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(BEFORE K.G. BALAKRISHNAN, C.J. AND S.H. KAPADIA,
R.V. RAVEENDRAN, B. SUDERSHAN REDDY AND P. SATHASIVAM, JJ.)

UNION OF INDIA

.. Appellant;

Versus

RAMESH RAM AND OTHERS

.. Respondents.

Civil Appeals Nos. 4310-11 of 2010[†] with Nos. 4315-16 of 2010[‡],
4319 of 2010^{††}, 4324-28 of 2010^{‡‡}, WPs (C) Nos. 297, 312, 336, 414, 416
and 539 of 2008, decided on May 7, 2010

A. Service Law — Reservation — Vacation of general seat by reserved candidate successful on merit, on migration to reserved seat — Allocation of vacated general seat — Computation of reservation quota — Inclusion of such migrated reserved candidates in — Procedure provided under R. 16 of 2005 CSE Rules, held, valid — Rationale for R. 16(2), explained — By operation of R. 16(2), reserved candidates selected on merit (MRCs) and recommended against unreserved/general vacancies, can choose to migrate to respective reserved category and accordingly they can be adjusted against reserved vacancies in order to get a service of higher choice at time of service allocation — MRCs so adjusted in reserved category under R. 16(2) to be counted as part of reserved pool for computing aggregate reservation quota — Vacancies occurring in general category due to migration of MRCs are to be offered to general category candidates — If, however, any MRC does not choose to migrate to reserved category by availing benefit under R. 16(2), he has to be counted as a general category candidate and seat vacated by him in reserved category is to be filled by wait-listed candidate belonging to same reserved category — In the process no candidate recommended in first list of selected candidates for appointment is ousted and only lower ranked wait-listed candidates are excluded, who have no right or even expectation to be recruited — If seats vacated by MRCs in general category because of their adjustment against reserved category vacancies are further allotted to reserved category candidates, aggregate reservation may exceed 50% of all available vacancies, which is prohibited — Rr. 16(2) to (5) are neither inconsistent with R. 16(1), nor violative of Arts. 14, 16(4) and 335 of the Constitution — Constitution of India — Arts. 14, 16(4) and 335 — Civil Services Examination Rules, 2005, Rr. 16, 2, 3 and 15

B. Constitution of India — Arts. 14, 16 and 335 — Affirmative action measures — Proportionality — Affirmative action measures should be scrutinised as per standard of proportionality — Criteria for any form of differential treatment should have a rational correlation with legitimate governmental objective — Service rules seeking to recognise inter se merit amongst reserved candidates for purpose of allocation of various civil

[†] Arising out of SLPs (C) Nos. 13571-72 of 2008. From the Judgment and Order dated 20-3-2008 of the High Court of Judicature at Madras in WPs Nos. 1814-15 of 2008

[‡] Arising out of SLPs (C) Nos. 13297-98 of 2008

^{††} Arising out of SLP (C) No. 13581 of 2008

^{‡‡} Arising out of SLPs (C) Nos. 14834-38 of 2008

services and intending to arrest arbitrariness and to protect interest of meritorious reserved candidates, held, not violative of Arts. 14, 16(4) and 335 — Service Law — Civil Services Examination Rules, 2005, Rr. 16(2) to (5)

a

C. Service Law — Reservation — Reservation policy applicable to civil services — Validity of — Principles applicable — UPSC examination and reservation procedure — Different from entrance examination and reservation for admission in medical colleges — Hence principles pertaining to reservation in admission to medical colleges cannot be readily applied to examine constitutionality of reservation policy for recruitment to civil services — Constitution of India — Arts. 16(4) and 15(4) — Reservation under — Principles applicable

b

Allowing the appeals and dismissing the writ petitions filed by the respondents, the Supreme Court

Held :

c

Article 16(4) empowers the State to initiate measures in order to protect and promote the interests of Backward Classes (OBCs, SCs and STs). The impugned measures in no way offend the equality clause since this particular clause was inserted to safeguard the concerns of certain classes and shield their legitimate claims in the domain of public employment. (Para 58)

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Affirmative action measures should be scrutinised as per the standard of proportionality. This means that the criteria for any form of differential treatment should bear a rational correlation with a legitimate governmental objective. (Para 70)

M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013, *relied on*

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The need for incorporating Rule 16(2) is to arrest arbitrariness and to protect the interests of the meritorious reserved category (MRC) candidates. If such rule is declared redundant and unconstitutional vis-à-vis Articles 14, 16 and 335 then the whole object of equality clause in the Constitution would be frustrated and MRC candidates selected as per the general qualifying standard would be disadvantaged. Rule 16 in essence and spirit protects the pledge outlined in the Preamble of the Constitution which conceives of equality of status and opportunity. (Para 60)

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Sub-rules (2) to (5) of Rule 16 provide as to how meritorious reserved category candidates are to be adjusted and once they get services of their preference after availing the benefit of their reserved status (as SC, ST, OBC or any other applicable category), the candidates whose names are in the consolidated reserve lists are to be subsequently adjusted. The consolidated reserve list is a wait list which includes the candidates from general category and reserved category. (Paras 44, 29 and 30)

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There is an obvious distinction between qualifying through an entrance test for securing admission in a medical college and qualifying in UPSC examinations since the latter examination is conducted for filling up vacancies in the various civil services. In the former case, all the successful candidates receive the same benefit of securing admission in an educational institution. However, the benefits accruing from successfully qualifying in UPSC examination are of a varying nature since some services are coveted more than others and successful candidates are also competing amongst themselves to secure the service of their

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choice. In this respect, a reserved category candidate who has qualified as part of the general list should not be disadvantaged by being assigned to a lower service against the vacancies in the general category especially because if he had availed the benefit of his reserved category status, he would have got a service of a higher preference. Thus, the reserved category candidates who are selected on merit and placed in the list of general/unreserved category candidates can choose to migrate to the respective reserved category at the time of allocation of services. Such migration as envisaged by Rule 16(2) is not inconsistent with Rule 16(1) or Articles 14, 16(4) and 335 of the Constitution.

[Paras 32, 38, 66, 67, 71 and 72(iv)]

Anurag Patel v. U.P. Public Service Commission, (2005) 9 SCC 742 : 2005 SCC (L&S) 563; *Ritesh R. Sah v. Dr. Y.L. Yamul*, (1996) 3 SCC 253; *Union of India v. Satya Prakash*, (2006) 4 SCC 550 : 2006 SCC (L&S) 832, *distinguished*

Rule 16(2) should not be interpreted in an isolated manner since it was designed to protect the interests of MRC candidates. MRC candidates having indicated their status as SC/ST/OBC at the time of application, begin their participation in the examination process as reserved candidates. Having qualified as per the general qualifying standard, they have the additional option of opting out of the reserved category and occupying a general post. Where, however, they are able to secure a better post in the reserved list their placement in the general list should not deprive them of the same. Thus, by operation of Rule 16(2), the reserved status of an MRC candidate is protected so that his/her better performance does not deny him of the chance to be allotted to a more preferred service.

[Paras 72(ii), 35 and 45]

When MRC candidates get adjusted against the reserved category, the same creates corresponding vacancies in the general merit list (since MRC candidates are on both lists). These vacancies are of course filled up by general candidates. Likewise, when MRC candidates are subsequently adjusted against the general category [i.e. without availing the benefit of Rule 16(2)], the same will result in vacancies in the reserved category which must in turn be filled up by wait-listed reserved candidates. It is significant that if MRC candidates are adjusted against the reserved category vacancies with respect to their higher preferences and the seats vacated by them in the general category are further allotted to other reserved category candidates, the aggregate reservation could possibly exceed 50% of all of the available posts, which is prohibited. When MRC candidates do not choose to accept the general category slot available to them on account of their merit, but opt to occupy a slot reserved for reservation category candidates, because that post is more attractive, then counting him/her against reservation quota will not violate the law laid down in *Indra Sawhney case*, 1992 Supp (3) SCC 217. Hence, MRC candidates who avail the benefit of Rule 16(2) and are adjusted in the reserved category, should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will be offered to general category candidates.

