REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.6385 OF 2010

SURAJ BHAN MEENA & ANR. … PETITIONERS

VERSUS

STATE OF RAJASTHAN & ORS. … RESPONDENTS

WITH

SLP(C)NOS.7716, 7717, 7826, 7838 of 2010

J U D G M E N T

ALTAMAS KABIR, J.

1. Since common questions of fact and law are involved, five Special Leave Petitions have been taken up for hearing and final disposal together.

While SLP(C)No.6385 of 2010 has been filed by Suraj Bhan Meena & Anr., SLP(C)Nos.7716, 7717, 7826 and 7838 of 2010, have all been filed by the State of Rajasthan.

2. All the petitioners are aggrieved by the judgment and order dated 5th February, 2010, passed by the Jaipur Bench of the Rajasthan High Court in D.B. Civil Special Appeal (Writ) No.618/2009 filed by the State of Rajasthan & Anr. against Bajrang Lal Sharma & Ors., D.B. Civil Special Appeal (Writ) No.3/2010 filed by Suraj Bhan Meena against Bajrang Lal Sharma & Ors., D.B. Civil Special Appeal (Writ) No.611/2009 filed by the State of Rajasthan against Gyan Prakash Shukla, D.B. Civil Special Appeal (Writ) No.610/2009 filed by the State of Rajasthan against M.M. Joshi, D.B. Civil Writ Petition No.8104/2008 filed by Bajrang Lal Sharma & Ors. against the State of Rajasthan & Ors., D.B. Civil Writ Petition No.6241/2008 filed by Gyan Prakash Shukla & Anr. against the State of Rajasthan & Ors.

and D.B. Civil Writ Petition No.7775/2009 filed by M.M. Joshi against the State of Rajasthan & Ors. As indicated hereinbefore, all the matters were heard and disposed of by a common judgment passed by the Division Bench on 5th February, 2010. While considering the writ petitions along with the writ appeals, the Division Bench referred to the facts of D.B. Civil Writ Petition No.8104/2008, against which SLP(C)No.6385/2010 has been filed by Suraj Bhan Meena and SLP(C)No.7716/2010 has been filed by the State of Rajasthan. The other Special Leave Petitions have been filed against the orders passed in the Writ Petitions filed by the private respondents therein.

3. All the writ petitioners, as also the Petitioners in SLP(C)No.6385/2010, are members of the Rajasthan Administrative Service and are governed by the Rajasthan Administrative Service Rules, 1954. The writ petitioners in their respective writ petitions challenged the

Notification dated 25th April, 2008, issued by the State of Rajasthan in exercise of its powers conferred by the proviso to Article 309 of the Constitution of India amending the Rajasthan "Various Service Rules" with effect from 28.12.2002.

4. According to the writ petitioners, they had been inducted in the Rajasthan Administrative Service in December, 1982, through selection by the Rajasthan Public Service Commission. Vide notice dated 26th June, 2000, the State Government issued a Provisional Seniority List of Rajasthan Administrative Service Selection Grade as on 1.4.1997, in which the Writ Petitioner No.1, Bajrang Lal Sharma, was placed above Suraj Bhan Meena (Scheduled Tribe) and Sriram Choradia (Scheduled Caste). The said Seniority List was published pursuant to the order of this Court dated 16.9.1999, passed in the case of Ajit Singh-II & Ors. Vs. State of Punjab & Ors. [(1999) 7 SCC 209]

and another order of the same date in the case of Ram Prasad vs. D.K. Vijay [(1999) 7 SCC 251]. Once again Provisional Seniority Lists were published on 27.11.2003 and 12.5.2008. Subsequently, the State of Rajasthan published the final Seniority Lists of Super Time Scale and Selection Scale of the service on 24.6.2008 as on 1.4.1997 and Provisional Seniority List dated 2.7.2008 as on 1.4.2008, wherein the name of Bajrang Lal Sharma was shown below the names of both Suraj Bhan Meena and Sriram Choradia.

5. The Notification dated 25.4.2008, which was the subject matter of challenge in the Writ Petition was challenged on two grounds. It was firstly contended that the proviso dated 28.12.2002, which had been added to the Various Service Rules was subject to the final decision of this Court in Writ Petition (Civil) No.234/2002 filed by the All India Equality Forum against the Union of India & Ors., but the same was yet to be decided. Therefore,

during the pendency of the Writ Petition before this Court, the Respondents had acted improperly in deleting the above-mentioned proviso in the Various Service Rules by the Notification dated 25.4.2008, which amounted to giving a consequential seniority to candidates belonging to the Scheduled Castes and Scheduled Tribes, which could not have been given without quantifying the figures of Scheduled Castes and Scheduled Tribes candidates to enable a decision to be arrived at that reservation was required in promotion and also to show that the State had to pass such orders for compelling reasons, such as, backwardness, inadequacy of representation, as held by this Court in the case of M. Nagaraj & Ors. vs. Union of India & Ors. [(2006) 8 SCC 212]. It was contended that since the State Government had not complied with the directions given by this court in M. Nagaraj's case (supra), the Notification in question was liable to be quashed. It was further urged on behalf of the

