
(1999) 03 GAU CK 0023
In the Gauhati High Court
Case No : Civil Rule No. 323 of 1996

Paritosh Saha and Others	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 16(4), 330

Citation : (1999) 1 GLT 468

Hon'ble Judges : P.K. Sarkar, J

Bench : Single Bench

Advocate : S. Talapatra, for the Appellant; U.B. Saha and S. Chakravorty, for the Respondent

Judgement

P.K. Sarkar, J.—The Petitioners are the Degree holder Assistant Engineers in the Public Works Department of the Govt. of Tripura and they were appointed during the year 1979. The Petitioners are the members of the Tripura Engineering Service. There are 69 posts in the Grade of Executive Engineer in the Tripura Engineering Services out of which 70% of the posts are to be filled up by promotion from the Degree holder Assistant Engineers and 30% of the posts are to be filled up from Diploma holder Assistant Engineers. Accordingly, out of 69 posts of Executive Engineer, 48 posts are to be filled up by Degree-holder Assistant Engineers and 21 by Diploma-holder Assistant Engineers.

2. It is stated that the Government has prepared the Inspection Report of 100 point roster in respect of the posts of Executive Engineer to be filled up by Degree holder Assistant Engineers. The Inspection Report has been prepared by the Tribal Welfare Department of the State Government on 26.2.99. A copy of the said Inspection Report has been furnished by the Petitioners at the time of hearing of the case and the same will form a part of this record and for convenience it is marked as Annexure-"X". According -to the Inspection Report (Annexure-X) at present there are 21 vacancies in the post of Executive Engineer, which are to be filled up by Degree holder Assistant Engineers.

According to Annexure-X all the 21 posts of Executive Engineer have been reserved to be filled up by SC and ST candidates. It has been shown in the report that during the year of recruitment current vacancies to be filled up by SC and ST candidates are 3 and 7 respectively whereas the backlog vacancies to be filled up by SC and ST candidates are 5 and 13 respectively. Thus all the 21 vacancies have been reserved to be filled up by SC and ST candidates from amongst the Degree holder Assistant Engineers. The Petitioners have challenged the reservation policy of the State Government. It is asserted that the Government can not reserve any post in a particular recruitment year in excess of 50% of the total vacancies. It is also stated that in the past in every year of recruitment the Government reserved more than 50% posts to be filled up by SC and ST candidates. Thus the Petitioners, who have earned their eligibility long back, are being deprived from getting their promotion in the posts of Executive Engineer. It is further asserted that the promotion rules as well as the Tripura Engineering Service Rules provide that no reserve category candidate should be considered by the D.P.C. who do not come within the zone of consideration. It is alleged that the Government is not following the Rule of zone of consideration and are promoting the SC and ST candidates, who do not even come within the zone of consideration. Thus an injustice is being done to the general category candidates who inspite of acquiring the eligibility for promotion are being deprived in the name of reservation. The Petitioners, therefore, prayed that the Respondent Government be directed not to fill up the vacancies of the post of Executive Engineer (Civil) more than 50% by reserved category candidates in a particular year of recruitment. The Petitioners also prayed for a direction to the Respondent Government to fill up the remaining 50% of the posts by eligible general category candidates. It is further alleged that the Government adopted a pick and choose method for filling up the posts of Executive Engineer by SC and ST candidates by resorting to ad-hoc arrangement. Even though these SC and ST candidates are much below in the seniority list than the Petitioners, they are being appointed on ad-hoc basis in the posts of Executive Engineer. The Petitioners, therefore, claimed that this system of ad-hoc arrangement for filling up the posts by junior SC and ST candidates be discontinued forthwith.

