

(2003) 12 GAU CK 0059

In the Gauhati High Court

Case No : Writ Petition (C) No. 317 (AP) of 2003 and 8666 of 2003 (PS)

Birendra Pratap Singh

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Arunachal Pradesh Power Energy Service Rules, 1993 — Rule 28, 28(1), 28(3)
Constitution of India, 1950 — Article 226

Citation : (2004) 2 GLR 675 : (2005) GLT 827 Supp

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : B.C. Das, S. Roy and R.C. Paul, for the Appellant; C.K.S. Baruah, AG, B.L. Singh, R.P. Sarma, B.P. Chakravorty and K. Jini, for the Respondent

Judgement

I.A. Ansari, J.—It is not uncommon to have litigation over the question of seniority amongst the employees. A model employer is one, who minimizes such litigations by giving consistent, fair and transparent deal to his employees and desists from undertaking ad hoc exercise instead of giving regular promotion. When a State indulges in ad hocism, it not only invites litigation with its own employees, but also creates causes and generates litigations among its employees, which results in bitterness among the employees and is bound to affect the organizational efficiency of the institution concerned, for, such acts of ad hocism lead to animosity, jealousy and anguish among the employees inasmuch as those, who do not receive the benefit of ad hocism, consider themselves dealt with unjustly and discriminated against those, who have been the beneficiary of such ad hocism. Thus, ad hocism creates litigations not only between the employer and the employees, but also between those, who receive the benefits of ad hocism, and those, who feel aggrieved for not being given the benefit of such ad hocism. Such is the grim picture, which the present writ petition depicts.

2. Can an issue or issues settled in a judicial decision by the High Court, in

exercise of its powers under Article 226 of the Constitution of India, be re-opened or shall be treated to have been re-opened, superseded, revised, changed or modified by the directives issued or recommendations made by the National Commission for Scheduled Caste and Scheduled Tribes constituted under Article 338 or the Constitution of India is one of the core issues raised in this writ petition ? Can a Government servant be transferred, against his consent, to a post outside the cadre of his service or to a post lesser in status than what he is, as an ad hoc appointee, occupying substituting him by an officer junior to him on allegations of misconduct or with ulterior motive or as a measure of penalty or in a manner, which may leave stigma on the officer without giving him any opportunity of showing cause and/ or hearing are the other vital issues, which have been raised in the present writ petition ? On the answers to the issues, so raised, rests the fate of this writ petition.

3. The material facts required for effective disposal of the present writ petition may, in a nutshell, be stated as follows :

(i) The writ petitioner, who holds a degree of B.Sc. Engineering (Mechanical), was appointed as an Assistant Engineer (Electrical) on ad hoc basis on 12.6.1980. The respondent No. 3, who holds a degree of B.Tech. (Electrical) was appointed on 20.7.1984 on ad hoc basis as an Asstt. Engineer. Both these appointments were made in the Department, of Power, Govt. of Arunachal Pradesh. The petitioner was promoted to the post of Executive Engineer on ad hoc basis on 12.6.1988. The respondent No. 3 was also promoted on ad hoc basis to the post of Executive Engineer on 20.7.1992. On 25.8.1993, respondent No. 3 along with one Shri P. Deb was promoted on ad hoc basis as Superintending Engineer (Electrical). As, according to the petitioner, both these persons, namely, respondent No. 3 as well as Shri P. Deb were junior to the petitioner right from the grade of the Asstt. Engineer (Electrical), the petitioner, feeling aggrieved, filed Civil Rule No. 2551/93 in this Court. This writ petition was disposed of on 24.1.1994 and though in this Civil Rule, the learned Single Judge held that the petitioner was senior to the respondent No. 3 and Shri P. Deb aforementioned and that ad hoc promotion given to the respondent No. 3 and Shri P. Deb was arbitrary and not sustainable, the impugned order, dated 28.5.1993, aforementioned was not interfered with on the ground that the impugned order was to expire by lapse of time. Against this order, Writ Appeal No. 49/1994 was preferred by respondent No. 3. This writ appeal was disposed of on 22.1.1994, on the basis of the submissions made by the learned Advocate General, Arunachal Pradesh, that the State respondents would consider the cases of all the three persons concerned, namely, the present writ petitioner, the present respondent No. 3 and the said Shri P. Deb for ad hoc promotion to the post of Superintending Engineer (Electrical) on the basis of draft service rules and that the State Govt. would take appropriate steps to accommodate all the three persons on ad hoc basis on the post of Superintending Engineer (Electrical) till the entire matter was finalized.

