution as held in *Indra Sawhney*⁵. The content of Article 14 was originally interpreted by this Court as a concept of equality confined to the aspects of discrimination and classification. It is only after the rulings of this Court in *Maneka Gandhi*¹¹ and *Ajay Hasia and others v. Khalid Mujib Sehravardi and others*, that the content of Article 14 got expanded conceptually so as to comprehend the doctrine of promissory estoppel, non-arbitrariness, compliance with rules of natural justice, eschewing irrationality etc. There is a difference between "formal equality" and "egalitarian equality". At one point of time Article 16(4) was read by the Supreme Court as an exception to Article 16(1). That controversy got settled in *Indra Sawhney*⁵. The words "nothing in this Article" in Article 16(4) represents a legal device allowing positive discrimination in favour of a class. Therefore, Article 16(4) relates to "a class apart". Article 16(4), therefore, creates a field which enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist in Article 16(1). It is only when these reasons are satisfied that a State gets the power to provide for reservation in matters of employment. Therefore, Article 16(1) and Article 16(4) operate in different fields. Backwardness and inadequacy of representation, therefore, operate as justifications in the sense that the State gets the power to make reservation only if backwardness and inadequacy of representation exist. These factors are not obliterated by the impugned amendments.

The question still remains as to whether any of the constitutional limitations are obliterated by way of the impugned constitutional amendments. By way of the impugned amendments Articles 16(4A) and 16(4B) have been introduced.

In *Indra Sawhney*⁵ the equality, which was protected by the rule of 50%, was by balancing the rights of the general category vis-à-vis the rights of BC en bloc consisting of OBC, SC and ST. On the other hand, in the present case the question which we are required to answer is: whether within the egalitarian equality, indicated by Article 16(4), the sub-classification in favour of SC and ST is in principle constitutionally valid. Article 16(4A) is inspired by the observations in *Indra Sawhney*⁵ vide para 802 and 803 in which this Court has unequivocally observed that in order to avoid lumping of OBC, SC and ST

which would make OBC take away all the vacancies leaving SC and ST high and dry, the concerned State was entitled to categorize and sub-classify SCs and STs on one hand vis-à-vis OBC on the other hand. We quote herein below paragraphs 802 and 803 of the judgment in *Indra Sawhney*⁵:

"802. We are of the opinion that there is no constitutional or legal bar to a State categorizing the backward classes as backward and more backward. We are not saying that it ought to be done. We are concerned with the question if a State makes such a categorization, whether it would be invalid? We think not. Let us take the criteria evolved by Mandal Commission. Any caste, group or class which scored eleven or more points was treated as a backward class. Now, it is not as if all the several thousands of castes/groups/classes scored identical points. There may be some castes/groups/classes which have scored points between 20 to 22 and there may be some who have scored points between eleven and thirteen. It cannot reasonably be denied that there is no difference between these two sets of castes/groups/classes. To give an illustration, take two occupational groups viz., goldsmiths and vaddes (traditional stone-cutters in Andhra Pradesh) both included within Other Backward Classes. None can deny that goldsmiths are far less backward than vaddes. If both of them are grouped together and reservation provided, the inevitable result would be that goldsmiths would take away all the reserved posts leaving none for vaddes. In such a situation, a State may think it advisable to make a categorization even among other backward classes so as to ensure that the more backward among the backward classes obtain the benefits intended for them.

Where to draw the line and how to effect the sub-classification is, however, a matter for the Commission and the State - and so long as it is reasonably done, the Court may not intervene. In this connection, reference may be made to the categorization obtaining in Andhra Pradesh. The Backward Classes have been divided into four categories. Group-A comprises "Aboriginal tribes, Vimukta jatis, Nomadic and semi-nomadic tribes etc.". Group-B comprises professional group like tappers, weavers, carpenters, ironsmiths, goldsmiths, kamsalins etc. Group-C pertains to "Scheduled Castes converts to Christianity and their progeny", while Group-D comprises all other classes/communities/groups, which are not included in groups A, B and C. The 25% vacancies reserved for backward classes are sub-divided between them in proportion to their respective population. This categorization was justified in *Balram* [1972] 3 S.C.R. 247 at 286. This is merely to show that even among

backward classes, there can be a sub-classification on a reasonable basis. (emphasis supplied)

"803. There is another way of looking at this issue. Article 16(4) recognises only one class viz., "backward class of citizens". It does not speak separately of Scheduled Castes and Scheduled Tribes, as does Article 15(4). Even so, it is beyond controversy that Scheduled Castes and Scheduled Tribes are also included in the expression "backward class of citizens" and that separate reservations can be provided in their favor. It is a well-accepted phenomenon throughout the country. What is the logic behind it? It is that if Scheduled Tribes, Scheduled Castes and Other Backward Classes are lumped together, O.B.Cs. will take away all the vacancies leaving Scheduled Castes and Scheduled Tribes high and dry. The same logic also warrants categorisation as between more backward and backward. We do not mean to say - we may reiterate - that this should be done. We are only saying that if a State chooses to do it, it is not impermissible in law."(emphasis supplied)

Therefore, while judging the width and the ambit of Article 16(4A) we must ascertain whether such sub-classification is permissible under the Constitution. The sub-classification between "OBC" on one hand and "SC and ST" on the other hand is held to be constitutionally permissible in *Indra Sawhney*⁵. In the said judgment it has been held that the State could make such sub-classification between SCs and STs vis-à-vis OBC. It refers to sub-classification within the egalitarian equality (vide paras 802 and 803). Therefore, Article 16(4A) follows the line suggested by this Court in *Indra Sawhney*⁵. In *Indra Sawhney*⁵ on the other hand vide para 829 this Court has struck a balance between formal equality and egalitarian equality by laying down the rule of 50% (ceiling-limit) for the entire BC as "a class apart" vis-à-vis GC. Therefore, in our view, equality as a concept is retained even under Article 16(4A) which is carved out of Article 16(4).