Writ Petitioner, Bajrang Lal Sharma, that in the case of Indra Sawhney & Ors. Vs. Union of India & Ors. [(1992) Supp.(3) SCC 217], this Court had held that Article 16(4) of the Constitution of India did not permit reservations in the matter of promotion. Thereafter, the Constitution (77th Amendment) Act, 1995, was enacted and came into force on 17.6.1995. The subsequent Special Leave Petitions filed by the Union of India & Ors. against Virpal Singh Chauhan & Ors. [(1995) 6 SCC 684], Ajit Singh Januja & Ors. Vs. State of Punjab & Ors. [(1996) 2 SCC 715] and Ajit Singh-II & Ors. Vs. State of Punjab & Ors. [(1999) 7 SCC 209)], introduced the "catch-up" rule and held that if a senior general candidate was promoted after candidates from the Scheduled Castes and Scheduled Tribes have been promoted to a particular cadre, the senior general candidate would regain his seniority on promotion in relation to the juniors who had been promoted against reserved vacancies.

6. The Parliament on 4.1.2002 amended the Constitution by the Constitution (85th Amendment) Act, 2001, in order to give the benefit of consequential seniority to the reserved category candidates with effect from 17.6.1995. The constitutional validity of both the said Constitution Amendment Acts was challenged before this court in other writ petitions, including the writ petition filed by M. Nagaraj and All India Equality Forum. During the pendency of the writ petitions, this Court passed an interim order protecting the promotion and seniority of general/OBC candidates. The Government of Rajasthan, thereafter, deleted the proviso added vide Notification dated 1.4.1997.

7. In M. Nagaraj's case (supra), this Court while upholding the constitutional validity of the Constitution (77th Amendment) Act, 1995 and the Constitution (85th Amendment) Act, 2001, clarified

the position that it would not be necessary for the State Government to frame rules in respect of reservation in promotion with consequential seniority, but in case the State Government wanted to frame such rules in this regard, then it would have to satisfy itself by quantifiable data, that there was backwardness, inadequacy of representation in public employment and overall administrative inefficiency and unless such an exercise was undertaken by the State Government, the rule relating to reservation in promotion with consequential seniority could not be introduced.

8. Despite the decision in M. Nagaraj's case, the State Government by deleting the proviso, which had been inserted vide notification dated 1.4.1997 on the basis of the "catch-up" rule and further deleting the new proviso added on 28.12.2002 in the Various Service Rules of the State, had in effect provided consequential seniority to the Scheduled Castes and Schedule Tribes candidates, without

undertaking the exercise indicated in M. Nagaraj's case in respect of the three conditions laid down in the said judgment. It was the case of the Petitioners that the impugned notification dated 25.4.2008 was liable to be declared ultra vires to the provisions of the Constitution being contrary to the decision of this Court in M. Nagaraj's case.

9. As indicated hereinbefore, it was also the case of the Writ Petitioners that nowhere in Rule 33 of the Rajasthan Administrative Service Rules has any provision been made for consequential seniority to reserved category promotees. As a result, after the judgment in B.K. Sharma & Anr. Vs. State of Rajasthan & Ors. [WLC (Raj.) 1998 (2) 583] and in Ram Prasad's case (supra), consequential seniority could not have been assigned to reserve promotees above the senior General/OBC candidates.

10. This was the view which had been taken by this Bench in the cases of Virpal Singh Chauhan (supra)

and Ajit Singh-I (supra) to the effect that reserve promotees would be entitled for accelerated promotion, but not accelerated seniority. The same view was reiterated by a Constitution Bench of this Court on 16th September, 1999, while deciding Ajit Singh-II's case (supra). It is only on account of the judgment in Virpal Singh Chauhan's case (supra) and in the case of Ajit Singh-I (supra), the State Government vide notification dated 1.4.1997 inserted the new proviso in the Various Service Rules.

11. The Constitution (85th Amendment) Act, 2001 was thereafter passed on 4th January, 2002, with retrospective effect from 16th September, 1995, with regard to consequential seniority to reserve promotees. It was the said amendments which were the subject matter of challenge in several writ petitions, including in M. Nagaraj's case and in the case of All India Equality Forum.