[Paras 36, 39, 42, 44, 56 and 72(i)]

Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385; *Post Graduate Institute of Medical Education and Research v. Faculty Assn.*, (1998) 4 SCC 1 : 1998 SCC (L&S) 961; *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310 : 1976 SCC (L&S) 227, *followed*

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M.R. Balaji v. State of Mysore, AIR 1963 SC 649; *T. Devadasan v. Union of India*, AIR 1964 SC 179; *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481; *State of A.P. v. U.S.V. Balram*, (1972) 1 SCC 660; *C.A. Rajendran v. Union of India*, AIR 1968 SC 507, cited

a

In *R.K. Sabharwal case*, (1995) 2 SCC 745, the Supreme Court had declared that the State shall not count a reserved category candidate selected in the open category against the vacancies in the reserved category. However, by this it could not be inferred that if the candidate himself wishes to avail a vacancy in the reserved category, he shall be prohibited from doing so. Moreover, *R.K. Sabharwal case* is strictly confined to the enabling provision of Article 16(4) of the Constitution under which the State Government has the sole power to decide whether there is a requirement for reservations in favour of the backward class in the services under the State Government. (Para 68)

b

Union of India v. Ramesh Ram, (2009) 6 SCC 619 : (2009) 2 SCC (L&S) 234, referred to *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745, distinguished and limited

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Moreover, the operation of Rule 16 does not result in the ouster of any of the candidates recommended in the first select list. Many of the wait-listed candidates are accommodated in the second stage, and the relatively lower ranked wait-listed candidates are excluded. These excluded candidates never had any absolute right to recruitment or even any expectation that they would be recruited. Their chances depend on how MRC candidates are adjusted.

(Paras 36 and 46)

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The proviso to Rule 16(1) and Rule 16(2) operate in different dimensions and these provisions are not contradictory or inconsistent with each other.

(Para 69)

Rule 16(2) and the subsequent sub-rules merely recognise and advance inter se merit among the reserved category candidates. The amended Rule 16(2) only seeks to recognise the inter se merit between two classes of candidates i.e. (a) meritorious reserved category candidates and (b) relatively lower ranked reserved category candidates, for the purpose of allocation to the various civil services with due regard for the preferences indicated by them.

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[Paras 59, 22 and 72(iii)]

State of Bihar v. M. Neethi Chandra, (1996) 6 SCC 36, relied on

R-D/46294/CL

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Advocates who appeared in this case :

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Advocates] for the appearing parties.

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2. (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013, *M. Nagaraj v. Union of India* 256c
3. (2006) 4 SCC 550 : 2006 SCC (L&S) 832, *Union of India v. Satya Prakash* 244f-g, 245e, 245e-f, 250a
4. (2005) 9 SCC 742 : 2005 SCC (L&S) 563, *Anurag Patel v. U.P. Public Service Commission* 242b, 243d, 257c, 257f-g, 258d-e, 259c, 260a-b, 260c, 260e-f **b**
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9. 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385, *Indra Sawhney v. Union of India* 250b, 250d-e, 250f, 251a, 255g, 256b-c
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11. (1972) 1 SCC 660, *State of A.P. v. U.S.V. Balram* 250f
12. AIR 1968 SC 507, *C.A. Rajendran v. Union of India* 250f, 251e **d**
13. AIR 1964 SC 179, *T. Devadasan v. Union of India* 250d, 251c, 251d-e
14. AIR 1963 SC 649, *M.R. Balaji v. State of Mysore* 250d, 251d-e

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, C.J.— Leave granted.

2. The constitutional validity of sub-rules (2) to (5) of Rule 16 of the Civil Services Examination Rules (hereinafter “the Rules”) relating to Civil Services Examinations held by the Union Public Service Commission in the years 2005 to 2007 is the subject-matter of these appeals by special leave. **e**

3. A three-Judge Bench of this Court, by order dated 14-5-2009¹ has referred these cases to the Constitution Bench as it raises an important legal question as to whether candidates belonging to reserved category, who get recommended against general/unreserved vacancies on account of their merit (without the benefit of any relaxation/concession), can opt for a higher choice of service earmarked for reserved category and thereby migrate to reserved category. **f**

4. The selection to three All India Services (Indian Administrative Service, Indian Foreign Service and Indian Police Service) and fifteen Group A Services and three Group B officers in various government departments are made by the Union Public Service Commission (hereinafter “UPSC”), by conducting Civil Services Examinations periodically. The Civil Services Examinations are held as per the Civil Services Examination Rules notified in regard to each examination. The Rules for the Civil Services Examination **g**

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¹ *Union of India v. Ramesh Ram*, (2009) 6 SCC 619 : (2009) 2 SCC (L&S) 234

a which was to be held in 2005 by UPSC were published by the Department of Personnel and Training (hereinafter “DoPT”) vide Notification dated 4-12-2004.

5. To appreciate the issue, it will be necessary to refer to the relevant rules. The Preamble to the Rules enumerates 21 services. Rule 1 provides that the examination will be conducted by UPSC in the manner prescribed in Appendix-I to the Rules.

b 6. Rule 2 of the Rules relates to preferences and is extracted below:
“2. A candidate shall be required to indicate in his/her application form for the main examination his/her order of preferences for various services/posts for which he/she would like to be considered for appointment in case he/she is recommended for appointment by the Union Public Service Commission.

c A candidate who wishes to be considered for IAS/IPS shall be required to indicate in his/her application if he/she would like to be considered for allotment to the State to which he/she belongs in case he/she is appointed to the IAS/IPS.

d *Note.*—The candidate is advised to be very careful while indicating preferences for various services/posts. In this connection, attention is also invited to Rule 19 of the Rules. The candidate is also advised to indicate all the services/posts in the order of preference in his/her application form. In case he/she does not give any preference for any services/posts, it will be assumed that he/she has no specific preference for those services. If he/she is not allotted to any one of the services/posts for which he/she has indicated preference, he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to services/posts in accordance with their preferences.”

e 7. Rule 3 relates to number of vacancies and provision for reservation and it reads as follows:

“3. The number of vacancies to be filled on the result of the examination will be specified in the notice issued by the Commission.

f Reservation will be made for candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and physically disabled categories in respect of vacancies as may be fixed by the Government.”

8. Rule 15 provides for three examinations, namely, preliminary examination, main written examination and interview test as follows:

g “15. Candidates who obtained such minimum qualifying marks in the preliminary examination as may be fixed by the Commission at their discretion shall be admitted to the main examination; and candidates who obtain such minimum qualifying marks in the main examination (written) as may be fixed by the Commission at their discretion shall be summoned by them for an interview for a personality test:

h Provided that candidates belonging to the Scheduled Castes or Scheduled Tribes or Other Backward Classes may be summoned for an interview for a personality test by the Commission by applying relaxed standards in the preliminary examination as well as main examination (written) if the Commission is of the opinion that sufficient number of

candidates from these communities are not likely to be summoned for interview for a personality test on the basis of the general standard in order to fill up vacancies reserved for them.”

9. Rule 16 lays down the manner of selection, preparation of merit list and selection of candidates. The said rule is extracted below:

“16(1). After interview, the candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate in the main examination. Thereafter, the Commission shall, for the purpose of recommending candidates against unreserved vacancies, fix a qualifying mark (hereinafter referred to as “general qualifying standard”) with reference to the number of unreserved vacancies to be filled up on the basis of the main examination. For the purpose of recommending reserved category candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes against reserved vacancies, the Commission may relax the general qualifying standard with reference to number of reserved vacancies to be filled up in each of these categories on the basis of the main examination:

Provided that the candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward Classes who have not availed themselves of any of the concessions or relaxations in the eligibility or the selection criteria, at any stage of the examination and who after taking into account the general qualifying standards are found fit for recommendation by the Commission shall not be recommended against the vacancies reserved for Scheduled Castes, Scheduled Tribes and the Other Backward Classes.

(2) While making service allocation, the candidates belonging to the Scheduled Castes, the Scheduled Tribes or Other Backward Classes recommended against unreserved vacancies may be adjusted against reserved vacancies by the Government if by this process they get a service of higher choice in the order of their preference.

(3) The Commission may further lower the qualifying standards to take care of any shortfall of candidates for appointment against unreserved vacancies and any surplus of candidates against reserved vacancies arising out of the provisions of this rule, the Commission may make the recommendations in the manner prescribed in sub-rules (4) and (5).