As stated above, Article 14 enables classification. A classification must be founded on intelligible differential which distinguishes those that are grouped together from others. The differential must have a rational relation to the object sought to be achieved by the law under challenge. In *Indra Sawhney*⁵ an opinion was expressed by this Court vide para 802 that there is no constitutional or legal bar to making of classification. Article 16(4B) is also an enabling provision. It seeks to make classification on the basis of the differential between current

vacancies and carry-forward vacancies. In the case of Article 16(4B) we must keep in mind that following the judgment in *R.K. Sabharwal*⁸ the concept of post-based roster is introduced. Consequently, specific slots for OBC, SC and ST as well as GC have to be maintained in the roster. For want of candidate in a particular category the post may remain unfilled. Nonetheless, that slot has to be filled only by the specified category. Therefore, by Article 16(4B) a classification is made between current vacancies on one hand and carry-forward/backlog vacancies on the other hand. Article 16(4B) is a direct consequence of the judgment of this court in *R.K. Sabharwal*⁸ by which the concept of post-based roster is introduced. Therefore, in our view Articles 16(4A) and 16(4B) form a composite part of the scheme envisaged. Therefore, in our view Articles 16(4), 16(4A) and 16(4B) together form part of the same scheme. As stated above, Articles 16(4A) and 16(4B) are both inspired by observations of the Supreme Court in *Indra Sawhney*⁵ and *R.K. Sabharwal*⁸. They have nexus with Articles 17 and 46 of the Constitution. **Therefore, we uphold the classification envisaged by Articles 16(4A) and 16(4B).** The impugned constitutional amendments, therefore, do not obliterate equality.

The test for judging the width of the power and the test for adjudicating the exercise of power by the concerned State are two different tests which warrant two different judicial approaches. In the present case, as stated above, we are required to test the width of the power under the impugned amendments. Therefore, we have to apply "the width test". In applying "the width test" we have to see whether the impugned amendments obliterate the constitutional limitations mentioned in Article 16(4), namely, backwardness and inadequacy of representation. As stated above, these limitations are not obliterated by the impugned amendments. However, the question still remains whether the concerned State has identified and valued the circumstances justifying it to make reservation. This question has to be decided case-wise. There are numerous petitions pending in this Court in which reservations made under State enactments have been challenged as excessive. The extent of reservation has to be decided on facts of each case. The judgment in *Indra Sawhney*⁵ does not deal with constitutional amendments. In our present judgment, we are upholding the validity of the constitutional amendments subject to the limitations. Therefore, in each case the Court has got to be satisfied that the State has exercised its opinion in making reservations in promotions for SCs and STs and for which the concerned State will have to place before the Court the requisite quantifiable data in each case and satisfy the Court that such reservations became necessary on

account of inadequacy of representation of SCs/ STs in a particular class or classes of posts without affecting general efficiency of service as mandated under Article 335 of the Constitution.

The constitutional principle of equality is inherent in the Rule of Law. However, its reach is limited because its primary concern is not with the content of the law but with its enforcement and application. The Rule of Law is satisfied when laws are applied or enforced equally, that is, evenhandedly, free of bias and without irrational distinction. The concept of equality allows differential treatment but it prevents distinctions that are not properly justified. Justification needs each case to be decided on case-to-case basis

Existence of power cannot be denied on the ground that it is likely to be abused. As against this, it has been held vide para 650 of Kesavananda Bharati¹³ that where the nature of the power granted by the Constitution is in doubt then the Court has to take into account the consequences that might ensue by interpreting the same as an unlimited power. However, in the present case there is neither any dispute about the existence of the power nor is there any dispute about the nature of the power of amendment. The issue involved in the present case is concerning the width of the power.

The power to amend is an enumerated power in the Constitution and, therefore, its limitations, if any, must be found in the Constitution itself. The concept of reservation in Article 16(4) is hedged by three constitutional requirements, namely, backwardness of a class, inadequacy of representation in public employment of that class and overall efficiency of the administration.

These requirements are not obliterated by the impugned constitutional amendments. Reservation is not in issue. **What is in issue is the extent of reservation.** If the extent of reservation is excessive then it makes an inroad into the principle of equality in Article 16(1). Extent of reservation, as stated above, will depend on the facts of each case. Backwardness and inadequacy of representation are compelling reasons for the State Governments to provide reservation in public employment. Therefore, if in a given case the court finds excessive reservation under the State enactment then such an enactment would be liable to be struck down since it would amount to derogation of the above constitutional requirements.

At this stage, one aspect needs to be mentioned. Social justice is concerned with the distribution of benefits and burdens. The basis of distribution

is the area of conflict between rights, needs and means. These three criteria can be put under two concepts of equality, namely, "formal equality" and "proportional equality". Formal equality means that law treats everyone equal. Concept of egalitarian equality is the concept of proportional equality and it expects the States to take affirmative action in favor of disadvantaged sections of society within the framework of democratic polity. In Indra Sawhney⁵ all the judges except Pandian, J. held that the "means test" should be adopted to exclude the creamy layer from the protected group earmarked for reservation. In Indra Sawhney⁵ this Court has, therefore, **accepted caste as determinant of backwardness** and yet it has struck a balance with the principle of secularism which is the basic feature of the Constitution by bringing in the concept of creamy layer.