12. On behalf of the Petitioners, it was submitted by Dr. Krishan Singh Chauhan, that the insertion of the words "with consequential seniority" in clause IVA of Article 16 of the Constitution after the words "reservation in promotion", was only an enabling provision which was under challenge before this Court and while the matter was sub-judice, without waiting for the decision of this Court in M. Nagaraj's case and All India Equality Forum, the State Government withdrew its earlier notification dated 1st April, 1997 vide notification dated 28.12.2002. It has to be kept in mind that as in M. Nagaraj's case (supra), this Court has made it mandatory on the part of the State Government to undertake the three exercises in case any rule was required to be framed by the State for reservation in promotion with consequential seniority. It was submitted that the withdrawal of the notification dated 1.4.1997 by notification dated 28.12.2002 amounted to negating the judgment of this Court in

Ram Prasad's case (supra) and, accordingly, the notification dated 28.12.2002 was also liable to be quashed by the Court. In short, the question to be decided in this case is whether the State Government was reintroducing a concept which had been replaced pursuant to the orders passed by this Court, which had been found to be *ultra vires* the provisions of the Constitution.

13. It was urged on behalf of the Petitioners, Suraj Bhan Meena and Sriram Choradia, that till the decision of this Court in the case of Indra Sawhney vs. Union of India [(1992) Supp. (3) SCC 217], this Court had almost uniformly applied the rule of reservation in promotion with consequential seniority. In Indra Sawhney's case (supra), this Court had held that reservation in promotion was unconstitutional, but permitted such reservation to continue for a period of five years. It is pursuant to the said decision in Indra Sawhney's case (supra), that the Parliament enacted the

Constitution (77th Amendment) Act, 1995. A contrary view was taken in Union of India vs. Virpal Singh Chauhan [(1995) 6 SCC 684], wherein it was laid down that the grant of consequential seniority in cases of reservation in promotion was illegal. The issue was taken further in the case of Ajit Singh Januja Vs. State of Punjab [(1996) 2 SCC 715] holding that the grant of consequential seniority to reserve category employees, who had got promotion on the basis of reservation, was unconstitutional.

14. On 7th May, 1997, another Bench of this Court in the case of Jagdish Lal Vs. State of Haryana [(1997) 6 SCC 538] took a diametrically opposite view upon holding, inter alia, that equality should not remain mere idle incantation, but it had to become a vibrant living reality since equality of opportunity could not simply be judged on the merit of the marks obtained by him but by taking into account de facto inequalities which exist in

society and to give preference to the socially and economically disadvantaged persons by inflicting handicaps on those more disadvantageously placed. Although such affirmative action might appear to be discriminatory, it was calculated to bring about equality on a broader basis by eliminating the de facto inequalities between the weaker sections and the stronger sections of the community and placing them on a footing of equality in relation to public employment.

15. In view of the opposite stands taken in Jagdish Lal's case (supra) and in Ajit Singh-I's case (supra), the matters were referred to the Constitution Bench which approved the decision in Ajit Singh Januja's case (supra) and Virpal Singh Chauhan's case (supra), upon holding that the case of Jagdish Lal had not been correctly decided. As a result, the rule of "regain" and "catch-up" was explained as the correct interpretation of the rules. As mentioned hereinbefore, by enacting the

Constitution (85th Amendment) Act, 2001, the Parliament constitutionally nullified the principle of "regain" and "catch-up" by enacting the Constitution (77th Amendment) Act, 1995 under its constituent power under Article 368 of the Constitution. It was sought to be urged by Dr. Krishan Singh Chauhan, learned Advocate, that the power which was existing in the Government to make provision for consequential seniority in promotion of reservation, which had been eclipsed on account of the decision of this Court in Virpal Singh Chauhan's case (supra), stood revived by the enactment of the Constitution (85th Amendment) Act, 2001, with retrospective effect.

16. Learned counsel for the Petitioners referred to various decisions on the doctrine of eclipse, which we will refer to, if necessary.

17. Learned counsel, in addition, contended that the Respondents had not acquired any vested right

since the Constitution Amendment Acts had been enacted by the Parliament only with the intention of nullifying the effects of the judgments of this Court in Virpal Singh Chauhan's case (supra) and Ajit Singh-II's case (supra). Dr. Chauhan submitted that the Constitution (85th Amendment) Act, 2001, given effect to from 17th June, 1995, had constitutionally nullified the principle of "regain of seniority" and the principle of "catch-up" which had been explained by this Court in Virpal Singh Chauhan's case (supra).

18. Mr. P.P. Rao, learned Senior Advocate, appearing for the State of Rajasthan, submitted at the very outset that the reliefs prayed for in the several writ petitions, which are common in the Special Leave Petitions, praying for a direction that the benefit of reservation in promotion with consequential seniority, should not be given unless the three compelling conditions as indicated in M. Nagaraj's case (supra), were fulfilled, was totally

misconceived in the absence of any challenge to the order dated 10th February, 1975, passed by the State of Rajasthan providing for reservations in favour of Scheduled Castes and Scheduled Tribes candidates in promotion. Furthermore, no such prayer had been granted by the High Court. Mr. Rao submitted that the reliefs prayed for was based on a complete misreading of the decision in M. Nagaraj's case (supra).