(ii) Thereafter, vide Government order, dated 22.8.1994, the services of eighteen Assistant Engineers including that of the respondent No. 3 were regularized against direct quota on the recommendation of the Arunachal Pradesh Public Service Commission (hereinafter referred to as "the APPSC") retrospectively with effect from their respective dates of the ad hoc appointments. The service of the respondent No. 3, thus, stood regularized in the grade of Assistant Engineer (Electrical) with effect from 20.7.1984, i.e., with effect from the date of his initial appointment on ad hoc basis. By order, dated 12.3.1997, the petitioner was promoted to the post of Superintending Engineer (Electrical) on ad hoc basis and by an order, dated 13.4.1999, the service of the petitioner was also regularized in the grade of Assistant Engineer, on the recommendation of the APPSC, with effect from 12.6.1980, i.e., w.e.f. the date of his ad hoc appointment against direct quota. By another order passed on the same date, that is, on 13.4.1999, the services of both the present writ petitioner as well as of respondent No. 3 along with some others were regularized in the grade of Executive Engineer (Electrical). By this order, dated 13.4.1999, while the service of the writ petitioner was regularized in the grade of executive Engineer (Electrical) with effect from 12.6.1988, the service of the respondent No. 3 was regularized in the said grade, that is, in the grade of Executive Engineer (Electrical), with effect from 20.7.1992.

(iii) Both the orders, dated 13.4.1994, aforementioned were challenged by respondent No. 3 in WP(C) 1922/99, which was renumbered as WP(C) No. 113 (AP)/2001 contending, inter alia, that he was always senior to the present writ petitioner and his service ought to have been regularized in the grade of Executive Engineer holding him senior to the writ petitioner. While this writ petition was pending, the Government, acting upon the orders passed in the said Civil Rule No. 2551/93 and Writ Appeal No. 14/94, considered the entire controversy over the question of seniority and passed an order, dated 28.9.1999, giving the present writ petitioner seniority in the grade of Superintending Engineer (Electrical) over his juniors, namely, Sri P. Deb aforementioned and the present respondent No. 3. Thereafter, on 17.11.2000, the Government published the final seniority list of Assistant Engineers (Electrical) placing the present petitioner at Sl. No. 3 and putting Sri P. Deb aforementioned and Sri A. Perme (that is the present respondent No. 3) at Sl. Nos. 4 and 9 respectively. Treating, thus, the petitioner as senior to Sri P. Deb aforementioned and respondent No. 3, the Government, vide order, dated 28.2.2001, allowed the petitioner to hold the charge of the Chief Engineer (Power) in addition to his own duty without any financial benefit till the alternative arrangement was made, the arrangement being temporary without bestowing on him right to claim regular promotion and seniority. The petitioner accordingly took over the charge of Chief Engineer (Power).

(iv) Feeling aggrieved by the order of the Government allowing the present petitioner to hold the charge of the office of the Chief Engineer (Power), the respondent No. 3 filed in his pending writ petition, namely, WP(C) No.

113(AP)2001, a miscellaneous application praying for interim order. Based on this application, Misc. Case No. 135(AP)/2001 came to be registered. By order, dated 17.8.2001, passed in this Miscellaneous application (that is, Misc. Case No. 135(AP)/2001), learned Single Judge held to the effect that in case of temporary arrangement also, senior most person should be given preference and since the respondent No. 3 was senior to the present writ petitioner, the respondent No. 3 be allowed to hold the charge of the office of the Chief Engineer (Power). Against this direction, the petitioner preferred an appeal bearing Writ Appeal No. 335/2001. The Division Bench of this Court, while disposing of the writ appeal vide order, dated 9.10.2001, held to the effect that in the face of the order, dated 13.4.1999, aforementioned, it cannot be said that the respondent No. 3 is senior to the present writ petitioner and accordingly, the said interim order passed, on 17.8.2001, was set aside. The respondent No. 3, however, challenged the said two orders, dated 28.9.1999 and 28.2.2001, whereby the petitioner was given seniority as Superintending Engineer and was also allowed to hold the charge of Chief Engineer (Power), and this challenge resulted into the institution of WP(C) No. 56(AP)/2002. Thereafter, the Govt., by order, dated 7.2.2002, appointed Shri Tomy Ete, the then Addl. Chief Engineer, PWD, as the Chief Engineer, (Power) on deputation for a period of one year and in consequence thereof, the present writ petitioner was relieved of the charge of Chief Engineer (Power). This order was challenged by respondent No. 3 by WP(C)68 (AP)/2002 and by order, dated 11.2.2002, passed therein, the operation of the impugned order, dated 7.2.2002, aforementioned was suspended. Thereafter, the Govt., by order, dated 14.2.2002, reverted back Shri Tomy Ete to his parent department, but by another order passed on the same date, Shri Tomy Ete was allowed to function as Link Officer of Chief Engineer of Power. Subsequently, the Govt. withdraw the order, dated 14.2.2002, aforementioned too and by another order passed, on 5.3.2002, the Court allowed Shri P. Deb to look after the works of the Chief Engineer in addition to his own duty. In the meanwhile, the Govt. published the seniority list dated 25.2.2002, or Executive Engineer (Electrical) under the Department of Power. In this seniority list, the petitioner stood at the serial No. 1, whereas Shri P. Deb was put at serial No. 2 and the present respondent No. 3 was placed at serial No. 3.