Views have often been expressed in this Court that caste should not be the determinant of backwardness and that the economic criteria alone should be the determinant of backwardness. As stated above, we are bound by the decision in Indra Sawhney⁵. The question as to the "determinant" of backwardness cannot be gone into by us in view of the binding decision. In addition to the above requirements this Court in Indra Sawhney⁵ has evolved numerical benchmarks like ceiling-limit of 50% based on post-specific roster coupled with the concept of replacement to provide immunity against the charge of discrimination.

CONCLUSION:

The impugned constitutional amendments by which Articles 16(4A) and 16(4B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling-limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBC on one hand and SCs and STs on the other hand as held in Indra Sawhney⁵, the concept of post-based Roster with in-built concept of replacement as held in R.K. Sabharwal⁸.

We reiterate that the ceiling-limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.

However, in this case, as stated, the main issue concerns the "extent of reservation". In this regard the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

Subject to above, we uphold the constitutional validity of the Constitution (Seventy-Seventh Amendment) Act, 1995, the Constitution (Eighty-First Amendment) Act, 2000, the Constitution (Eighty-Second Amendment) Act, 2000 and the Constitution (Eighty-Fifth Amendment) Act, 2001.

We have not examined the validity of individual enactments of appropriate States and that question will be gone into in individual writ petition by the appropriate bench in accordance with law laid down by us in the present case.

Reference is answered accordingly.

..... CJI.
(Y.K. SABHARWAL)

..... J.
(K. G. BALAKRISHNAN)

..... J.
(S.H. KAPADIA)
..... J.
(C. K. THAKKER)
..... J.
(P. K. BALASUBRAMANYAN)

New Delhi,
October 19, 2006

Supreme Court of India
S.Panneer Selvam & Ors vs Govt.Of T.Nadu & Ors on 27 August, 2015
Author:J.
Bench: T.S. Thakur, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6631-6632 of 2015
(Arising out of SLP (Civil) Nos. 8366-8367 of 2012)

S. PANNEER SELVAM & ORS. ..Appellants
Versus
GOVERNMENT OF TAMIL NADU & ORS. ..Respondents

WITH
CIVIL APPEAL NO. 6633 of 2015
(Arising out of SLP (Civil) No.10928 of 2012)
VENKATACHALAM & ORS. ..Appellants
Versus
THE SECRETARY, GOVERNMENT OF TAMIL NADU & ORS. ..Respondents

AND

CIVIL APPEAL NOS. 6634-6636 of 2015
(Arising out of SLP (Civil) Nos. 16692-16694 of 2012)

GOVERNMENT OF TAMIL NADU
AND ANR. ETC.ETC.

.Appellants

Versus

V. VIVEKANANDAN & ORS. ETC. ETC.

..Respondents

J U D G M E N T

R. BANUMATHI, J.

Leave granted in all the special leave petitions.

2. Common issues involved in this bunch of appeals are:-(i) In the absence of policy decision taken by the State/rules framed pursuant to the enabling provision of Article 16 (4A) of the Constitution of India whether a reserved category candidate promoted on the basis of reservation earlier than his senior general category candidate in the feeder category can claim consequential seniority in the promotional post; (ii) In the absence of policy decision taken by the State with regard to Tamil Nadu Highways Engineering Service Rules, whether Division Bench was right in holding that Article 16(4A) of the Constitution of India by itself would give consequential seniority in addition to accelerated promotion to the roster- point promotees.

3. These appeals are filed assailing the common judgment dated 25.11.2011 passed by the High Court of Judicature at Madras in Writ Appeals No. 113, 207 and 208 of 2009 whereby the High Court while setting aside the order passed by the learned Single Judge observed that the object of the amending Article 16 (4A) of the Constitution of India is to give consequential seniority in addition to accelerated promotion to roster-point promotees thereby holding that 'catch-up rule' is not applicable among the Assistant Divisional Engineers appointed from the post of Junior Engineers following the rule of reservation. For convenience, parties are referred to as per their array in the appeals arising out of SLP (Civil) Nos. 8366-8367 of 2012.

4. The appellants are graduate Assistant Engineers and the contesting private respondents are Diploma holder Junior Engineers are entangled in several rounds of litigation for about two decades over the nagging question of 'catch-up rule' and the consequential seniority in the promotional post of Assistant Divisional Engineers. Before adverting to the legal issues, it would be appropriate to refer to the background facts. Engineers of Tamil Nadu Highways Department viz., Chief Engineers, Superintending Engineers, Divisional Engineers and Assistant Divisional Engineers are governed by Tamil Nadu Highways Engineering Service Rules. Assistant Engineers, Junior Engineers, Supervisors and further lower categories are governed by Tamil Nadu Highways Engineering

Subordinate Service Rules. The categories viz., Assistant Engineers and Junior Engineers were feeder categories to the category of Assistant Divisional Engineer and the first three vacancies to be filled by Assistant Engineers and the fourth vacancy to be filled by recruitment by transfer by Junior Engineer of Tamil Nadu Highways Engineering Subordinate Service. Rule 12 of Special Rules to Tamil Nadu Highways Engineering Service prescribes application of rule of reservation for the appointment of Assistant Divisional Engineers by direct recruitment and recruitment by transfer. Accordingly prior to 24.05.1993, the Assistant Engineers and Junior Engineers were appointed as Assistant Divisional Engineers by recruitment by transfer after following the rule of reservation.