19. Mr. Rao urged that the High Court took an erroneous view that seniority is a vested right in view of the observations made in paragraph 123 in M. Nagaraj's case that the State was not bound to provide for reservation for Scheduled Castes/Scheduled Tribes candidates in matters of promotions, but that if it intended to exercise its discretion and make such provision, it had 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 of the Constitution. Mr. Rao submitted that the High Court, however, overlooked the opening part of the judgment which indicated that the main issue involved the extent of reservation. Mr. Rao submitted that the High Court erred in proceeding on the basis that seniority in Government service is a vested right, since it is now well settled that the seniority of a Government servant can be interfered with by the State by making a Rule under the Proviso to Article 309 of the Constitution. In this regard, Mr. Rao referred to and relied on the decision of this Court in S.S. Bola & Ors. Vs. B.D. Saldana & Ors. [(1997) 8 SCC 522], and T. Narasimhulu & Ors. Vs. State of A.P. & Ors. [(2010) 5 SCALE 730], where the aforesaid principle was enunciated. It was urged that even otherwise, a right would accrue only when an order is issued to a Government servant. It was further urged that the High Court's reliance on the observations in M.

Nagaraj's case (supra), and the statement of the Advocate General that the exercise of collection of quantifiable data was not undertaken, is without basis on the ground that the collection of quantifiable data showing backwardness and inadequacy of representation would only arise when the State wished to exercise its discretion in making reservation for Scheduled Tribes and Scheduled Castes candidates in matters of promotion and not in a case where reservation had already been made as far back as on 10.2.1975 and was allowed to continue uninterruptedly.

20. Mr. Rao submitted that as far as the "Catch-up Principle" is concerned, the same had been deleted by the impugned notification dated 25.4.2008. The first Notification deleted the said rule with effect from 1.4.1997, while retaining some reservation in the form of a Proviso which too was ultimately deleted by the second Notification with effect from 28.12.2002. Mr. Rao also referred to

the observation made in M. Nagaraj's case that it could not be said that the equality code under Articles 14, 15 and 16 was violated by the deletion of the "Catch-up" Rule. Mr. Rao submitted that this declaration of the Constitution Bench had not been noticed by the High Court when it held that the two impugned notifications violated Articles 14 and 16 of the Constitution.

21. Mr. Rao also submitted that the doctrine of eclipse, as urged on behalf of the Petitioners, was not applicable to the facts of the case since after over-ruling the decision in General Manager, Southern Railway Vs. Rangachari [(1962) 2 SCR 586], this Court had extended the life of the existing reservations for a period of five years. Accordingly, the Government Order dated 10.2.1975 survived the decision in Indra Sawhney's case (supra) and during the period of extension of five years, Parliament intervened and inserted Clause (4-A) in Article 16 empowering the State to

continue reservations in promotions already made or to make such reservations, if not already made. Mr. Rao urged that the 85th Amendment was enacted not merely to withdraw the Office Memorandum dated 31.1.1997, which gave effect to the catch-up rule, but to restore the benefit of consequential seniority with retrospective effect from 17.6.1995 as if there never was any Catch-up Rule at all in the eye of law. Mr. Rao submitted that the contention of the Petitioners that for the purpose of giving the benefit of consequential seniority, the State would have to undertake the collection of quantifiable data in regard to backwardness, inadequacy of representation and non-impairment of efficiency, was based on a misunderstanding of the law declared in M. Nagaraja's case (supra), since it defeats the intent of Parliament to give retrospective effect to the Constitution (85th Amendment) Act.

22. In addition, it was pointed out that in M. Nagaraj's case (supra) it had been categorically indicated that the concept of consequential seniority did not violate the equality code under Articles 14, 15 and 16 by deleting the Catch-up Principle , as was held in Virpal Singh Chauhan's case (supra). It was submitted that the instant case is a simple case of deletion of the Catch-up Principle in view of the Constitution (85th Amendment) Act. It was contended that the provisional seniority list which was quashed by the High Court could never become the ground for any accrued right to seniority.

23. Appearing for the Intervenor, Rajasthan Vanijik Kar Anusuchit Jati-Janjati Mahasangh, hereinafter referred to as "Mahasangh", Mr. Pallav Shishodia, learned Senior Advocate, reiterated Mr. Rao's submissions regarding the observations made by this Court in paragraph 79 of M. Nagaraj's case that the concept of "Catch-up Rule" and "consequential

seniority" are judicially evolved concepts not implicit in Clauses (1) and (4) of Article 16 of the Constitution and with the concept of equality contained in Articles 14, 15 and 16 stood violated by the deletion of the "Catch-up Rule". The Constitution Bench also observed that such concepts were based on principles which could not be elevated to the status of constitutional principles or constitutional limitations. Mr. Shishodia urged that the deletion of the Proviso added by the Amendment of 1997 by way of the impugned Notification of 28.12.2002 and 25.4.2008, merely gave a quietus to the Catch-up Rule in harmony with the Constitution (85th Amendment) Act, which was introduced with the specific object of negating the effect of the decisions of this Court in Virpal Singh Chauhan's case (supra), Ajit Singh-I's case (supra) and in Ajit Singh-II's case (supra). It was submitted that since the 85th Amendment had been upheld by the constitution Bench in M. Nagaraj's

case (supra) the State was duty bound to restore the original practice of giving seniority from the date of substantive appointment, without reference to the Catch-up Principle.