(v) The present writ petitioner challenged the order, dated 5.3.2002, aforementioned, whereby Shri P. Deb aforementioned was allowed to look after the works of the Chief Engineer (Power), in WP(C) 107(AP)/ 2002. By order, dated 21.3.2002, this writ petition was disposed of with directions that Shri S.K. Chakraborty, then working as OSD (Technical) attached to the office of the Chief Minister, be appointed as Chief Engineer (Power) for two months or till the post is substantially filled up in accordance with the relevant Rules from amongst the eligible Superintendent Engineers, whichever is earlier. In compliance with this order, the Govt., by order, dated 22.3.2002, appointed Shri S.K. Chakraborty aforementioned to hold the charge of the Chief Engineer (Power). Thereafter, all the three pending writ petitions, namely, WP(C)113(AP)/2001 WP (C)

56(AP)/2002 and WP(C)68(AP)/2002 were disposed of by a common judgment and order, dated 27.3.2002, setting aside the order, dated 13.4.1999 (whereby the service of the writ petitioner was regularized in the grade of Assistant Engineer, with effect from 12.6.1980), the order dated 13.4.1999 (whereby the services of 14 Executive Engineers including that of the writ petitioner was regularized in the grade of Executive Engineer, the service of the petitioner having been regularized as Executive Engineer with effect from 12.6.1988) and the order, dated 28.9.1999 (whereby notional seniority and promotion was accorded to the petitioner). Against the aforesaid judgment and order, the writ petitioner preferred two appeals being WA No. 160/2002 and WA No. 162/2002. By an order, dated 10.4.2002, the appeals were admitted and interim order was passed. In the meanwhile, although the period of appointment of Shri S.K. Chakraborty was over, he was allowed by order, dated 27.5.2002, passed by the Government to continue until further orders as the Government was not in a position to make regular appointment of the Chief Engineer (Power). However, the Government, again, considered the entire matter and allowed, vide order, dated 28.10.2002, the present writ petitioner to hold the charge of Chief Engineer (Power) until further orders. The order reveals, inter alia, that it was passed considering the exigency of work and public interest and the writ petitioner accordingly took the charge.

(vi) Thereafter, both the Writ Appeals mentioned hereinabove were disposed of, on 12.12.2002, by modifying the order, dated 26.7.2003. As observed in this appellate order, the order was passed in terms of the agreement reached between the parties. As per this order, the order, dated 13.4.1999, passed by the Government regularizing the services of 14 persons in the post of Executive Engineer including the present petitioner and the respondent No. 3 was to remain as it is but the order, dated 28.9.1999, giving ad hoc promotion to the present petitioner was set aside and the Government was directed to consider the case of the present petitioner as well as of respondent No. 3 along with other persons named in the order dated 13.4.1999, for regularization and promotion in the post of Superintending Engineer. In short, the order, dated 13.4.1999, passed by the Government regularizing the services of the writ petitioner as Assistant Engineer and also the order, dated 13.4.1999 regularizing the services of 14 Executive Engineers including the present petitioner were maintained, but the order, dated 28.9.1999, giving notional promotion to the petitioner was set aside and the State Government was directed to undertake the exercise for regularization and promotion in the post of Superintending Engineer in accordance with the relevant Rules and to prepare seniority list of Superintending Engineers accordingly. It was further directed by this appellate order that until this exercise was completed, the Government shall not take steps to make regular promotion to the post of Chief Engineer (Power). Thereafter, the State Government, on the basis of the recommendation of the DPC passed an order, on 18.6.2003 (Annexure XVI to the writ petition), giving regular promotion to the writ petitioner as well as Shri P. Deb and the respondent No. 3 in the grade of

Superintending Engineer with effect from the dates shown against their names. In the order so passed, while the date of regular promotion of the present petitioner was shown as 1.1.1994, the date of regular promotion of Shri P. Deb and the respondent No. 3 were shown as 1.1.1994 and 1.1.1998 respectively.