(4) While recommending the candidates, the Commission shall, in the first instance, take into account the total number of vacancies in all categories. This total number of recommended candidates shall be reduced by the number of candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes who acquire the merit at or above the fixed general qualifying standard without availing themselves of any concession or relaxation in the eligibility or selection criteria in terms of the proviso to sub-rule (1). Along with this list of recommended candidates, the Commission shall also declare a consolidated reserve list of candidates which will include candidates from general and reserved categories ranking in order of merit below the last recommended candidate under each category. The number of candidates in each of these categories will be equal to the number of reserved category candidates who were included in the first list without availing of any relaxation or concession in eligibility or selection

a criteria as per proviso to sub-rule (1). Amongst the reserved categories, the number of candidates from each of the Scheduled Caste, the Scheduled Tribe and Other Backward Class categories in the reserve list will be equal to the respective number of vacancies reduced initially in each category.

b (5) The candidates recommended in terms of the provisions of sub-rule (4), shall be allocated by the Government to the services and where certain vacancies still remain to be filled up, the Government may forward a requisition to the Commission requiring it to recommend, in order of merit, from the reserve list, the same number of candidates as requisitioned for the purpose of filling up the unfilled vacancies in each category.”

c 10. Rule 19 provides that due consideration will be given at the time of making allocation on the results of the examination to the preferences expressed by a candidate for various services at the time of his application and the appointment to various services will also be governed by the rules/regulations in force, as applicable to the respective services at the time of appointment.

d 11. The total vacancies notified by the participating services for the Civil Services Examination, 2005 were 457 made up of general category: 242, OBC category: 117, Scheduled Castes: 166 and Scheduled Tribes: 32. As per Rules 16(1) and (4), UPSC recommended 425 candidates in the first phase made up of the following: general—210, OBC—117 (including 31 merit candidates); Scheduled Castes—66 (including 1 merit candidate) and Scheduled Tribes—32.

e 12. A consolidated reserve list (wait list) was also prepared consisting of 64 candidates. The DoPT after allocation of the candidates from the first list, made a requisition for recommendation of candidates through the operation of the reserve list. 26 meritorious OBC candidates and one meritorious Scheduled Caste candidate recommended against unreserved vacancies, opted for reserved vacancies as by that process, they got a service of higher choice in the order of preference. If the said 27 meritorious reserved category candidates had been considered only for service allocation against unreserved vacancies in competition with the general category candidates, they would have got a service of lower choice. Rule 16(2) enabled the meritorious candidate of any of the reservation categories to get a service of higher preference so that he may not be placed at a disadvantaged position vis-à-vis other candidates of his category.

f 13. The DoPT could therefore adjust only 5 out of the 31 meritorious category OBC candidates through their merit-cum-service preference option as general candidates. As a result, UPSC recommended under Rule 16(5) of the Rules, 27 general category candidates and 5 OBC candidates from the consolidated reserve list.

g 14. Certain OBC candidates in the reserve list (wait list) filed applications before the Central Administrative Tribunal, Madras Bench, challenging Rule 16(2). It was contended that adjustment of OBC merit candidates against OBC reservation vacancies was illegal. According to them, such candidates should be adjusted against the general (unreserved) vacancies, as that would have allowed more posts for OBC candidates and

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would have allowed the lower ranked OBC candidates a better choice of service. They contended that the more meritorious OBC candidates should be satisfied with lower choice of service as they became general (unreserved) candidates by reason of their better performance. a

15. The Tribunal, after interpreting amended Rule 16(2) in the light of the various judgments of this Court, concluded that meritorious OBC candidates who were selected on merit must be adjusted against the “general category”. However, it ordered that Rule 16(2) may be applied in terms of the decision of this Court in *Anurag Patel v. U.P. Public Service Commission*², to ensure that allocation of service is in accordance with rank-cum-preference with priority given to meritorious candidates for service allocation. b

16. The Union of India and other aggrieved candidates preferred writ petitions before the Madras High Court challenging the order of the Central Administrative Tribunal. Some other aggrieved candidates got themselves impleaded in the said proceedings. By the impugned order dated 20-3-2008, the High Court held Rule 16(2) as unconstitutional. Consequently, the High Court set aside the select lists and directed the Government of India and UPSC to redo service allocation de hors Rule 16(2). c

17. The first batch of civil appeals @ SLPs (C) Nos. 13571-72 of 2008 is filed by the Union of India against the said order dated 20-3-2008 in WPs (C) Nos. 1814 and 1815 of 2008. Other persons aggrieved by the said order have filed the remaining civil appeals. Being aggrieved by the action of the Union Public Service Commission and the Government of India by which candidates in reserved category selected in general category were given choice to opt for service of higher preference in terms of Rule 16(2) of the Rules, some of the reservation category candidates have filed Writ Petitions (C) Nos. 297, 312, 336 and 416 of 2008 under Article 32 of the Constitution of India to declare Rules 16(2), (3), (4) and (5) of the Civil Services Examination Rules, 2005 as ultra vires being inconsistent with Rule 16(1) of the said Rules, as violative of Articles 14, 16(4) and 335 of the Constitution of India and consequential reliefs. d e

18. We heard Mr Gopal Subramaniam, learned Solicitor General of India, on behalf of the Union of India. Ms Indira Jaisingh, learned Additional Solicitor General appeared in WP (C) No. 297 of 2008. Mr P.P. Rao, Senior Advocate, Mr P.S. Patwalia, Senior Advocate and Mr Anirudh Sharma, Advocate represented the appellants in the other appeals. Mr Raju Ramachandran, Senior Advocate, Mr Nidhesh Gupta, Senior Advocate, Prof. Ravivarma Kumar, Senior Advocate, Mr Santosh Paul, Advocate, Mr S.P. Sinha, Advocate, Mr Praveen Agarwal, Advocate, and Mr Shiva Pujan Singh Advocate, appeared on behalf of the writ petitioners and the respondents in the writ appeals. f g

19. The case of the contesting respondents is that the newly introduced system which is different from the single list system followed earlier (prior to amendment of the CSE Rules) will undermine the rights of the reserved category candidates to get assigned to services of higher preference (e.g. IAS, h

- IPS or IRS). They also urged that this system will reduce the aggregate number of reserved candidates who will be selected while simultaneously increasing the number of general candidates. It also puts candidates who come through the second list at a disadvantage in terms of seniority and promotions for rest of their career in their respective services. By the impugned order, the High Court had vindicated these grievances, particularly those raised by OBC candidates.

- 20.** In the light of the submissions made by the learned counsel appearing for different appellants, the following questions arise for consideration:

- I.* Whether the reserved category candidates who were selected on merit (i.e. MRCs) and placed in the list of general category candidates could be considered as reserved category candidates at the time of “service allocation”?

- II.* Whether Rules 16(2), (3), (4) and (5) of the CSE Rules are inconsistent with Rule 16(1) and violative of Articles 14, 16(4) and 335 of the Constitution of India?

- III.* Whether the order of the Central Administrative Tribunal was valid to the extent that it relied on *Anurag Patel v. U.P. Public Service Commission*² (which in turn had referred to the judgment in *Ritesh R. Sah v. Dr. Y.L. Yamul*³, which dealt with reservations for the purpose of admission to postgraduate medical courses); and whether the principles followed for reservations in admissions to educational institutions can be applied to examine the constitutionality of a policy that deals with reservation in civil services.

Re: Question I

- 21.** The relevant provision is Rule 16(2) of the Civil Services Examination Rules which was amended by a Notification dated 4-12-2004 issued by the Ministry of Personnel, Public Grievances and Pensions (DoPT), New Delhi. The appellants’ contention is that the amended Rule 16(2) intends to rectify an anomaly, as otherwise, the interests of the meritorious reserved category (hereinafter “MRC”) candidates who have toiled hard to qualify as per the general qualifying standard would be jeopardised. Such candidates could find themselves in a position where reserved category candidates who are less meritorious than them can possibly secure posts in a service of a higher preference. The Union Government contends that the object of amending Rule 16(2) is to ensure that such an adverse incongruous position does not arise for more meritorious candidates.

- 22.** Mr Gopal Subramaniam, the learned Solicitor General of India, has brought forth three implications and repercussions of the amended Rule 16 once it comes into operation:

(i) It affords a meritorious reserved candidate the benefit of reservation insofar as service allocation is concerned. In other words, if

² (2005) 9 SCC 742 : 2005 SCC (L&S) 563

³ (1996) 3 SCC 253

such a meritorious reserved candidate although entitled to a post in the general list is able to secure a better (or more preferred) post in the reserved list, Rule 16(2) comes to his aid, and he is able to secure the better post. This preserves and protects inter se merit amongst the reserved candidates. a

(ii) When Rule 16(2) enables a meritorious reserved candidate to secure a post in the reserved category, that candidate is to be treated as a reserved candidate (consistent with his reserved category status as per the application form). b

(iii) Once Rule 16(2) is operated, the general post that would otherwise have been available to the meritorious reserved candidate is now filled up by a (wait listed) general candidate.