5. List of Assistant Engineers/Junior Engineers as on 01.01.1993 was published vide Chief Engineer Memo No. 960/N4/91 dated 18.04.1994 not following the 'catch up rule'. One Assistant Divisional Engineer (ADE) D. Rajendran who belonged to general category, who was overlooked for promotion by Assistant Engineers who belonged to reserved category filed O.A. No.2186/1996 before the Tamil Nadu Administrative Tribunal challenging the consequential seniority given to the reserved category Assistant Divisional Engineers and prayed to revise the seniority in the higher category as obtained in the lower category. Relying upon Ajit Singh Januja & Ors. vs. State of Punjab & Ors., (1996) 2 SCC 715, vide order dated 29.11.1996, the tribunal allowed the application observing that even though the respondents therein were promoted as ADEs earlier to D. Rajendran, they cannot be placed above the applicant by virtue of accelerated promotion and giving them the consequential seniority. Aggrieved by the order in O.A. 2186/1996, Special Leave Petition (Civil) No. 24455/1996 was filed by the ADEs of the reserved category which was dismissed by this Court vide order dated 18.12.1996.

6. On 29.04.2004, seniority list of Assistant Divisional Engineers was published by applying 'catch-up rule' among ADEs appointed from Assistant Engineers and consequential seniority was not given to SC/ST Assistant Divisional Engineers appointed from Assistant Engineers. But the 'catch-up rule' was not applied among the ADEs appointed from Junior Engineers and thereby giving benefit of consequential seniority to SC/ST Assistant Divisional Engineers appointed from Junior Engineers in addition to accelerated promotion. Aggrieved by the seniority list dated 29.04.2004 and the subsequent seniority list fit for further promotion to the post of Divisional Engineer dated 19.08.2005, the Assistant Engineers who were selected by the Tamil Nadu Public Service Commission under the junior category filed the writ petition in the High Court. Contention advanced by the appellants/writ petitioners was that the promotion given to Junior Engineers as ADEs was based on rule of reservation and in the promotional post it would not reverse the seniority of the seniors in the feeder category who gained promotions subsequently. Relying on the decisions of this

Court reported in *Union of India And Ors. vs. Virpal Singh Chauhan And Ors.*, (1995) 6 SCC 684; *Ajit Singh Januja And Ors. vs. State of Punjab And Ors.*, (1996) 2 SCC 715; *R.K. Sabharwal And Ors. vs. State of Punjab And Ors.*, (1995) 2 SCC 745; *Ajit Singh And Ors. (II) vs. State of Punjab And Ors.*, (1999) 7 SCC 209 and *M. Nagaraj And Ors. vs. Union of India And Ors.*, (2006) 8 SCC 212, learned Single Judge of the High Court held that the State failed to follow the dictum laid down by the Supreme Court in the above judgments and erred in issuing the seniority list of Assistant Divisional Engineers, Tamil Nadu Highways Engineering Service by ignoring the principle of 'catch-up rule' vis-à-vis 'inter-se seniority' of the seniors who have gained promotion subsequently. The Single Judge thus allowed the batch of writ petitions by setting aside the seniority list dated 29.04.2004 and directed the authorities to prepare the revised seniority list of the Assistant Divisional Engineers.

7. Aggrieved, the respondents-promotees promoted as ADEs from Junior Engineers in the reserved category preferred writ appeals and the Division Bench by the impugned judgment while setting aside the order passed by the Single Judge held that the object of the amending Article 16 (4A) of the Constitution of India is to give accelerated promotion to roster-point promotees in addition to accelerated promotion and thereby held that the 'catch-up rule' is not applicable among the Assistant Divisional Engineers appointed from the post of Junior Engineers by recruitment by transfer following reservation rules. These appeals assail the correctness of the above judgment.

8. Having heard both the parties, we have given our thoughtful consideration to the rival contentions in the light of the principles enunciated by this Court in a catena of decisions.

9. The concept of 'catch-up rule' and 'consequential seniority' is judicially evolved concepts to control the extent of reservation. The question of reservation and the associated promotion and the consequential seniority have been the matter of discussion in various decisions of this Court. The matter regarding reservation in promotions was considered by a nine Judge Bench of this Court in *Indra Sawhney And Ors. vs. Union of India And Ors.*, (1992) Supp. 3 SCC 217 and this Court held that the reservation under Article 16(4) of the Constitution of India is confined only to initial appointment and cannot extend to reservation in the matter of promotion. In order to nullify the effect of the aforesaid dicta, there was an amendment to Article 16 by Constitution (Seventy-seventh Amendment) Act with effect from 17.06.1995. Vide this Amendment, after Clause (4), Clause (4A) was inserted in Article 16 of the Constitution.

10. Clause (4) and Clause (4A) of Article 16 of the Constitution of India read as under:-

"Clause 4. Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Clause 4A. Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

11. Article 16 (4) of the Constitution of India enables the State to make a provision for reservation for appointments or posts in favour of any backward class of citizens which in its opinion is not adequately represented in the services under the State. The constitutional position on the insertion of Clause (4A) in Article 16 is that the State is now empowered to make provision for reservation in the matter of promotions as well, in favour of SCs and STs wherever the State is of the opinion that the SCs and STs are not adequately represented in the service under the State. Clause (4A) of Article 16 of the Constitution is only an enabling provision which empowers the State to make any provision for reservation for SC and ST candidates in the matter of promotion as well.