24. Mr. Shishodia concluded on the note that just as the repealing of an enactment would not automatically revive the original Act, on the same analogy, mere setting aside or quashing of the impugned Notification dated 28.12.2002 and 25.4.2008 would not revive the "Catch-up" Rule introduced by Notification dated 1.4.1997. While the repeal of the two Notifications dated 28.12.2002 and 25.4.2008 removed the eclipse caused by the judgment in Ajit Singh-I's case (supra), Ram Prasad's case (supra) and Ajit Singh-II's case (supra), no fresh right of consequent seniority was conferred.

25. Mr. M.L. Lahoti, learned Senior Advocate, appearing for Respondent No.13 in SLP(C)No.6385 of

2010, while reiterating the submissions made on behalf of the other Respondents, submitted that the question of reservation had been gone into in detail in Indra Sawhney's case (supra) and it had been held that if a feeling of complacency relating to promotion was allowed to prevail amongst candidates from the reserved categories, it was bound to generate a feeling of despondency among candidates from the open categories which would affect the efficiency of administration. It was also held that putting the members of the Backward Class on a fast track would lead to leap-frogging which could have disastrous effects on the moral of the candidates from the general candidates. Learned counsel went on to submit that the 77th and 85th Constitutional Amendments were brought about in the Constitution after the judgment in Indra Sawhney's case and provided the Government with power to provide reservation in promotion and consequential seniority. Although, the same was

challenged in the All India Equality Forum's case, as also in M. Nagaraja's case, this Court upheld the constitutional validity of all the amendments, subject to compelling circumstances being fulfilled by the States. Mr. Lahoti also referred to the contents of paragraph 123 of the judgment in M. Nagaraja's case (supra) which has been referred to hereinbefore, relating to the "extent of reservation" to be made by the State Government.

26. Mr. Lahoti submitted that in response to several applications made under the Right to Information Act, 2005, little or no information was supplied with regard to the population, education, public employment, private employment, self-employment, below poverty line population and per-capita income of Scheduled Tribes and Scheduled Castes for the years 1951, 2001 and 2009. In fact, the response of the National Commission for Scheduled Tribes was that they did not have the requisite data for all the information sought for.

27. Mr. Lahoti lastly contended that in the absence of any data in relation to Scheduled Castes and Scheduled Tribes, the parameters laid down in M. Nagaraja's case were not fulfilled and Rule 33 of the Rajasthan Administrative Service Rules, 1954 providing for consequential seniority, was unconstitutional as no exercise had been undertaken by the State pursuant to Article 16(4-A) of the Constitution, and, as such it was not entitled to provide consequential seniority to Scheduled Castes and Scheduled Tribes employees.

28. Mr. M.R. Calla, learned Senior Advocate, who appeared for the sole Respondent, Mr. O.P. Harsh, in Special Leave Petition (Civil) No.7838 of 2010, contended that as far as his client was concerned, he was the Selection Scale promotee of the year 1991-92 and the judicial decision upholding his position had attained finality and had nothing to do with the amendment of the rules or the

constitutional amendment with retrospective effect from 17th June, 1995. It was submitted that in his case there was no question of any general category candidate gaining seniority over him once he had superseded them on the basis of merit in the year 1991-92. In other words, once a general category candidate, though initially senior to him, failed to compete against him in merit in the year 1991-92, he could not regain seniority over his client even if he had been promoted in any subsequent year. Mr. Calla urged that when Shri Harsh had been given the benefit of the "catch-up" rule in terms of the notification dated 1.4.1997, the general category candidates, who were senior to him but had been superseded by him on the basis of merit in the year 1991-92 for the selection scale, had been wrongly placed above him. Mr. Calla further submitted that such an act on the part of the Respondents having been challenged by Shri Harsh in Writ Petition No.3136 of 2000, which was

allowed on 30th May, 2001 and the subsequent challenge thereto before the Division Bench having been dismissed, the order dated 12.9.2001 of the learned Single Judge had attained finality.