23. The respondents have objected to the effect of Rule 16(2) insofar as the second and third aspects are concerned. They have no grievance with respect to the first aspect. They contend that when an MRC candidate is entitled to a general merit slot, chooses to opt for a slot earmarked for a reserved category the result should be a mutual exchange between the meritorious reserved candidate and the reserved candidate. The MRC candidate will carry the tag of a general candidate even when he occupies the reserved post and the occupant of the reservation post will migrate to the general merit slot vacated by the MRC candidate. If the MRC candidate migrating to reservation category slot is counted as a reservation candidate, to that extent there will be a reduction in the posts meant for reserved category candidates. c
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24. The Civil Services Examination conducted by the Union Public Service Commission (UPSC) has three stages: preliminary examination, main examination, and interview. The candidates appearing in the examination have to render information in the application form indicating their status as General, Other Backward Class (OBC), Scheduled Caste (SC) or Scheduled Tribe (ST). Moreover, at a later stage the candidates have to furnish their preferences of services in which they have to indicate their choices in the event of qualification. This has been spelt out in Rule 2 of the CSE Rules. e
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25. In support of their contentions, the respondents have relied upon the following observations of this Court in *Union of India v. Satya Prakash*⁴, (SCC p. 557, paras 18-20):

“18. By way of illustration, a reserved category candidate, recommended by the Commission without resorting to relaxed standard (i.e. on merit) did not get his own preference ‘say IAS’ in the merit/open category. For that, he may opt a preference from the reserved category. But simply because he opted a preference from the reserved category does not exhaust the quota of OBC category candidate selected under the g
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a relaxed standard. Such preference opted by OBC candidate who has been recommended by the Commission without resorting to the relaxed standard (i.e. on merit) shall not be adjusted against the vacancies reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes. This is the mandate of the proviso to sub-rule (2) of Rule 16.

b 19. In other words, while a reserved category candidate recommended by the Commission without resorting to the relaxed standard will have the option of preference from the reserved category recommended by the Commission by resorting to relaxed standard, but while computing the quota/percentage of reservation he/she will be deemed to have been allotted seat as an open category candidate (i.e. on merit) and not as a reserved category candidate recommended by the Commission by resorting to the relaxed standard.

c 20. If a candidate of the Scheduled Caste, the Scheduled Tribe and Other Backward Class, who has been recommended by the Commission without resorting to the relaxed standard could not get his/her own preference in the merit list, he/she can opt a preference from the reserved category and in such process the choice of preference of the reserved category recommended by resorting to the relaxed standard will be pushed further down but shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preference.”

e 26. The decision in *Satya Prakash*⁴ was rendered prior to the amendment of Rule 16(2) and the learned Judge had not contemplated the present version of the rule. Hence, this decision is clearly distinguishable from the present case. Prior to the decision in *Satya Prakash case*⁴, the practice had been that a single list of successful candidates was released in respect of all the vacancies. At that time, MRC candidates were initially treated as general candidates and had Rule 16(2) not been amended, a single list would have been released for all 457 posts which were vacant in the year under consideration. Accordingly, such a list would have contained 242 general candidates (including 32 MRC candidates). There would have been a separate list for 117 OBCs, 66 SCs and 32 STs (excluding MRC candidates). When the MRC candidates were shifted from the general list to the reserved list, there was an ouster of the relatively lower ranked reserved category candidates who were initially selected as part of the reserved list. For example when 27 MRC candidates (26 belonging to OBC and 1 SC) would have moved from the general list to the reserved list, 26 OBC and 1 SC candidates who were ranked lower among the 117 OBC and 66 SC candidates initially selected in the reserved category, would have been ousted.

h ⁴ *Union of India v. Satya Prakash*, (2006) 4 SCC 550 : 2006 SCC (L&S) 832

27. The unamended as well as amended Rule 16(2) are as follows:

<i>Rule 16(2) in the old Civil Services Examination Rules</i>	<i>Rule 16(2) in the current Civil Services Examination Rules (vide Notification dated 4-12-2004)</i>	
The candidates belonging to any of the Scheduled Castes or Scheduled Tribes or the Other Backward Classes may, to the extent of the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes be recommended by the Commission by a relaxed standard, subject to the fitness of these candidates for selection to services:	While making service allocation, the candidates belonging to the Scheduled Castes, the Scheduled Tribes or Other Backward Classes recommended against unreserved vacancies may be adjusted against reserved vacancies by the Government, if by this process, they get a service of higher choice in the order of their preference.	a
Provided that the candidates belonging to the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes who have been recommended by the Commission without resorting to the relaxed standard referred to in this sub-rule shall not be adjusted against the vacancies reserved for the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes.		b
		c
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28. UPSC declares results in two stages and the same was done in the year 2006. As per the final result of CSE 2005, out of 457 vacancies, 425 candidates were recommended for appointment which included 210 General, 117 OBC, 66 SC and 32 ST candidates. UPSC was maintaining a consolidated reserve list i.e. a wait list of 64 candidates (consisting of 32 general, 31 OBC and 1 SC candidate) ranking in order of merit below the last recommended candidate under each of these categories as per Rules 16(4) and (5) of the CSE Rules, 2005. Admittedly, 31 OBC category candidates who had qualified in the general merit list were not included in the general category and instead they were part of 117 OBC category candidates selected as part of the reserved category. Hence, an equal number of OBC category candidates who were ranked lower in the order of merit as part of the reserved category seats were initially ousted. The purpose of including those OBC category candidates who had qualified in the general category was to give them a higher preferred service from the vacancies under the OBC category. The CSE Rules were accordingly amended to allow for such a migration.

29. The learned Solicitor General has described in detail how along with the list of recommended candidates, UPSC also prepares a consolidated

- reserve list. This consolidated reserve list is a wait list for filling the remaining 32 vacancies. It contained two parallel sub-lists: Wait List A consisting of 32 general candidates and Wait List B consisting of 32 reserved candidates (31 OBCs and 1 SC) the 1 SC candidate would be positioned in the wait list at the same position in which the 1 SC candidate was placed amongst the 32 MRC candidates. Two wait lists are prepared so that depending on how the 32 MRCs are placed and in whatever contingency—whether they are adjusted against general or reserved posts, there will remain a sufficient number of candidates (both general and reserved) to be adjusted against the balance 32 posts in the second stage.

- 30.** When Department of Personnel and Training (DoPT) received the lists, the 32 MRC candidates were added to the list of 210 general candidates but at the same time they were positioned in the reserved lists of 117 OBC candidates and 66 SC candidates as well. UPSC list counts the MRC candidates as part of the reserved list for the purpose of ascertaining the reservation quota in terms of percentage. The rationale cited for this method is that for the purpose of service allocation, the DoPT initially counts the MRC candidates in both the general and the reserved lists. These candidates are then placed against the better of the two services available to them under either of these categories which is of course based on their order of preference. A service is allocated by moving downwards in the merit list in a serial manner, with each candidate in the merit list getting the best available option as per his/her preference.

- 31.** The respondents have also placed strong reliance on this Court's decision in *Ritesh R. Sah v. Dr. Y.L. Yamul*³. The question in that case was whether a reserved category candidate who is entitled to be selected for admission in open competition on the basis of his/her own merit should be counted against the quota meant for the reserved category or should he be treated as a general candidate. The Court reached the conclusion that when a candidate is admitted to an educational institution on his own merit, then such admission is not to be counted against the quota reserved for Schedule Castes or any other reserved category. However, it is pertinent to note that this decision was given in the context of admissions to medical colleges in which G.B. Pattanaik, J. (as His Lordship then was) had held: (SCC pp. 261e-262a, para 17)

- “17. ... In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved

category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.”