3. The State Respondents by filing a counter-affidavit have denied the allegations made by the Petitioners in their writ petition. It is stated in the counter-affidavit that the Respondents are taking steps for filling up the posts of Executive Engineer both by Degree-holder and Diploma-holder Assistant Engineers in accordance with the decision of the Supreme Court and High Court. It is further stated that the number of posts to be filled up by Degree-holder Assistant Engineers and Diploma-holder Assistant Engineers in the posts of Executive Engineer has been worked out and the dispute has been settled by this Court by an order dated 8.12.95 passed in Misc. Case No. 723/95 arising out of Civil Rule No. 539 of 1995. There is no dispute about the number of posts to be shared by Degree-holder and Diploma-holder Assistant Engineers in the Grade of Executive Engineer and this question has been finally settled by the High Court. Ultimately

an appeal was filed against the judgment and order passed in Civil Rule No. 539 of 1995 and the judgment was stayed in Writ Appeal No. 21 of 1996 on 27.9.96. After the stay order the SC/ST Department of the Government of Tripura prepared a separate Inspection Report for 100 point roster in accordance with the provisions of the Tripura Engineering Service Rules. According to the Annexure-R/7 of the counter-affidavit the Department worked out that 20 vacancies in the post of Executive Engineer are to be filled up by Degree holder Assistant Engineers and 6 vacancies are to be filled up by Diploma holder Assistant Engineers and the Government reserved all the 20 posts of Executive Engineer to be filled up by Degree holder Assistant Engineers belonging to SC and ST category. It is also stated in the counter-affidavit that the Government has prepared the Inspection Report of 100 point roster in accordance with the provisions of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1991 and as per the provisions of the aforesaid Act the backlog vacancies reserved for SC and ST, but filled up by general category candidates, are to be carried forward and after carrying forward of all the backlog vacancies reserved for SC and ST, all the 20 vacancies have been reserved to be filled up by SC and ST candidates. At present the vacancies in the Grade of Executive Engineer to be filled up by Degree holder Assistant Engineers have risen to 21 and as per the latest inspection of 100 point roster prepared by the SC and ST Department, all the 21 posts of Executive Engineer have been reserved to be filled up by SC and ST Degree-holder Assistant Engineers. It is further stated in the counter that in promotion more than 50% posts can be reserved for SC and ST candidates and there is no illegality in reserving posts in excess of 50% in any recruitment year. It is, therefore, asserted by the Respondent Government that there is no illegality in reserving all the 21 posts of Executive Engineer to be filled up by SC and ST candidates.

4. I have heard Mr. S. Talapatra, learned Counsel appearing on behalf of the Petitioners and Mr. S. Chakraborty, learned Counsel appearing on behalf of the State Respondents.

5. After going through the pleadings of the parties and after hearing the learned Counsel of both the parties, I am of the view that the following questions require decision.

(a) Whether the 50% rule enunciated by the Apex Court is binding rule or only a rule of caution or rule of prudence?

(b) While applying 50% rule, if any, whether a year should be taken as a unit or whether the total strength of the cadre should be looked to?

6. Mr. Talapatra, learned Counsel for the Petitioners draws my attention to the case decided by the Apex Court reported in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., Mr. Talapatra submitted that the aforesaid questions were discussed by the Apex Court and the Apex Court has given its findings in the aforesaid case. The Apex Court in paragraphs 93, 94, 94A, 95 and 96 of the

aforesaid judgment has discussed the questions referred to above and has given its findings. The relevant portion of the judgment will be referred hereafter.

7. In the instant case, there are 69 posts in the Grade of Executive Engineer in the Tripura Engineering Services. In 70% share the Degree-holder Assistant Engineers are entitled to be promoted in 48 posts. It is submitted by Mr. S. Chakraborty, learned Counsel for the Respondents that out of 48 posts, 21 posts are vacant at present and out of the remaining 27 posts only two posts are filled up by SC and ST candidates, each category sharing one post. Mr. Chakraborty consequently submitted that since in earlier recruitment years sufficient number of SC and ST candidates were not found, those posts were filled up by general category candidates and at present 25 posts in the Grade of Executive Engineer are filled up by general category candidates. It is also submitted by Mr. Chakraborty that the SC and ST Welfare Department has worked out the backlog vacancies which were carried forward and taking into consideration the existing vacancies to be reserved for SC and ST together with backlog vacancies, all the 21 vacant posts of Executive Engineer are to be filled up by SC and ST candidates. Learned counsel consequently submitted that it has been decided by the Government that out of 21 vacancies in the Grade of Executive Engineer falling within the quota of Degree-holder Assistant Engineers all the posts are to be filled up by reserve category candidates.