12. In *Union of India And Ors. vs. Virpal Singh Chauhan And Ors.*, (1995) 6 SCC 684, a question had arisen as to whether a person in SC or ST category who gets accelerated promotion because of reservation would also get consequential seniority in the higher post if he gets that promotion earlier than his senior in general category and this Court held that such an employee belonging to SC/ST category on promotion would not get consequential seniority and his seniority will be governed by the panel position. It was held as under:-
"24. ...In short, it is open to the State, if it is so advised, to say that while the rule of reservation shall be applied and the roster followed in the matter of promotions to or within a particular service, class or category, the candidate promoted earlier by virtue of rule of reservation/roster shall not be entitled to seniority over his senior in the feeder category and that as and when a general candidate who was senior to him in the feeder category is promoted, such general candidate will regain his seniority over the reserved candidate notwithstanding that he is promoted subsequent to the reserved candidate. There is no unconstitutionality involved in this. It is permissible for the State to so provide..."

13. The decision in *Virpal Singh Chauhan* case led to another Constitution Amendment and the Parliament enacted Constitution (Eighty-fifth Amendment) Act 2001 whereby Clause (4A) of Article 16 was further amended enabling the

State to make a provision for reservation in matters of promotion with consequential seniority. Amended Clause (4A) reads as under:-

"4A. Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State." Eighty-fifth Amendment was made effective retrospectively from 17.06.1995, that is, the date of coming into force the original Clause (4A) of Article 16 of the Constitution of India.

14. In *Ajit Singh Januja And Ors. vs. State of Punjab And Ors.*, (1996) 2 SCC 715, by placing reliance on the principle laid down in *Indra Sawhney* case and also the Constitution Bench judgment in *R.K. Sabharwal And Ors. vs. State of Punjab And Ors.*, reported in (1995) 2 SCC 745, a three Judge Bench accepted the principle of 'catch-up rule' as laid down in *Virpal Singh Chauhan* case observing that the balance must be maintained in such a manner that there was no reverse discrimination against the general category candidates and that any rule/circular or order which gives seniority to the reserved category candidates promoted at the roster-point would be violative of Articles 14 and 16 of the Constitution of India.

15. In *Jagdish Lal And Ors. vs. State of Haryana And Ors.*, (1997) 6 SCC 538, another three Judge Bench opined that seniority granted to the Scheduled Caste and Scheduled Tribe candidates over a general category candidate due to his accelerated promotion does not in all events get wiped out on promotion of general category candidate.

16. In *Ajit Singh And Ors.(II) vs. State of Punjab And Ors.*, (1999) 7 SCC 209, the Constitution Bench was concerned with the issue whether the decisions in *Virpal Singh Chauhan* and *Ajit Singh Januja* case which were earlier decided to the effect upholding the 'catch-up rule', that is, the seniority of general category candidates is to be confirmed or whether the later deviation made in *Jagdish Lal* case against the general category candidates. In *Ajit Singh (II)* case, inter-alia, the following points arose for consideration:-

(i). Can the roster-point promotees count their seniority in the promoted category from the date of their continuous officiation vis-à-vis general candidates, who were senior to them in the lower category and who were later promoted to the same level?

(ii) Have *Virpal* [(1995) 6 SCC 684] and *Ajit Singh* [(1996) 2 SCC 715] been correctly decided and has *Jagdish Lal* [(1997) 6 SCC 538] been correctly decided?

(iii) Whether the "catch-up" principles are tenable?

17. The Constitution Bench held that Articles 16(4) and (4A) did not confer any fundamental right to reservation and that they are only enabling provisions. Overruling the judgment in *Jagdish Lal* case and observing that rights of the reserved classes must be balanced against the interests of other segments of society in para (77), this Court held as under:-

"77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, — vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate — he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that *Virpal*, (1995) 6 SCC 684 and *Ajit Singh*, (1996) 2 SCC 715 have been correctly decided and that *Jagdish Lal*, (1997) 6 SCC 538 is not correctly decided. Points 1 and 2 are decided accordingly."

18. Constitutional validity of Clauses (4A) and (4B) of Article 16 of the Constitution was challenged in *M. Nagaraj And Ors. vs. Union of India And Ors.*, (2006) 8 SCC 212. The question that came up for consideration was whether by virtue of impugned constitutional amendments, the power of Parliament was so enlarged as to obliterate any or all of the constitutional limitations and requirements upholding the validity of the said Articles with certain riders. On the concept of 'catch-up rule' and consequential seniority, this Court held as under:-

"79. Reading the above judgments, we are of the view that the concept of "catch-up" rule and "consequential seniority" are judicially evolved concepts to control the extent of reservation. The source of these concepts is in service jurisprudence. These concepts cannot be elevated to the status of an axiom like secularism, constitutional sovereignty, etc. It cannot be said that by insertion of the concept of "consequential seniority" the structure of Article 16(1) stands destroyed or abrogated. It cannot be said that "equality code" under Articles 14, 15 and 16 is violated by deletion of the "catch-up" rule. These concepts are based on practices. However, such practices cannot be elevated to the status of a constitutional principle so as to be beyond the amending power of Parliament. Principles of service jurisprudence are different from constitutional limitations. Therefore, in our view neither the "catch-up" rule nor the concept of "consequential seniority" is implicit in clauses (1) and (4) of Article 16 as correctly held in *Virpal Singh Chauhan*, (1995) 6 SCC 684."