32. There is an obvious distinction between qualifying through an entrance test for securing admission in a medical college and qualifying in UPSC examinations since the latter examination is conducted for filling up vacancies in the various civil services. In the former case, all the successful candidates receive the same benefit of securing admission in an educational institution. However, in the latter case there are variations in the benefits that accrue to successful candidates because they are also competing amongst themselves to secure the service of their choice. For example, most candidates opt for at least one of the first three services [i.e. Indian Administrative Service (IAS), Indian Foreign Service (IFS) and Indian Police Service (IPS)] when they are asked for preferences. A majority of the candidates prefer IAS as the first option. In this respect, a reserved category candidate who has qualified as part of the general list should not be disadvantaged by being assigned to a lower service against the vacancies in the general category especially because if he had availed the benefit of his reserved category status, he would have got a service of a higher preference. With the obvious intention of preventing such an anomaly, Rule 16(2) provides that an MRC candidate is at liberty to choose between the general quota or the respective reserved category quota.

33. Some factual examples can clarify the position. In 2005, an MRC (OBC) candidate attained 21st rank overall. With respect to his position in the general merit list, there were general category IAS vacancies available, and he occupied the 17th out of 45 general vacancies in the IAS. Thus, he did not need the assistance of Rule 16(2) to get a post in a more preferred service since he was adjusted against the general list. Accordingly, he opted out of the reserved category. This was in line with the proposition that when a candidate is entitled to a certain post on his merit alone, he should not be counted against the reserved quota.

34. In contrast, another candidate who was an MRC (OBC) candidate obtained 64th rank overall in CSE, 2005. At his position in the general list, he was entitled to a post in the IPS since the general category IAS vacancies had been exhausted by candidates above him in the general merit list. However, IPS was his second preference while IAS was his first preference. If he were to be considered against the vacancies in the reserved category, he would be entitled to a post in the IAS because the 22 OBC IAS vacancies had not been

exhausted at that point of time. By the operation of Rule 16(2), he was able to secure a post in the IAS, while retaining his reserved status. Having
a availed of this benefit, he was adjusted against the reserved (OBC) category.

35. The learned counsel for the respondent questioned the rationale of declaring CSE results in two phases in order to support the proposition that even if MRC candidates are given a service of a higher preference, they should not oust lower-ranked reserved category candidates. However, Rule 16(2) should not be interpreted in an isolated manner since it was designed to
b protect the interests of MRC candidates. MRC candidates having indicated their status as SC/ST/OBC at the time of application, begin their participation in the examination process as reserved candidates. Having qualified as per the general qualifying standard, they have the additional option of opting out of the reserved category and occupying a general post. Where, however, they
c are able to secure a better post in the reserved list their placement in the general list should not deprive them of the same. In that respect, the adjustment referred to in Rule 16(2) does not, in fact, denote any change in the status of MRC from general to reserved. To the contrary, it is an affirmation of the reserved status of MRC candidate. Rule 16(2) exists to protect this reserved status of the MRC candidates.

36. We must also take note of the fact that when MRC candidates get
d adjusted against the reserved category, the same creates corresponding vacancies in the general merit list (since MRC candidates are on both lists). These vacancies are of course filled up by general candidates. Likewise, when MRC candidates are subsequently adjusted against the general category [i.e. without availing the benefit of Rule 16(2)], the same will result in vacancies in the reserved category which must in turn be filled up by
e wait-listed reserved candidates. Moreover, the operation of Rule 16 does not result in the ouster of any of the candidates recommended in the first list. Many of the wait-listed candidates are accommodated in the second stage, and the relatively lower ranked wait-listed candidates are excluded. It is pertinent to note that these excluded candidates never had any absolute right to recruitment or even any expectation that they would be recruited. Their
f chances depend on how MRC candidates are adjusted.

37. In the impugned judgment, the High Court had reasoned that allocation to a particular post cannot be distinguished from allocation to a service for the purpose of reservation. However, the High Court had not considered the fact that in CSE examination, the candidates are not competing for similar posts in one service but are instead competing for posts
g in different services that correspond to varying preferences.

38. Furthermore, the impugned judgment did not appreciate the possibility that when an SC/ST/OBC candidate qualifies on merit (i.e. without any relaxation/concession) there can be a situation where a lower-ranked OBC candidate gets allotted to a better service in comparison to a
h higher-ranked SC/ST/OBC candidate simply because the higher-ranked OBC candidate performed well enough to qualify in the general category. Such a

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situation is anomalous. As we have already discussed, the High Court's reliance on the decision of this Court in *Union of India v. Satya Prakash*⁴, is not tenable since it dealt with the effect of Rule 16(2) as it existed prior to the amendment notified on 4-12-2004. a

39. A significant aspect which needs to be discussed is that the aggregate reservation should not exceed 50% of all the available vacancies, in accordance with the decision of this Court in *Indra Sawhney v. Union of India*⁵. If MRC candidates are adjusted against the reserved category vacancies with respect to their higher preferences and the seats vacated by them in the general category are further allotted to other reserved category candidates, the aggregate reservation could possibly exceed 50% of all of the available posts. b

40. In *Post Graduate Institute of Medical Education and Research v. Faculty Assn.*⁶, G.N. Ray, J. had clearly stated that the upper ceiling of 50% reservations should not be breached: (SCC p. 22, para 32) c

“32. Articles 14, 15 and 16 including Articles 16(4), 16(4-A) must be applied in such a manner so that the balance is struck in the matter of appointments by creating reasonable opportunities for the reserved classes and also for the other members of the community who do not belong to reserved classes. Such a view has been indicated in the Constitution Bench decisions of this Court in *Balaji case*⁷, *Devadasan case*⁸ and *Sabharwal case*⁹. Even in *Indra Sawhney case*⁵ the same view has been held by indicating that only a limited reservation not exceeding 50% is permissible. It is to be appreciated that Article 15(4) is an enabling provision like Article 16(4) and the reservation under either provision should not exceed legitimate limits. In making reservations for the Backward Classes, the State cannot ignore the fundamental rights of the rest of the citizens. The special provision under Article 15(4) [sic 16(4)] must therefore strike a balance between several relevant considerations and proceed objectively. In this connection reference may be made to the decisions of this Court in *State of A.P. v. U.S.V. Balram*¹⁰ and *C.A. Rajendran v. Union of India*¹¹. It has been indicated in *Indra Sawhney*⁵ that clause (4) of Article 16 is not in the nature of an exception to clauses (1) and (2) of Article 16 but an instance of classification permitted by clause (1). It has also been indicated in the said decision that clause (4) of Article 16 does not cover the entire field covered by d e f

4 (2006) 4 SCC 550 : 2006 SCC (L&S) 832 g

5 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385

6 (1998) 4 SCC 1 : 1998 SCC (L&S) 961

7 *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649

8 *T. Devadasan v. Union of India*, AIR 1964 SC 179

9 *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481 h

10 (1972) 1 SCC 660

11 AIR 1968 SC 507

- a clauses (1) and (2) of Article 16. In *Indra Sawhney case*⁵ this Court has also indicated that in the interests of the Backward Classes of citizens, the State cannot reserve all the appointments under the State or even a majority of them. The doctrine of equality of opportunity in clause (1) of Article 16 is to be reconciled in favour of Backward Classes under clause (4) of Article 16 in such a manner that the latter while serving the cause of Backward Classes shall not unreasonably encroach upon the field of equality.”
- b 41. In *State of Kerala v. N.M. Thomas*¹², the same proposition was enunciated by A.N. Ray, C.J. who had held: (SCC pp. 332-33, para 26)
- c “26. The respondent contended that apart from Article 16(4) members of Scheduled Castes and Scheduled Tribes were not entitled to any favoured treatment in regard to promotion. In *T. Devadasan v. Union of India*⁸ reservation was made for Backward Classes. The number of reserved seats which were not filled up were carried forward to the subsequent year. On the basis of ‘carry forward’ it was found that such reserved seats might destroy equality. To illustrate, if 18 seats were reserved and for two successive years the reserved seats were not filled and in the third year there were 100 vacancies the result would be that 54 reserved seats would be occupied out of 100 vacancies. This would
- d destroy equality. On that ground ‘carry forward’ principle was not sustained in *Devadasan case*⁸. The same view was taken in *M.R. Balaji v. State of Mysore*⁷. It was said that not more than 50 per cent should be reserved for Backward Classes. This ensures equality. Reservation is not a constitutional compulsion but is discretionary according to the ruling of this Court in *Rajendran case*¹¹.”
- e 42. Therefore, we are of the firm opinion that MRC candidates who avail the benefit of Rule 16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will therefore be offered to general category candidates. This is
- f the only viable solution since allotting these general category seats (vacated by MRC candidates) to relatively lower-ranked reserved category candidates would result in aggregate reservations exceeding 50% of the total number of available seats. Hence, we see no hurdle to the migration of MRC candidates to the reserved category.