8. From the submission of Mr. Chakraborty, learned Counsel for the Respondents it appears that the Government has worked out the vacancies to be filled up in a particular year on the basis of cadre strength in the Grade of Executive Engineer in the Tripura Engineer Services. This aspect will be discussed in the later part of the judgment. For the present it is necessary to decide to what extent the reservation can be made in respect of vacancies in a Cadre or Grade. The Apex Court after discussing Balaji's case reported in *M.R. Balaji and Others Vs. State of Mysore*, Devadasan's case reported in *T. Devadasan Vs. The Union of India (UOI) and Another*, and Karamchari Sangh's case as well as the case reported in *State of Kerala and Another Vs. N.M. Thomas and Others*, and the observations of the Hon'ble Judges of the Supreme Court in the said cases came to the conclusion which runs as follows:

94A. We must, however, point out that Clause (4) speaks of adequate representation and not proportionate representation. Adequate representation cannot be read as proportionate representation. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State legislature in favour of Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore not possible to accept the theory of proportionate representation though the proportion of population of backward classes to the total population would certainly be relevant. Just as every power must be exercised reasonably and fairly, the power conferred by Clause (4) of Article 16

should also be exercised in a fair manner and within reasonable limits-and what is more reasonable than to say that reservation under Clause (4) shall not exceed 50% of the appointments or posts, barring certain extraordinary situations as explained hereinafter. From this point of view, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of Scheduled Castes and Scheduled Tribes, it comes to a total of 49.5%. In this connection, reference may be had to the Full Bench decision of the Andhra Pradesh High Court in V. Narayana Rao and Another Vs. State of Andhra Pradesh and Another, striking down the enhancement of reservation from 25% to 44% O.B.Cs. The said enhancement had the effect of taking the total reservation under Article 16(4) to 65%. It needs no emphasis to say that the principle aim of Articles 14 and 16 is equality and equality of opportunity and that Clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision - though not an exception to Clause (1). Both the provisions have to be harmonised keeping in mind fact that both are but the restatements of the principle of equality enshrined in Article 14. The provision under Article 16(4) - conceived in the interest of certain Sections of society - should be balanced against the guarantee of equality enshrined in Clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr Ambedkar himself contemplated reservation being "confined to a minority of seats" (see his speech in Constituent Assembly, set out in para 28). No other member of the Constituent Assembly suggested otherwise. It is, thus, clear that reservation of a majority of seats was never envisaged by the founding fathers. Nor are we satisfied that the present context requires us to depart from that concept.

From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in Clause (4) of Article 16 should not exceed 50%.

The Apex Court, however, made some relaxation in 50% rule in cases of certain farflung and remote areas as the people of those areas might on account of their being out of main stream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way. But while making such relaxation the Apex Court has cautioned the Executive Authority that while making such relaxation a special case must be made out.

9. The next question is whether a year should be taken as a unit of the total strength of the cadre, for the purpose of applying 50% rule. M.R. Balaji and Others Vs. State of Mysore, does not deal with this aspect, but T. Devadasan Vs. The Union of India (UOI) and Another, does and held that the guarantee contained in Article 16(1) is for ensuring equality of opportunity for all citizens relating to employment, and to appointments to any office under the State. This means that on every occasion for recruitment the State should see that all citizens are treated equally. The guarantee is to each individual citizen and, therefore, every citizen who is seeking employment or appointment to an office

under the State is entitled to be afforded an opportunity for seeking such employment or appointment whenever it is intended to be filled. In order to effectuate the guarantee each year of recruitment will have to be considered by itself and the reservation for backward communities should not be so excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities. On the other hand, is the approach adopted by Ray, C.J. in *State of Kerala and Another Vs. N.M. Thomas and Others*, . While not disputing the correctness of the 50% rule he seems to apply it to the entire service as such. After discussing the above observation of Ray, C.J. the Apex Court in *Indra Sawhney*'s case held:

In our opinion, the approach adopted by Ray, C.J. would not be consistent with Article 16. True it is that the backward classes, who are victims of historical social injustice which has not ceased fully as yet, are not properly represented in the services under the State but it may not be possible to redress this imbalance in one go. i.e., in a year or two. The position can be better explained by taking an illustration. 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 O.B.Cs. in the unit/service/category is only 50, a short fall of 220. Similarly the number of members of scheduled castes and scheduled tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all backward classes reaches 500 i.e., till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by Clause (1) is to each individual citizen of the country while Clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be.

The Apex Court further held:

97. The rule (providing for carry forward of unfilled reserved vacancies as modified in 1955) struck down in *T. Devadasan Vs. The Union of India (UOI) and Another*, read as follows:

3(a) If a sufficient number of candidates considered suitable by the recruiting authorities, are not available from the communities for whom reservations are

made in a particular year, the unfilled vacancies should be treated as unreserved and filled by the best available candidates. The number of reserved vacancies thus treated as unreserved will be added as an additional quota to the number that would be reserved in the following year in the normal course; and to the extent to which approved candidates are not available in that year against this additional quota, a corresponding addition should be made to the number of reserved vacancies in the second following year.

The facts of the case relevant for our purpose are the following:

(i) Reservation in favour of Scheduled Castes and Scheduled Tribes was 12V4 %and 5% respectively;

(ii) In 1960, U.P.S.C. issued a notification proposing to hold a limited competitive examination for promotion to the category of Assistant Superintendents in Central Secretariat Services. 48 vacancies were to be filled, out of which 16 were unreserved while 32 were reserved for Scheduled Castes/Scheduled Tribes, because of the operation of the carry forward Rule; 28 vacancies were actually carried forward;

(iii) U.P.S.C. recommended 16 for unreserved and 30 for reserved vacancies - a total of 46;

(iv) The Government however appointed in all 45 persons, out of whom 29 belonged to Scheduled Castes/Scheduled Tribes.

The said Rule and the appointments made on that basis were questioned mainly on the ground that they violated the 50% rule enunciated in Balaji. It was submitted that by virtue of the carry forward Rule, 65% of the vacancies for the year in question came to be reserved for Scheduled Castes/Scheduled Tribes.

In Devadasan (Supra) the majority, speaking through Mudholkar, J. upheld the contention of the Petitioners and struck down the Rule purporting to apply the principle of M.R. Balaji and Others Vs. State of Mysore, . The vice of the Rule was pointed out in the following words:

In order to appreciate better the import of this rule on recruitment, let us take an illustration. Supposing in two successive years no candidate from amongst the Scheduled. Castes and Tribes is found to be qualified for filling any of the reserved posts. Supposing also that in each of those two years the number of vacancies to be filled in a particular service was 100. The reserved vacancies for each of those years would, according to the Government resolution, be 18 for each year. Now, since these vacancies were not filled in those years a total of 36 vacancies will be carried forward to the third year. Supposing in the third year also the number of vacancies to be filled is 100. Then 18 vacancies out of these will also have to be reserved for members of the Scheduled Castes and Tribes. By operation of the carry forward rule the vacancies to be filled by persons from amongst the Scheduled Castes and Tribes would be 54 as against 46 by persons from amongst the more advanced classes. The reservation would thus be more

than 50%.

After discussing Devadasan's case the Apex Court in Indra Sawhney's case held:

98. We are of the respectful opinion that on its own reasoning, the decision in so far as it strikes down the Rule is not sustainable. The most that could have been done in that case was to quash the appointments in excess of 50%, in as much as, as a matter of fact, more than 50% of the vacancies for the year 1960 came to be reserved by virtue of the said Rule. But it would not be correct to presume that is the necessary and the only consequence of that rule. Let us take the very illustration given at pp. 691-2, - namely 100 vacancies arising in three successive years and 18% being the reservation quota - and examine. Take a case, where in the first year, out of 18 reserved vacancies 9 are filled up and 9 are carried forward. Similarly, in the second year again 9 are filled up and another 9 are carried forward. Result would be that in the third year $9 + 9 + 18 = 36$ (out of a total of 100) would be reserved which would be far less than 50% of the rule in M.R. Balaji and Others Vs. State of Mysore, is not violated. But by striking down the Rule itself, carrying forward of vacancies even in such a situation has become impermissible, which appears to us indefensible in principle. We may also point out that the premise made in Balaji and reiterated in T. Devadasan Vs. The Union of India (UOI) and Another, , to the effect that Clause (4) is an exception to Clause (1) is no longer acceptable, having been given up in State of Kerala and Another Vs. N.M. Thomas and Others, . It is for this reason that in Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, Krishna Iyer, J. Explained Devadasan in the following words:

In Devadasan's case the Court went into the actuals, not into the hypotheticals. This is most important. The Court actually verified the degree of deprivation of the "equal opportunity" right....

...What is striking is that the Court did not take an academic view or make a notional evaluation but checked up to satisfy itself about the seriousness of the infraction of the right.... Mathematical calculations, departing from realities of the case, may startle us without jurisdiction, the apprehension being misplaced. All that we need say is that the Railway Board shall take care to issue instructions to see that in no year shall SC & ST candidates be actually appointed to substantially more than 50% of the promotional posts. Some excess will not affect as mathematical precision is different in human affairs, but substantial excess will void the selection. Subject to this rider or condition that the "carry forward" rule shall not result, in any given year, in the selection of appointments of SC & ST candidates considerably in excess of 50%.

After discussing the Karamchari Sangh's case the Apex Court in Indra Sawhney's case held:

We are respectful agreement with the above statement of law. Accordingly, we

over-rule the decision in *T. Devadasan Vs. The Union of India (UOI) and Another*, . We have already discussed and explained the 50% rule in paras 93 to 96. The same position would apply in the case of carry forward rule as well. We, however, agree that a year should be taken as the unit or basis, as the case may be, for applying the rule of 50% and not the entire cadre strength.

99. We may reiterate that a carry forward rule need not necessarily be in the same terms as the one found in *Devadasan*. A given rule may say that the unfilled reserved vacancies shall not be filled by unreserved category candidates but shall be carried forward as such for a period of three years. In such a case, a contention may be raised that reserved posts remain a separate category altogether. In our opinion, however, the result of application of carry forward rule, in whatever manner it is operated, should not result in breach of 50% rule.

10. On a plain reading of the decision of the Apex Court in *Indra Sawhney's* case (*supra*), it is clear that the Hon'ble Supreme Court by giving illustrations and examples has made it amply clear that the reservation contemplated in Clause (4) of Article 16 of the Constitution should not exceed 50% and it has also been held by the Apex Court that even by application of carry forward rule such reservation should not result in breach of 50% rule. The Apex Court has further held that while applying 50% rule year should be taken as the unit or basis and not the entire cadre strength. In other words, the vacancies that are to be filled up in a year is to be worked out first and thereafter, out of the total vacancies to be filled up in a year not more than 50% of the total vacancies shall be reserved for SC, ST and other backward classes including the carry forward vacancies for SCs, STs and other backward classes. In the present case, from the Inspection Report of 100 point roster (Annexure-X) prepared by the Tribal Welfare Department of the State Government dated 26.2.99 it appears that at present there are 21 vacancies in the Grade of Executive Engineer to be filled up by Degree-holder Assistant Engineers. It further appears from Annexure-X that the current vacancies for SCs and STs are 3 and 7 respectively and the backlog vacancies for SCs and STs are 5 and 13 respectively. Therefore, according to Annexure-X next 28 vacancies of Executive Engineer are to be filled up by SC and ST candidates. At present there are 21 vacancies and therefore, the Tribal Welfare Department has suggested that all the 21 posts be filled up by SC and ST candidates and in case of non-availability of ST candidates the vacancies may be filled up by SC candidates or vice-versa. So, on a plain reading of Annexure-X it is evident that if in the year 1998 or 1999, 21 vacancies of Executive Engineer are filled up, then the Respondent Government proposes to fill up all the 21 vacancies by SC and ST candidates. Such a decision of the Respondent Government is contrary to the decision of the Apex Court in *Indra Sawhney's* case (*supra*).