19. In *Nagaraj* case Court further considered two questions viz.:- (1) Whether there is any upper-limit beyond which reservation is not permissible? (2)

Whether there is any limit to which seats can be reserved in a particular year; in other words, the issue is whether the percentage limit applies only on the total number of posts in the cadre or to the percentage of posts advertised every year as well? Answering the said questions in paras (121) and (123), this Court held as under:- "121. The impugned constitutional amendments by which Articles 16(4-A) and 16(4-B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs on one hand and SCs and STs on the other hand as held in *Indra Sawhney*, 1992 Suppl. (3) SCC 217, the concept of post-based roster with inbuilt concept of replacement as held in *R.K. Sabharwal*, (1995) 2 SCC 745. 123. However, in this case, as stated above, the main issue concerns the "extent of reservation". In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely." The Constitution Bench judgment in *Nagaraj* case (supra) was subsequently followed in *Shiv Nath Prasad vs. Saran Pal Jeet Singh Tulsi And Ors.*, (2008) 3 SCC 80 and *Chairman And Managing Director, Central Bank of India And Ors. vs. Central Bank of India SC/ST Employees Welfare Association And Ors.*, 2015 (1) SCALE 169.

20. While considering the validity of Section 3(7) of Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, and Rule 8A of U.P. Government Servants Seniority Rules, 1991 which provided for consequential seniority in promotions given to SCs/STs by virtue of rule of reservation/roster and holding that Section 3(7) of the 1994 Act and Rule 8A of 1991 Rules are ultra vires as they run counter to the dictum in *M. Nagaraj's* case in *Uttar Pradesh Power Corporation Limited vs. Rajesh Kumar And Ors.*, (2012) 7 SCC 1, in paragraph (81), this

Court summarized the principles as under: "(i) Vesting of the power by an enabling provision may be constitutionally valid and yet "exercise of power" by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure the backwardness and inadequacy keeping in mind the efficiency of service as required under Article 335.

(ii) Article 16(4) which protects the interests of certain sections of the society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonized because they are restatements of the principle of equality under Article

(iii) Each post gets marked for the particular category of candidates to be appointed against it and any subsequent vacancy has to be filled by that category candidate.

(iv) The appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that the upper ceiling limit of 50% is not violated. Further, roster has to be post-specific and not vacancy based.

(v) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4-A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4-A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4-A). Therefore, clause (4-A) will be governed by the two compelling reasons-"backwardness" and "inadequacy of representation", as mentioned in Article 16(4). If the said two reasons do not exist, then the enabling provision cannot be enforced.

(vi) If the ceiling limit on the carry over of unfilled vacancies is removed, the other alternative time factor comes in and in that event, the timescale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the timescale is not kept, then posts will continue to remain vacant for years which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact situation.

(vii) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335, then this Court will certainly set aside and strike down such legislation.

(viii) The constitutional limitation under Article 335 is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case.

(ix) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercise depends on numerous factors. It is for this

reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment.

(x) Article 16(4), therefore, creates a field which enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist in Article 16(1). It is only when these reasons are satisfied that a State gets the power to provide for reservation in the matter of employment.”

21. In the light of the above, we shall consider the factual matrix and the rival contentions urged and the purport of Rule 12 of Tamil Nadu Highways Engineering Service Rules.

22. Dr. Rajiv Dhawan, learned Senior Counsel for the appellants submitted that while it is well-settled law followed by this Court in a catena of cases *M. Nagaraj And Ors. Vs. Union of India & Ors.*, (2006) 8 SCC 212 that Article 16 (4A) is only an enabling provision and does not automatically confer right on the reserved categories and when no policy decision was taken by the State, Article 16 (4A) does not per se applicable to Tamil Nadu Highways Engineering Service conferring consequential seniority to the Junior Engineers who obtained accelerated promotion by following rule of reservation. It was further submitted that post of Assistant Engineers to be promoted as ADEs constitute more than 75% of the cadre strength and by not applying the ‘catch up rule’ among the Assistant Divisional Engineers promoted from Junior Engineers by following rule of reservation would result in patent discrimination creating disharmony amongst the cadre. On behalf of the appellants, it was urged that the implementation of the impugned judgment of the Division Bench of the High Court would result in conferring seniority to a less qualified and less experienced Assistant Divisional Engineer appointed from Junior Engineer belonging to SC/ST category and who stand on a higher footing both on education and experience than the Assistant Divisional Engineers belonging to general category would offend the rule of equality.

23. Per contra, learned Senior Counsel Mr. R. Thiagarajan and Ms. Kiran Suri appearing for the respondents contended that there is no common list of seniority of the appellants who are the direct recruit Assistant Engineers and the respondents who are in the cadre of Junior Engineers and, therefore, the services of the appellants and the respondents cannot be compared and the ‘catch up rule’ is not applicable. The learned Senior Counsel further contended that promotion given to the respondents were not accelerated promotion but promotion on account of rule of reservation following Rule 12 of Tamil Nadu Highways Engineering Service Rules. The respondents contended that Article 16 (4A) of

the Constitution has been added to protect the consequential seniority arising out of accelerated promotions and when such amendment is held to be valid and not ultra vires the Constitution by this Court in *M. Nagaraj case* (supra), the Single Judge ought not to have allowed the writ petitions and the Division Bench rightly set aside the order of the Single Judge.