Re: Question II

- g 43. We have extracted Rule 16 of the Civil Services Examination Rules, as per Notification dated 4-12-2004 issued by the Ministry of Personnel,

5 *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385

12 (1976) 2 SCC 310 : 1976 SCC (L&S) 227

8 AIR 1964 SC 179

7 AIR 1963 SC 649

11 *C.A. Rajendran v. Union of India*, AIR 1968 SC 507

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Public Grievances and Pensions (Department of Personnel and Training), New Delhi. A perusal of the rule discloses the following: Rule 16(1) mandates that after the interview phase, the candidates will be arranged in the order of merit on the basis of aggregate marks obtained in the main examination. Later on, UPSC shall fix a qualifying mark for recommending the candidates for the unreserved vacancies. a

44. Proviso to sub-rule (1) lays down that a candidate who belongs to the SC, ST and OBC categories and who has qualified on his own in the merit list shall not be recommended against the vacancies reserved for such classes if such candidate has not availed of any of the concessions or relaxations in the eligibility or the selection criteria. The other sub-rules provide as to how meritorious reserved category candidates are to be adjusted and once they get services of their preference after availing the benefit of their reserved status (as SC, ST, OBC or any other applicable category), the candidates whose names are in the consolidated reserve lists are to be subsequently adjusted. The consolidated wait list includes the candidates from general category and reserved category. If an MRC candidate who belongs to OBC category has availed the benefit of his status for better service allocation then the seat vacated by him will go to a general category candidate. If he chooses not to avail the benefits of special status then he would be counted in general category and the seat vacated by him in the reserved category will automatically go to a candidate who belongs to the same reserved category. b
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45. As per the submissions made before this Court, in the year 2005, 27 MRC candidates were adjusted against reserved category and 5 MRC candidates were adjusted in general category. As already explained, the current process entails that a reserved candidate, although having done well enough in the examination to have qualified in the open category, does not automatically rescind his/her right to a post in the reserved category. e

46. Furthermore, Rule 16(2) operates to recognise the inter se merit amongst the reserved category candidates. The two stage process is designed in a manner that no person included in the first recommended list is subsequently eliminated. However, since the wait list contains more candidates than available posts, it is inevitable that some persons in the wait list will necessarily be excluded. Such exclusion is on the basis of merit and the aggrieved parties were never promised a post. f

47. The following chart presented by the learned Solicitor General explains how service allocation has been done for the years 2005, 2006 and 2007:

Service allocation in the years 2005, 2006, 2007 g

Vacancy Position

<i>Year</i>	<i>General vacancies</i>	<i>OBC vacancies</i>	<i>SC vacancies</i>	<i>ST vacancies</i>	<i>Total vacancies</i>
2005	242	117	66	32	457
2006	273	144	80	36	533
2007	382	190	109	53	734

h

Candidates recommended against vacancies in the first case

	<i>Year</i>	<i>General candidates</i>	<i>OBC candidates</i>	<i>SC candidates</i>	<i>ST candidates</i>	<i>Total candidates</i>
<i>a</i>	2005	210	117 (including 31 merit candidates)	66 (including 1 merit candidate)	32	425
<i>b</i>	2006	214	144 (including 41 merit candidates)	80 (including 15 merit candidates)	36 (including 2 merit candidates)	474
	2007	286	190 (including 76 merit candidates)	109 (including 19 merit candidates)	53 (including 1 merit candidate)	638
<i>c</i>						

48. However, we have been apprised that on account of the intervening order of CAT, Chennai Bench (dated 17-9-2007 in OAs Nos. 690 and 775 of 2006), the Department of Personnel and Training (DoPT) has not been able to proceed with service allocation against the second list. Similarly, for the years 2006 and 2007, UPSC is maintaining a consolidated reserve list of 116 and 192 candidates respectively, but DoPT has not sent any requisition for the second list as per Rule 16(5).

49. In *State of Bihar v. M. Neethi Chandra*¹³, this Court was confronted with broadly analogous issues. In that case, the Controller of Examinations, Health Services, Government of Bihar, Patna had issued the prospectus for a competitive examination for admission to postgraduate courses in Patna Medical College (Patna), Darbhanga Medical College (Laheria Sarai), Rajendra Medical College (Ranchi) and Mahatma Gandhi Medical College (Jamshedpur) for the year 1992. The prospectus contained the following provisions with respect to reservations: (SCC p. 37, para 3)

“3. ... ‘The reservation of seats for various categories shall be as per the decision of the Government. There will be no economic criteria for the reservation.

Scheduled Castes	14%
Scheduled Tribes	10%
Extremely Backward Classes	14%
Backward Classes	9%
Ladies	3%’ ”

50. The Government of Bihar acting through the Department of Personnel and Administrative Reforms published a Resolution dated 7-2-1992, bearing No. 11/K1-1022/91-K20 (hereinafter “Resolution 20”).

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Para 6 of the same is reproduced below: (*M. Neethi Chandra case*¹³, SCC p. 38, para 4)

“4. ... ‘As there is provision in direct appointment to the effect that the candidates belonging to reserved classes, who are selected on the basis of merit, would not be adjusted against reserved seats, similarly maintaining the same arrangement here also the candidates selected on the basis of merit, for admission into professional training institutes would not be adjusted against the reserved quota for the candidates of the reserved classes.’ ”

51. The High Court of Patna which considered the matter devised a method to remove the anomalies. It initiated a process of allotment of seats by which the reserved seats were offered first (i.e. before the general seats are filled first) to the candidates of the reserved category on merit, and after all the reserved seats were so filled up, all other qualifying candidates of the reserved category were “adjusted” against open seats in the general category along with the general merit candidates and offered seats on merit-cum-choice basis.

52. Furthermore, the High Court made arrangement for the reserved category of girls who could get seats under the reservation for girls or under those reserved for SCs/STs, etc. thereby retaining a choice between one of the two reservations. The girls in excess of the reserved vacancies could seek admission on general merit. The High Court held that by this procedure all the anomalies in the procedure for allotment of seats could be removed. In the meantime, another resolution was passed which was supposed to rectify the anomalies arising out of the operation of the previous resolution.

53. The Resolution dated 22-3-1994 provided that casual vacancies occurring at a later stage in the general category or reserved category would be filled from amongst the candidates of the respective category on merit and in that process no candidate would be allotted a college/course below the choice of the college or course already allotted. The High Court observed that the resolution takes care of the grievances of the candidates who by reason of readjustment at the State for filling up subsequent vacancies often had to lose the college/course of their choice but it did not address the anomaly that arises when preparing the main merit list as per Resolution 20.

54. The State of Bihar moved this Court in appeal against the judgment of the Patna High Court and the main ground was that if the method suggested by the High Court was followed, all students of reserved category who had secured the minimum marks would have to be admitted even though there may not be adequate number of vacancies for them. A.M. Ahmadi, C.J. pronounced this contention to be very genuine and laid down: (*M. Neethi Chandra case*¹³, SCC pp. 40-41, paras 10-13)

“10. Let us take a situation in which in a particular reserved category there are x number of seats but the candidates qualifying according to criteria fixed for that category are x+5 with the best among them also

¹³ *State of Bihar v. M. Neethi Chandra*, (1996) 6 SCC 36

- a qualifying on merit as general candidates. According to the arrangement made by Circular No. 20, the first candidate gets a choice along with the general category candidate but being not high enough in the list, gets a choice lesser than what he could secure in the reserved category to which he was entitled. The x number of seats could then be filled up with the four qualifying candidates being denied admission for want of seats. This would have been harsh for the best candidate as well as violative of Articles 14 and 16 of the Constitution. On the other hand, if the direction
- b of the High Court is followed, the first x number of candidates get seats according to merit against the reserved seats but the remaining 5 will also have to be 'adjusted' against the open seats for regular candidates. These 5 will be those who are not qualified according to the general merit criteria and so will necessarily displace 5 general candidates who would be entitled to seats on merit.
- c 11. In a particular year, the number of such candidates may be much larger and thus the method evolved by the High Court may create much hardship. The method will also not be in tune with the principles of equality. Hence the method evolved by the High Court will have to be struck down.
- d 12. If however, the word 'adjusted' is read to mean considered along with other general merit list candidates, it will lose much of its value. As per the above illustration, the 5 candidates qualifying on reserved category criteria having not secured enough marks according to general criteria, cannot, at all be allotted any seat in the general category.
- e 13. At the same time, as pointed out above, all is not well with Government Circular No. 20 as it operates against the very candidates for whom the protective discrimination is devised. The intention of Circular No. 20 is to give full benefit of reservation to the candidates of the reserved categories. However, to the extent the meritorious among them are denied the choice of college and subject which they could secure under the rule of reservation, the circular cannot be sustained. The
- f circular, therefore, can be given effect only if the reserved category candidate qualifying on merit with general candidates consents to being considered as a general candidate on merit-cum-choice basis for allotment of college/institution and subject."
- g 55. The learned counsel on behalf of the petitioner in WP (C) No. 297 of 2008 has relied upon the following observations of Jeevan Reddy, J., in *Indra Sawhney v. Union of India*⁵: (SCC p. 735, para 811)
- h "811. ... it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."