29. Mr. Calla also referred to the decision of this Court in M. Nagaraj's case (supra) and submitted that despite the constitutional mandate to the Government as per the 77th and 85th amendments, to form an opinion relating to adequate representation for exercise of the powers under Articles 16(4) and 16(4-A) of the Constitution, no such exercise had been undertaken by the State before exercising the enabling power. It was submitted that adequate representation of candidates cannot be a constant factor for ever, but was variable for the purpose of providing adequate representation in the services, as circumstances had changed after 1975. Mr. Calla submitted that the exercise for adequate representation was the most important factor for the Government to exercise its powers under Article

16(4) and 16(4-A) of the Constitution and the same could not be avoided by the Government and the failure to follow the said mandate rendered the exercise of the enabling power invalid. Mr. Calla submitted that the various data which came to be disclosed during the hearing of the matter, clearly show that Scheduled Castes and Scheduled Tribes candidates were adequately represented and had at times even exceeded the quota and as such it was necessary for an exercise to be undertaken to ascertain the representation of such candidates. Mr. Calla submitted that, in any event, since no injustice had been done to Scheduled Castes and Scheduled Tribes candidates, the petitioners could have no legitimate cause for grievance with the order of the High Court.

30. Dr. Rajeev Dhawan, learned Senior Advocate who appeared for the Respondent No.10 in Special Leave Petition (Civil) No.7716 of 2010, firstly contended that the main issue for decision in this case is

whether the conditions enumerated in M. Nagaraj's case (supra) applied to cases of seniority and promotion after 17th June, 1995, from which date the amendments were declared to be valid in M. Nagaraj's case (supra). Dr. Dhawan submitted that in M. Nagaraj's case (supra) this Court was called upon to consider the provisions of the Constitution (77th, 81st, 82nd and 85th Amendment) Acts relating to reservation in promotion, the principle of carry over, enabling preservation of principles of efficiency and providing for consequential seniority by amending Article 16(4-A) by substituting the words "in matters of promotion, with consequential seniority, to any class", in place of the words "in matters of promotion to any class". Dr. Dhawan submitted that by the Constitution (85th Amendment) Act, 2001, the legislature reintroduced the concept of consequential seniority to any class in matters of promotion.

31. It was submitted that after the decision in Virpal Singh Chauhan's case (supra), the provisions relating to "catch-up" were discontinued and the protection which had been given against disputes of seniority by juniors by the notification dated 1.4.1997 was withdrawn, but with a proviso of maintaining the status-quo that was existing as on that date.

32. Dr. Dhawan contended that the exercise to be undertaken as per the directions in M. Nagaraj's case (supra) was mandatory and admittedly such an exercise had not been undertaken before grant of promotion. The Division Bench also held that the rights which had been preserved by virtue of the notifications dated 1.4.1997 and 28.12.2002 were vested rights in favour of the writ petitioners and by the impugned judgment, the notifications dated 28.12.2002 and 25.4.2008 had been rightly quashed. Dr. Dhawan urged that by the notifications dated

1.4.1997 and 28.12.2002, the Government of Rajasthan had protected the seniority and merit of candidates. The decision in M. Nagaraj's case made a distinction between the existence and the width of the exercise of power under the amendments and validates the amendments subject to the exercise emanating from the above-mentioned principles. Dr. Dhawan submitted that the decision in M. Nagaraj's case did not automatically invalidate or validate any exercise between when the amendments were held to be valid, and 4.1.2000 from when consequential seniority was required to be considered in terms of such amendment.

33. It was submitted that since the State had not undertaken the exercise which was mandatory in terms of the judgment in M. Nagaraj's case (supra), the State could not, either directly or indirectly, circumvent or ignore or refuse to undertake the exercise by taking recourse to the Constitution

(85th Amendment) Act providing for reservation in promotion with consequential seniority.

34. Dr. Dhawan urged that the powers conferred on the State under Articles 16(4), 16(4-A) and 16(1-B) of the Constitution are enabling in nature and the expression "consequential seniority" was optional and not a requirement. Dr. Dhawan also urged that what was restored by the decision in M. Nagaraj's case (supra) was merely the enabling power of the Government and exercise of such power in relation to consequential seniority by the State of Rajasthan would still have to be reconsidered in accordance with the decision in M. Nagaraj's case (supra).

35. Dr. Dhawan submitted that the seniority of the candidates who had been promoted on merit was protected by the notification dated 1.4.1997 and the same was required to be retained and the contingent protection given by the notification of

28.12.2002 was also required to be retained, though the contingency in the last sentence of the notification was liable to be struck down. Dr. Dhawan also urged that the restoration of consequential seniority in the notification of 25.4.2002, without conducting the exercise as contemplated in M. Nagaraj's case (supra), was liable to be struck down and if the State wanted to introduce a provision for consequential seniority, it would have to follow the procedure indicated in M. Nagaraj's case (supra).

36. The primary question which we are called upon to answer in these five Special Leave Petitions is whether the amended provisions of Article 16(4-A) of the Constitution intended that those belonging to the Scheduled Castes and Schedule Tribes communities, who had been promoted against reserved quota, would also be entitled to consequential seniority on account of such promotions, or would the "catch-up" rule prevail.

37. The said question has been the subject matter of different decisions of this Court, but the discordant note was considered and explained by the Constitution Bench in M. Nagaraj's case (supra). On account of reservation those who were junior to their seniors, got the benefit of accelerated promotions without any other consideration, including performance. Those who were senior to the persons who were promoted from the reserved category were not overlooked in the matter of promotion on account of any inferiority in their work performance. It is only on account of fortuitous circumstances that juniors who belong to the reserve category were promoted from that category before their seniors could be accommodated.