24. Article 16(4A) of the Constitution is only an enabling provision which specifically provides that the concerned State may make any provision for providing reservation of appointments or posts in favour of any backward class citizens which is not adequately represented in the services under the State. Articles 16(4) and 16(4A) have to be read with Article 335 of the Constitution which deal with norms of Scheduled Castes and Scheduled Tribes to services and posts and lay down that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. In the absence of any policy decision taken by the State of Tamil Nadu, Eighty-fifth Amendment per se will not protect the consequential seniority granted to the respondents who were promoted to the post of Assistant Divisional Engineers following the rule of reservation.

25. The respondents placed heavy reliance upon Rule 12 of the Special Rules Tamil Nadu Engineering Service and contended that their consequential seniority is protected in terms of Rule 12 and under Article 16 (4A) of the Constitution of India. Rule 12 reads as under:- “Rule 12: Reservation of appointments: The rule of reservation of appointments (General Rule 22) shall apply to the appointment of Assistant Divisional Engineers by direct recruitment and recruitment by transfer separately and the appointment of Assistant Engineers by direct recruitment.” As per Rule 12, reserved category Assistant Engineers and the reserved category Junior Engineers secured promotion as Assistant Divisional Engineers much earlier to the general category Assistant Engineers and Junior Engineers respectively because of their accelerated promotion following rule of reservation.

26. The true legislative intent under Article 16 (4A) of the Constitution is to enable the State to make provision or frame rules giving consequential seniority for the accelerated promotion gained based on the rule of reservation. Rule 12 evidently does not provide for the consequential seniority for reserved category promotees at any point of time. The consequential seniority for such reserved category promotees can be fixed only if there is express provision for such reserved category promotees in the State rules. In the absence of any specific provision or policy decision taken by the State Government for consequential

seniority for reserved category accelerated promotees, there is no question of automatic application of Article 16 (4A) of the Constitution.

27. Respondents contended that in about eight departments of the State, rule of reservation is followed and one among them is Tamil Nadu Highways Engineering Service and in terms of Rule 12 practice of following rule of reservation in promotion is in existence for more than sixty years and therefore the Division Bench rightly extended the protection under Article 16(4A) to accelerated promotees. We are not impressed with the above submission. In terms of Rule 12, reservation is followed only for promotion of AEs/JEs as Assistant Divisional Engineers and Rule 12 does not protect the consequential seniority to ADEs who were promoted following the rule. The appellants belonging to the general category are not questioning the accelerated promotion granted to the Junior Engineers/Assistant Engineers by following rule of reservation but are only seeking fair application of the 'catch up rule' in the fixation of seniority in the category of ADEs.

28. Protection of the consequential seniority conferred on the Assistant Engineers appointed as Assistant Divisional Engineers following rule of reservation during the year 1994 was held to be unconstitutional in the earlier round of litigation in Original Application No.2186/1996 dated 29.11.1996 before the Tamil Nadu Administrative Tribunal and the same was confirmed by this Court in Special Leave Petition (Civil) No.24455/1996 titled Tr. J. Sabapathy And Ors. vs. D. Rajendran And Ors. decided on 18.12.1996. Pursuant to the same seniority of the Assistant Engineers promoted as ADEs following rule of reservation had been lowered following 'catch up rule'.

29. Now let us consider the crux of the dispute. While publishing the impugned seniority list dated 29.04.2004, the 'catch up rule' was applied among the Assistant Divisional Engineers appointed from Assistant Engineers and consequential seniority was not given to SC/ST Assistant Divisional Engineers appointed from Assistant Engineers; but the 'catch up rule' was not applied to the Assistant Divisional Engineers promoted from Junior Engineers and thus consequential seniority was given to the SC/ST Assistant Divisional Engineers-accelerated promotees. According to the State, 'catch-up rule' was applied to the Assistant Divisional Engineers promoted from Assistant Engineers, since, Assistant Engineers were recruited by Tamil Nadu Public Service Commission and at the time of their initial recruitment as Assistant Engineers, rule of reservation was strictly followed by Tamil Nadu Public Service Commission. In the counter affidavit filed before the High Court, the State has taken the stand that the 'catch up rule' was not applied in the case of JEs promoted as ADEs or regarding their inter se seniority of Assistant Engineers and the Junior Engineers

since rule of reservation was not followed at the time of their appointment as Junior Engineers.

30. Mr. Thiagarajan, learned Senior Counsel appearing for the private respondents submitted that under the Right to Information Act, information was sought for on behalf of respondent U. Palaniappan and Government furnished the Government Orders for temporary panel of Junior Engineers for promotion as Assistant Divisional Engineers and the said Government Orders furnished would clearly show that there is inadequate representation of Scheduled Caste candidates in various category of Tamil Nadu Highways Engineering Service. It was further submitted that there are only two persons belonging to Scheduled Caste community promoted from the rank of Junior Engineer after 17.06.1995 to the higher post of Assistant Divisional Engineer and Divisional Engineer and of these two persons one has been promoted to the post of Superintending Engineer and no other person is available in the entire department and the inadequacy of representation was rightly taken into consideration by the Government while implementing the rule of reservation and consequential seniority.