11. The law has been settled by the Apex Court that in any year of recruitment not more than 50% of the total posts or vacancies can be reserved for Scheduled Castes, Scheduled Tribes and other backward classes. Therefore, the decision of

the Respondent Government that all the 21 vacancies of Executive Engineer will be filled up by SC and ST candidates is against the decision of the Apex Court and therefore, the same is liable to be cancelled. It is made clear that if the Government proposes to fill up these 21 vacancies of Executive Engineer during the year 1999 or in any subsequent year, reservation cannot be made in excess of 50% of the total vacancies, i.e. the Government cannot reserve more than 10 vacancies of Executive Engineer for SC and ST candidates out of 21 vacancies.

12. Mr. S. Chakraborty, learned Counsel appealing on behalf of the State Respondents submitted that the Apex Court in R.K. Sabharwal and others Vs. State of Punjab and others, held that 50% rule is applicable only to initial appointments and this 50% rule is not applicable in case of promotions and therefore, the learned Counsel submitted that since the vacancies of Executive Engineer are promotional posts, 50% rule as laid down by the Apex Court in Indra Sawhney's case (supra) cannot apply in the present case. It is further argued by Mr. Chakraborty that in R.K. Sabharwal (supra) the Apex Court held that 50% rule is applicable to total cadre strength.

13. I have gone through the counter-affidavit filed by the Respondent Government. After hearing the submission of Mr. Chakraborty, learned Counsel for the State Respondent and after going through the counter-affidavit filed by the State Respondent, I am clearly of the opinion that the Respondent Government has misinterpreted the decision of the Apex Court in R.K. Sabharwal's case (supra). It appears that the Apex Court in R.K. Sabharwal's case decided three points, namely:

(i) when the total number of posts in a cadre are filled by the operation of the roster then the object of filling up reserved vacancies is achieved and there is no justification to operate the roster thereafter. The vacancies arising in the cadre, after the initial posts are filled up, 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;

(ii) 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 reserved posts. On the other hand the reserve category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation;

(iii) 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 from the cadre-strength;

The above three points decided by the Apex Court in R.K. Sabharwal (supra) is

that for working out the percentage of reservation the cadre strength shall be taken into consideration. In other words, if the reservation for Scheduled Castes and Scheduled Tribes is 45% and the cadre consists of 100 posts, then 45 posts are to be reserved for SC and ST candidates. This is how the percentage of reservation is to be worked out in a cadre or post. The Apex Court in R.K. Sabharwal (supra) did not lay down any law regarding maximum percentage of reservation that can be made in favour of SC and ST communities in a year of recruitment as that rule has been settled by the Apex Court in Indra Sawhney's case (supra).

14. After going through the decision of the Apex Court in R.K. Sabharwal's case (supra) it appears that the State Government has mis-interpreted the decision of the Apex Court in R.K. Sabharwal's case and has erroneously reserved all the 21 vacancies of Executive Engineer for SC and ST candidates.

15. After hearing the learned Counsel of both the parties and after going through the papers and documents as placed in the case I am of the view that the State Respondents have committed an illegality in reserving all the 21 vacancies of the Executive Engineer to be filled up by SC and ST candidates. Therefore, I am of the view that Annexure-X, the Inspection Report of 100 point roster dated 26.2.99, prepared by the Tribal Welfare Department is liable to be quashed and accordingly the same is quashed. The State Respondents are directed not to make reservation in excess of 50% of the total vacancies in any year of recruitment. In the instant case, out of 21 vacancies of Executive Engineer, the State Government may fill up 10 (ten) posts by reserve category candidates and the remaining 11 (eleven) posts are to be filled up by general category candidates.

16. The writ petition is accordingly allowed and the Rule is made absolute. But under the facts and circumstances, I make no order as to costs.