38. The question relating to reservation in promotional posts fell for the consideration of this Court in Indra Sawhney's case (supra) for

construction of Article 16(4) of the Constitution relating to the State's powers for making provision for reservation of appointments or posts in favour of any backward class of citizens, which in the opinion of the State, was not adequately represented in services under the State. The further question for determination was whether such power extended to promotional posts. This Court answered the questions by holding that Article 16(4) does not permit provision for reservation in the matter of promotion. Further, such rule was to be given effect to only prospectively and would not affect the promotions already made, whether made on regular basis or on any other basis. Accordingly, apart from holding that Article 16(4) does not permit provision for reservation in the matter of promotion, this Court also protected the promotees who had been appointed against reserved quotas and a direction was also given that wherever reservations are provided in the matter of

promotion, such reservation would continue in operation for a period of five years from the date of the judgment. In other words, the right of promotion was protected only for a period of 5 years from the date of the judgment and would cease to have effect thereafter.

39. The matter did not end there. The Constitution (77th Amendment) Act, 1995, came into force on 17th June, 1995. A subsequent question arose in the case of Union of India vs. Virpal Singh Chauhan, [(1995) 6 SCC 684], as to whether the benefit of accelerated promotion through reservation or the roster system would give such promotees seniority over general category promotees who were promoted subsequently. The said question arose in regard to promotion of Railway Guards in non-selection posts by providing concession to Scheduled Castes and Scheduled Tribes candidates and it was sought to be contended that the reservation provided was not only at the stage of initial appointment, but at

every stage of subsequent promotions. In the said case, the Petitioners, who were general category candidates and the Respondents who were members of the Scheduled Castes and Scheduled Tribes were in the grade of Guards Grade 'A' in the Northern Railway. On 1st August, 1986, the Chief Controller, Tundla, promoted certain general category candidates on ad-hoc basis to Grade 'A' Special. Within less then three months, however, they were reverted and in their place members of the Scheduled Castes and Scheduled Tribes were promoted. Complaining of such action as being illegal, arbitrary and unconstitutional, Virpal Singh Chauhan and others moved the High Court, but the petition was transferred to the Central Administrative Tribunal. The Tribunal, inter alia, held that persons who had been promoted by virtue of the application of roster would be given accelerated promotion but not seniority, and that the seniority in a particular grade amongst the

incumbents available for promotion to the next grade would be re-cast each time new incumbents entered from the lower grade on the basis of initial Grade 'C' seniority. This came to be recognized as the "catch-up" rule. The matter was brought to this Court by the Union of India and this Court confirmed the view taken by the Tribunal.

40. The same view was reiterated in the case of Ajit Singh Januja's case (supra) wherein it was held further that by accelerated promotion Scheduled Castes/Scheduled Tribes and Backward Class candidates could not supersede their seniors in the general category by accelerated promotion, simply because that their seniors in the general category had been promoted subsequently. It was observed that balance has to be maintained vis-à-vis reservation.

41. After the decision rendered in Virpal Singh Chauhan's case (supra) and in Ajit Singh-I's case (supra), in which the claim of reserved category candidates in promotional posts with consequential seniority was negated, the question surfaced once again in the case of Jagdish Lal & Ors. Vs. State of Hayrana & Ors. [(1997) 6 SCC 538], where a Bench of Three Judges took a different view. Their Lordships held that the recruitment rules had provided for fixation of seniority according to length of continuous service on a post in the service. Interpreting the said provisions, Their Lordships held that in view of the said rules those Scheduled Castes and Scheduled Tribes candidates, who though junior to others in the general category, had got promotion earlier than their seniors in the general category candidates and would, therefore, be entitled to get seniority with reference to the date of their promotion. Their Lordships held that the general candidates by

relying on Virpal Singh Chauhan's case (supra) and Ajit Singh Januja's case (supra) could not derive any benefit therefrom.

42. This resulted in the vexed question being referred to the Constitution Bench. Of the several cases taken up by the Constitution Bench, we are concerned with the decision rendered in the case of Ram Prasad vs. D.K. Vijay [(1999) 7 SCC 251] and Ajit Singh-II & Ors. Vs. State of Punjab & Ors. [(1999) 7 SCC 209]. Differing with the views expressed in Jagdish Lal's case (supra), the Constitution Bench in Ajit Singh-II's case (supra) affirmed the earlier decision in Virpal Singh Chauhan's case (supra) and Ajit Singh Januja's case (supra) and overruled the views expressed in Jagdish Lal's case (supra). The constitution Bench reiterated the views expressed in Ajit Singh-I's case (supra) that those who had obtained the benefit of accelerated promotion should not be reverted as that would cause hardship to them, but

they would not be entitled to claim seniority in the promotional cadre. Quite naturally, the same view was expressed in Ram Prasad's case (supra) which was also decided on the same day. In the said case, while affirming the decision in Ajit Singh-I's case (supra), this Court directed modification of the seniority lists which had been prepared earlier, to fall in line with the decision rendered in Ajit Singh-I's case (supra) and Virpal Singh Chauhan's case (supra).