5 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385

56. The said observations are not of any assistance as no MRC candidate occupying a general category slot is being counted against the quota for the reserved category. For example those MRC candidates belonging to the OBC category who cut across the general qualifying standard and are appointed to general posts are not being counted within the 27% quota earmarked for OBCs. However, MRC candidates who retain their reserved status and avail of the benefit of Rule 16(2) to occupy a reserved post are counted against the reservation quota. When MRC candidates do not choose to accept the general category slot available to them on account of their merit, but opt to occupy a slot reserved for reservation category candidates, because that post is more attractive, then counting him/her against reservation quota will not violate the law laid down in *Indra Sawhney*⁵.

57. In *M. Nagaraj v. Union of India*¹⁴, a Constitution Bench of this Court held: (SCC p. 269c-d, para 102)

“102. ... 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.”

58. Article 16(4) of the Constitution provides that nothing in Article 16 shall prevent the State from making any provision for the reservation of appointments or posts in favour of any Backward Classes of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Article 16(4) empowers the State to initiate measures in order to protect and promote the interests of Backward Classes (OBCs, SCs and STs). The impugned measures in no way offend the equality clause since this particular clause was inserted to safeguard the concerns of certain classes and shield their legitimate claims in the domain of public employment.

59. On behalf of the respondents in the appeals, it was submitted that Rules 16(2), (3), (4) & (5) infringes Article 16(4). We do not accept this proposition since Rule 16(2) and the subsequent sub-rules merely recognise and advance inter se merit among the reserved category candidates in the manner that has been demonstrated before us by the learned Solicitor General. Therefore, Rule 16 protects the interests of a reserved category candidate selected in the general (unreserved) category by giving him the option either to retain his position in the open merit category or to be considered for a vacancy in the reserved category, if it is more advantageous to him/her.

60. The need for incorporating such a provision is to arrest arbitrariness and to protect the interests of the meritorious reserved category candidates. If

⁵ *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385

¹⁴ (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

such rule is declared redundant and unconstitutional vis-à-vis Articles 14, 16 and 335 then the whole object of equality clause in the Constitution would be frustrated and MRC candidates selected as per the general qualifying standard would be disadvantaged since the candidate of his/her category who is below him/her in the merit list, may by availing the benefits of reservation attain a better service when allocation of services is made. Rule 16 in essence and spirit protects the pledge outlined in the Preamble of the Constitution which conceives of equality of status and opportunity.

Re: Question III

61. The Central Administrative Tribunal, Chennai Bench in OAs Nos. 690 of 2006 and 775 of 2006 had given the following directions:

“(i) The impugned Rule 16(2) is declared as valid so long as it is confined to allocation of services and confirms to the ratio of paras 4 to 6 of *Anurag Patel*² order of the Hon’ble Apex Court.

(ii) The supplementary list issued by the second respondent to the first respondent dated 3-4-2007 is set aside. This would entail issue of a fresh supplementary result from the reserved list of 64 in such a way that adequate number of OBCs are announced in lieu of the OBCs who have come on merit and brought under general category.

The respondents are directed to rework the result in such a way the select list for all the 457 candidates are announced in one lot providing for 242 general, 117 OBC, 57 SC and 41 ST and also ensure that the candidates in OBC, SC and ST categories who come on merit and without availing any reservation are treated as general candidates and ensure that on equal number of such reserved candidates who are of merit under general category, are recruited for OBC, SC and ST categories respectively and complete the select list for 457.

Having done this exercise, the respondents should apply Rule 16(2) to ensure that allocation of the service is in accordance with rank-cum-preference with priority given to meritorious reserved candidates for service allocation by virtue of Rule 16(2) which is as per para 5 of *Anurag Patel*² order. The entire exercise, as directed above, should be completed as per the order.

(iii) Applying the ratio of *Anurag Patel*² decision of Hon’ble Apex Court (paras 6 and 7), if there is need for reallocation of services, the respondents will take appropriate measures to that extent and complete this process also within two months from the date of receipt of a copy of this order.”

62. The Central Administrative Tribunal had also issued the following direction as to how the results of UPSC examinations (2005) should have been announced:

“52. If UPSC had followed the decision of the Hon’ble Apex Court cited supra and released the select list in one go for all the 457 vacancies

² *Anurag Patel v. U.P. Public Service Commission*, (2005) 9 SCC 742 : 2005 SCC (L&S) 563

then it would have ensured that the select list contained not only 117 OBCs but also an additional number of OBC candidates by this number, in addition to 117 under 27% reservation, while simultaneously the number of general candidates recruited will be less to the extent of OBCs recruited on merit and included in the general list in the result of Civil Services Examination, 2005. Once this order is met, the successful candidates list will include 242 candidates in the general category which is inclusive of all those reserved category candidates coming on merit plus 117 OBC, 57 SC and 41 ST exclusively from these respective reserved categories by applying relaxed norms for them. If such a list is subjected to Rule 16(2) of Civil Services Examination, 2005 in present form for making service allocation only and then services are allotted based on Rule 16(2) in this context, then the announcement of recruitment result and allocation services will be both in accordance with law as per various judgments the Hon'ble Apex Court and in accordance with the extent orders issued by Respondent 1 and also in keeping with spirit of Rule 16(2) so that, the meritorious reserved candidates get higher preference service as compared to their lower-ranked counterparts in OBC, ST and SC categories. In doing so, the respondents also would notice that the steps taken by them in accordance with Rules 16(3) to (5) are redundant once they issue the result of recruitment in one phase, instead of two as they have become primary cause for the litigation and avoidable confusion in the minds of the candidates seeking recruitment."

63. We may refer to the brief facts in *Anurag Patel v. U.P. Public Service Commission*², referred to by the Tribunal. In the year 1990, the Uttar Pradesh Public Service Commission (hereinafter "U.P. PSC") conducted a combined State Services/Upper Subordinate Services Examination for selection to various posts such as Deputy Collectors in U.P. Civil (Executive) Services, Deputy Superintendent of Police in U.P. Police Services, Treasury Officers/Account Officers in U.P. Finance and Accounts Services, Sales Tax Officers, Assistant Regional Transport Officers, District Supply Officers and various other posts. Pursuant to the notification issued by U.P. PSC, a large number of candidates appeared for selection. U.P. PSC published the list of selected candidates in August 1992. Altogether 358 posts in various categories were filled up. The candidates belonging to the Backward Classes were entitled to get reservation in selection in respect of 57 posts in various categories, out of a total number of 358 posts. The posts in each category of service were filled up by choice of the candidate and the person who secured higher position in the merit list opted for U.P. Civil (Executive) Service and those who could not get the higher and important category of service had to be satisfied with posts in services of lesser importance. In each category of service, posts were reserved for SCs/STs, Backward Classes and handicapped persons, etc. U.P. PSC treated the candidates belonging to SC/ST and Backward Classes who

got selection to the seats (posts) earmarked for general candidates as candidates in the general category and allotted them to various services depending upon the rank secured by them in the select list. SC/ST and BC candidates, who got lower rank in the merit list of general category candidates got posting in lesser important services. However, the SC/ST and BC candidates who got selected to posts reserved in each category even though they secured lesser rank in the whole list got appointed to reserved posts in each category. This mode of appointments caused serious injustice to candidates who initially applied in the reserved category, yet they got selected to the general seats (posts) as they were meritorious and were entitled to get selected along with the general candidates. However, their merit and ability did not pay any dividends as they got appointment only to lesser important posts.