31. The respondents' submission regarding inadequacy of representation of Scheduled Castes/Scheduled Tribes in the Tamil Nadu Highways Engineering Service by itself is not sufficient to uphold the inadequacy of representation of SCs/STs in the said service. Even after Eighty-fifth Amendment, the State is duty bound to collect data so as to assess the adequacy of representation of the Scheduled Caste candidates in the service and based on the same the State should frame a policy/rules for consequential seniority. No material is placed on record that the State of Tamil Nadu has ever undertaken such exercise of collecting data of adequacy of representation of the SC/ST candidates in the Tamil Nadu Highways Engineering Service. In the absence of any rule conferring consequential seniority in the State of Tamil Nadu 'catch up rule' is applicable even amongst Junior Engineers promoted as ADEs following rule of reservation and also for their inter-se seniority amongst AEs promoted as ADEs and JEs promoted as ADEs following rule of reservation.

32. Respondents placed reliance on Rule 35 (aa) of Tamil Nadu State and Subordinate Service Rules (General Rules) to contend that they are entitled to consequential seniority in promotional position. Rule 35 (aa) relied on by the respondents reads as under:-
“(aa). The seniority of a person in a service, class, category or grade shall where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment be determined with reference to the date on which he is appointed to the service, class, category or grade.

Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class, category or grade earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed: Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se seniority...." (* Substituted in G.O. Ms. No.523, P & AR, dated 4.06.1982, w.e.f. 13.07.78) Rule 35 (aa) of Tamil Nadu State and Subordinate Service (General) Rules relied upon by the 3rd respondent is applicable only for normal appointments to any service, class, category or grade and not reserved category promotions. Rule 35 (aa) does not specifically provide for consequential seniority to the accelerated promotees who were promoted following the rule of reservation and Rule 35 (aa) is of no assistance to the contesting respondents.

33. As noticed earlier, by application of Rule 12, it is evident that the Assistant Engineers and Junior Engineers of reserved category got promotion to the post of Assistant Divisional Engineer much earlier to the general category candidates. At this juncture, we may refer to the comparative table of service particulars of some of the appellants promoted as ADEs from Assistant Engineers/Junior Engineers and the respondents in the post of Assistant Engineer and Junior Engineer and their position in the cadre of Assistant Divisional Engineer to appreciate the patent discrimination as under:-

(List of Names and other details are deleted by the editor)

If we look at the above comparative table of the service particulars of the appellants and the respondents, it is seen that the contesting respondents U. Palaniappan joined the service almost seven years after the appellants, his seniority is automatically accelerated at an unprecedented rate and as on 01.04.2004 his seniority rank as ADE is 150 and seniority of V. Appadurai is 120. The appellants who are qualified and seniors than the contesting respondents are placed much below in rank in comparison to the person belonging to the reserved class promotees who were promoted following the rule of reservation. It is to be noted that the private respondents in the present case have been promoted temporarily under Rule 39 (a) and Rule 10 (a) (i) of the General Rules with the condition that their inclusion in the promotional order shall not confer on them any right whatsoever in the service. Determination of seniority is a vital aspect in the service career of an employee and his future promotion is dependent on this. Therefore, determination of seniority must be based on some principles which are just and fair. In the absence of any policy decision taken or rules framed by the State of Tamil Nadu regarding Tamil Nadu Highways Engineering Service, accelerated promotion given to the respondents following rule of reservation in terms of Rule 12 will not give them consequential accelerated seniority.

34. Appellants were appointed as Assistant Engineers directly, while the respondents were initially appointed as Junior Engineers. Hence according to the respondents, there was no common seniority between the Assistant Engineers belonging to general category and Junior Engineers belonging to reserved class and therefore promotion of JEs as ADEs applying Rule 12 is of no relevance to the appellants. This contention does not merit acceptance. Both the Assistant Engineers in the Tamil Nadu Engineering Service and the Junior Engineers in the Tamil Nadu Engineering Subordinate Service are feeder categories for filling up higher post of the Assistant Divisional Engineer in the ratio of 3:1 between them. Although, Assistant Engineers and Junior Engineers are presently two distinct categories, prior to 1993, both Assistant Engineers and Junior Engineers were in one category of service-Tamil Nadu Highways Engineering Subordinate Service. Only after G.O.Ms.No.807, Public Works (HK) Department dated 24.05.1993, the post of Assistant Engineer was raised to the level gazetted status and they were brought in to State Service/Tamil Nadu Highways Engineering Service. For promotion, even though two separate seniority lists are prepared for each category, they are actually of the same cadre and the respondents cannot contend that if Junior Engineers are promoted as ADEs following rule of reservation applying Rule 12, it does not affect the services of the Assistant Engineers.

35. In the absence of any provision for consequential seniority in the rules, the 'catch up rule' will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16 (4A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.

36. In the result, the impugned judgment is set aside and these appeals are allowed. State Government-respondent Nos. 1 and 2 are directed to revise the seniority list of Assistant Divisional Engineers applying the 'catch up rule' within four months. Pursuant to the impugned judgment of the Division Bench of Madras High Court, if any further promotion had been granted to the Assistant Divisional Engineers promoted from the rank of Junior Engineers following rule of reservation with consequential seniority, the same shall be reversed. Further promotion of Assistant Divisional Engineers shall be as per the revised seniority list. The parties shall bear their own costs.

.....J. (T.S. THAKUR)J.(R.
BANUMATHI) New Delhi;
August 27, 2015