43. Thereafter, as mentioned hereinbefore, on 4th January, 2002, the Parliament amended the Constitution by the Constitution (85th Amendment) Act, 2001, in order to restore the benefit of consequential seniority to the reserved category candidates with effect from 17th June, 1995. The constitutional validity of both the Constitution Amendment Acts was challenged in this Court in several Writ Petitions, including the Writ Petitions filed by M. Nagaraj and the All India

Equality Forum. The Constitution Bench while considering the validity and interpretation as also the implementation of the Constitution (77th, 81st, 82nd and 85th Constitutional Amendment) Acts and the effect thereof on the decisions of this Court in matters relating to promotion in public employment and their application with retrospective effect, answered the reference by upholding the constitutional validity of the amendments, but with certain conditions.

44. The vital issue which fell for determination was whether by virtue of the implementation of the Constitutional Amendments, the power of Parliament was enlarged to such an extent so as to ignore all constitutional limitations and requirements. Applying the "width" test and "identity" test, the Constitution Bench held that firstly it is the width of the power under the impugned amendments introducing amended Articles 16(4-A) and 16(4-B) that had to be tested. Applying the said tests,

the Constitution Bench, after referring to the various decisions of this Court on the subject, came to the conclusion that the Court has to be satisfied that the State had exercised its power in making reservation for Scheduled Castes and Scheduled Tribes candidates in accordance with the mandate of Article 335 of the Constitution, for which the State concerned would have to place before the Court the requisite quantifiable data in each case and to satisfy the Court that such reservation became necessary on account of inadequacy of representation of Scheduled Castes and Scheduled Tribes candidates in a particular class or classes of posts, without affecting the general efficiency of service. The Constitution Bench went on to observe that the Constitutional equality is inherent in the rule of law. However, it's reach is limited because its primary concern is not with efficiency of the public law, but with its enforcement and application. The Constitution

Bench also observed that the width of the power and the power to amend together with its limitations, would have to be found in the Constitution itself. It was held that the extension of reservation would depend on the facts of each case. In case the reservation was excessive, it would have to be struck down. It was further held that the impugned Constitution Amendments, introducing Article 16(4-A) and 16(4-B), had been inserted and flow from Article 16(4), but they do not alter the structure of Article 16(4) of the Constitution. They do not wipe out any of the Constitutional requirements such as ceiling limit and the concept of creamy layer on one hand and Scheduled Castes and Scheduled Tribes on the other hand, as was held in Indra Sawhney's case (supra). Ultimately, after the entire exercise, the Constitution Bench held that the State is not bound to make reservation for Scheduled Castes and Scheduled Tribes candidates in matters of promotion but if it wished, it could

collect quantifiable data touching 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.

45. In effect, what has been decided in M. Nagaraj's case (supra) is part recognition of the views expressed in Virpal Singh Chauhan's case (supra), but at the same time upholding the validity of the 77th, 81st, 82nd and 85th amendments on the ground that the concepts of "catch-up" rule and "consequential seniority" are judicially evolved concepts and could not be elevated to the status of a constitutional principle so as to place them beyond the amending power of the Parliament. Accordingly, while upholding the validity of the said amendments, the Constitution Bench added that, in any event, the requirement of Articles 16(4-A) and 16(4-B) would have to be maintained and that in order to provide for reservation, if at all, the tests indicated in Article 16(4-A) and 16(4-B)

would have to be satisfied, which could only be achieved after an inquiry as to identity.

46. The position after the decision in M. Nagaraj's case (supra) is that reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition of ascertaining as to whether such reservation was at all required. The view of the High Court is based on the decision in M. Nagaraj's case (supra) as no exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Schedule Castes and Scheduled Tribes communities in public services. The Rajasthan High Court has rightly quashed the notifications dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan providing for consequential seniority and promotion to the members of the Scheduled Castes and Scheduled

Tribes communities and the same does not call for any interference. Accordingly, the claim of Petitioners Suraj Bhan Meena and Sriram Choradia in Special Leave Petition (Civil) No.6385 of 2010 will be subject to the conditions laid down in M. Nagaraj's case (supra) and is disposed of accordingly. Consequently, Special Leave Petition (C) Nos. 7716, 7717, 7826 and 7838 of 2010, filed by the State of Rajasthan, are also dismissed.

47. Having regard to the nature of the facts involved, each party will bear its own cost.

.....J.
(ALTAMAS KABIR)

.....**J.**
(A.K. PATNAIK)

New Delhi
Dated: December 7, 2010