64. This Court held: (*Anurag Patel case*², SCC pp. 745-47, paras 4-6)

“4. ... The authorities should have compared the candidates who are to be appointed on general merit as also candidates who are to be appointed as against the reserved vacancies and while making appointments the inter se merit of the reserved candidates should have been considered and they must have been given the option treating each service separately. As this exercise was not followed, less meritorious candidates got appointment to higher posts whereas more meritorious candidates had to be satisfied with posts of lower category.

5. ... In the instant case, as noticed earlier, out of 8 petitioners in Writ Petition No. 22753 of 1993, two of them who had secured Ranks 13 and 14 in the merit list, were appointed as Sales Tax Officer II, whereas the persons who secured Ranks 38, 72 and 97, ranks lower to them, got appointment as Deputy Collectors and the Division Bench of the High Court held that it is a clear injustice to the persons who are more meritorious and directed that a list of all selected Backward Class candidates shall be prepared separately including those candidates selected in the general category and their appointments to the posts shall be made strictly in accordance with merit as per the select list and preference of a person higher in the select list will be seen first and appointment given accordingly, while preference of a person lower in the list will be seen only later. We do not think any error or illegality in the direction issued by the Division Bench of the High Court.

6. ... If these candidates who got selection in the general category are allowed to exercise preference and then are appointed accordingly the candidates who were appointed in the reserved categories would be pushed down in their posts and the vacancies thus left by the general category candidates belonging to Backward Classes could be filled up by the persons who are really appointed against the quota reserved for

² *Anurag Patel v. U.P. Public Service Commission*, (2005) 9 SCC 742 : 2005 SCC (L&S) 563

Backward Classes. There will not be any change in the total number of posts filled up either by the general category candidates or by the reserved category candidates.”

65. The decision in *Anurag Patel*² rectified the anomaly which had occurred since U.P. PSC had allotted services of lower preference to the candidates of Backward Classes who were meritorious enough to qualify as per the criteria laid down for general category candidates. Such meritorious candidates were disadvantaged on account of qualifying on merit which was patently offensive to the principles outlined in Articles 14 and 16 of the Constitution. This Court had reached such conclusion to ensure that allocation of service is in accordance with the rank-cum-preference basis with priority given to meritorious candidates for service allocation.

66. The decision in *Anurag Patel*² in turn referred to the earlier decision in *Ritesh R. Sah v. Dr. Y.L. Yamul*³. However, we have already distinguished the judgment in *Ritesh R. Sah*³. That decision was given in relation to reservation for admission to postgraduate medical courses and the same cannot be readily applied in the present circumstances where we are dealing with the examinations conducted by UPSC. The ultimate aim of civil services aspirants is to qualify for the most coveted services and each of the services have quotas for reserved classes, the benefits of which are availed by MRC candidates for preferred service. As highlighted earlier, the benefit accrued by different candidates who secure admission in a particular educational institution is of a homogeneous nature. However, the benefits accruing from successfully qualifying in UPSC examination are of a varying nature since some services are coveted more than others.

67. The order of CAT is valid to the extent that it relied on the ratio propounded by this Court in *Anurag Patel v. U.P. Public Service Commission*². Even though that decision had in turn relied on the verdict of this Court in *Ritesh R. Sah v. Dr. Y.L. Yamul*³, the latter case is distinguishable from the present case with respect to the facts in issue. However, we cannot approve of the conclusions arrived at in the Central Administrative Tribunal order as it failed to take note of the unique characteristics of UPSC examinations.

68. Reference was also made to *R.K. Sabharwal v. State of Punjab*⁹, this Court had declared that the State shall not count a reserved category candidate selected in the open category against the vacancies in the reserved category. However, by this it could not be inferred that if the candidate himself wishes to avail a vacancy in the reserved category, he shall be prohibited from doing so. After considering the counsel's submissions and deliberations among ourselves, we are of the view that the ratio in that case is not applicable for the purpose of the present case. That case was primarily

² *Anurag Patel v. U.P. Public Service Commission*, (2005) 9 SCC 742 : 2005 SCC (L&S) 563

³ (1996) 3 SCC 253

⁹ (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481

- concerned with the Punjab Service of Engineers in the Irrigation Department of the State of Punjab. The decision was rendered in the context of the posts
- a earmarked for the Scheduled Castes/Scheduled Tribes and Backward Classes on the roster. It was noted that once such posts 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 reserved or general due to retirement or removal of a person belonging to the respective category. Unlike the examinations conducted by UPSC which
 - b includes 21 different services this case pertains to a single service and therefore the same cannot be compared with the examination conducted by UPSC. The examination conducted by UPSC is very prestigious and the topmost services of this nation are included in this examination. In this respect, it is obvious that there is fierce competition amongst the successful candidates as well to secure appointments in the most preferred services. This
 - c judgment is strictly confined to the enabling provision of Article 16(4) of the Constitution under which the State Government has the sole power to decide whether there is a requirement for reservations in favour of the backward class in the services under the State Government. However, the present case deals with positions in the various civil services under the Union Government that are filled through the examination process conducted by UPSC.
 - d Therefore, the fact-situation in *R.K. Sabharwal case*⁹ is clearly distinguishable.

69. The proviso to Rule 16(1) and Rule 16(2) operate in different dimensions and it is untenable to argue that these provisions are contradictory or inconsistent with each other. As mentioned earlier, in the
- e examination for the year 2005, 32 reserved candidates (31 OBC candidates and 1 SC candidate) qualified as per the general qualifying standard [Rule 16(1)]. These MRC candidates did not avail of any of the concessions and relaxations in the eligibility criteria at any stage of the examination, and further they secured enough marks to place them above the general qualifying standard. MRC candidates are entitled to one of the two posts—
 - f one depending on their performance in the general list and other depending on their position in the reserved list. When MRC candidates are put in the general list on their own merit they do not automatically relinquish their reserved status. By the operation of Rule 16(2), the reserved status of an MRC candidate is protected so that his/her better performance does not deny such candidate the chance to be allotted to a more preferred service. Where,
 - g however, an MRC is able to obtain his preferred post by virtue of his/her ranking in the general list, he/she is not counted as a reserved candidate and is certainly not counted amongst the respective reservation quota.

70. We must also remember that affirmative action measures should be scrutinised as per the standard of proportionality. This means that the criteria
- h for any form of differential treatment should bear a rational correlation with a

9 *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481

legitimate governmental objective. In this case a distinction has been made between meritorious reserved category candidates and relatively lower ranked reserved category candidates. The amended Rule 16(2) only seeks to recognise the inter se merit between these two classes of candidates for the purpose of allocation to the various civil services with due regard for the preferences indicated by the candidates. a

71. With regard to the specific characteristics of UPSC examinations we hold that reserved category candidates (belonging to OBC, SC or ST categories among others) who are selected on merit and placed in the list of general/unreserved category candidates can choose to migrate to the respective reserved categories at the time of allocation of services. Such migration is enabled by Rule 16(2) of the Civil Services Examination Rules, which is not inconsistent with Rule 16(1) of the same or even the content of Articles 14, 16(4) and 335 of the Constitution of India. b

72. We sum up our answers: c

(i) MRC candidates who avail the benefit of Rule 16(2) and adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will be offered to general category candidates. d

(ii) By operation of Rule 16(2), the reserved status of an MRC candidate is protected so that his/her better performance does not deny him of the chance to be allotted to a more preferred service.

(iii) The amended Rule 16(2) only seeks to recognise the inter se merit between two classes of candidates i.e. (a) meritorious reserved category candidates (b) relatively lower ranked reserved category candidates, for the purpose of allocation to the various civil services with due regard for the preferences indicated by them. e

(iv) The reserved category candidates “belonging to OBC, SC/ST categories” who are selected on merit and placed in the list of general/unreserved category candidates can choose to migrate to the respective reserved category at the time of allocation of services. Such migration as envisaged by Rule 16(2) is not inconsistent with Rule 16(1) or Articles 14, 16(4) and 335 of the Constitution. f

73. In view of the above, the civil appeals are allowed and the judgment of the Madras High Court is set aside. The writ petitions challenging the validity of Rule 16(2) are dismissed. The validity of Rule 16 of the Civil Services Examination Rules, 2005 (vide Notification dated 4-12-2004) is upheld. There will be no order as to costs. g