(vii) In the meanwhile, the State Government constituted Arunachal Pradesh State Electricity Regulatory Commission (hereinafter referred to as "the APERC") u/s 17(1) of the Electricity Regulatory Commission Act, 1998, without, however, appointing any Chairman or Member and an Officer on Special Duty (in short, OSD) was appointed only to organize the same. This APERC is not a functioning authority. Before the order, dated 18.6.2003, aforementioned was passed giving regular promotion to the petitioner and the respondent Xo. 3, the respondent No. 3 was sent, on deputation, as Director, Arunachal Pradesh Energy Development Agency and on completion of his deputation period, he was repatriated to the parent department, i.e., Department of Power with effect from 5.6.2002 and consequent upon the repatriation, he was posted vide order, dated 16.5.2002, as OSD, APERC. Now, by the impugned order, dated 7.10.2003 (Annexure XXI to the writ petition), the respondent No. 3 has been directed to hold the charge of Chief Engineer and the petitioner has been posted as OSD, APERC. The respondent No. 3 has lodged a claim with the National Commission for Scheduled Caste and Scheduled Tribe, New Delhi, (hereinafter referred to as "the National Commission for SCST") which is constituted under Article 338 of the Constitution of India, regarding denial of his seniority and the National Commission for SC/ST has opined that the seniority position of the respondent No. 3 has not till, now, been determined and recommended that exercise for fixing the seniority of the officers in the Department of Power be undertaken and relevant reservation policy be taken into account, while making the promotion. The respondent No. 3 has also filed a SLP before the Hon'ble Supreme Court being SLP (Civil) No. 18396/2003, wherein the respondent No. 3 has claimed to the effect, inter alia, that though the order of the Division Bench passed, on 12.12.2002, in Writ Appeal Nos. 160/2002 and 162/2002, shows that the order was an agreed order, the said order could not have been passed on agreement inasmuch as the respondent No. 3 never gave any consent for such order and no such instruction was given to his counsel. The Supreme Court, while issuing notice for hearing on the question of condonation of delay in making the application, has also directed issuance of notice as to why matter had not been decided by the High Court on merit.

4. On the basis of the facts delineated above, the petitioner claims that he is senior to the respondent No. 3, that he is eligible for promotion to the post of Chief Engineer (Power) inasmuch as he has put in requisite years of service in the grade of Superintending Engineer, that even while making stop-gap arrangement to fill up the post of Chief Engineer (Power), the seniority position of the petitioner ought to have been kept in mind by the respondent authorities, that the post of OSD of the APERC is a non-functional one, the said post of OSD is of lesser status than that of the Chief Engineer, that the said post is an ex

cadre post, the petitioner could not have been transferred to the said post without taking his option and that no such option was obtained from the petitioner. The petitioner also claims that the respondent No. 3 is not eligible for promotion to the post of Chief Engineer (Power) +/inasmuch as he has not put in requisite numbers of years of service in the grade of Superintending Engineer and when the respondent No. 3 was not even eligible for promotion to the post of Chief Engineer (Power), appointment of the respondent No. 3, on the basis of stop-gap arrangement, under the relevant Rules, could not have been made.

5. As against the above claims, the respondent No. 3 alleges that he is senior to the petitioner, that the very appointment of the petitioner as Assistant Engineer has been contrary to the relevant Rules, the matter of seniority stands open in view of the directives/recommendations issued by the National Commission for SCST that any diligent officer of the grade of Superintending Engineer can be temporarily appointed as Chief Engineer, that the seniority of the respondent No. 3 vis-a-vis the petitioner has not been considered in the light of the necessary reservation policy, the respondent No. 3 has put in requisite years of service in the grade of Superintending Engineer, he is senior to the writ petitioner and he is eligible for promotion to the post of Chief Engineer (Power), that the impugned order is an interim arrangement made temporarily in the interest of general public and, hence, the same deserves to be maintained.

6. So far as State respondents, namely, respondent Nos. 1 and 2 are concerned, their case is that respondent No. 3 has been transferred to the office of the Chief Engineer (Power) in public interest as a purely temporary arrangement and as this order would not confer any right or claim for promotion, seniority or financial benefit, it does not cause any injury to the petitioner, the State respondents have also received directives/ recommendations from the National Commission for SCST vide letter, dated 19.9.2003, and the State Government is, now, taking requisite steps to comply with these directives/recommendations, the respondent No. 3 has also preferred the SLP aforementioned, and on account of directives/recommendations issued by the National Commission for SCST and pendency of the SLP aforementioned, regularization order, in respect of the parties in the grade of Superintending Engineer, cannot be treated as final at this stage and that the question of inter se seniority between the petitioner and respondent No. 3 is still open. Hence, the writ petition is wholly without merit and the same deserve to be dismissed.

7. I have perused the materials on record. I have heard Mr. B.C. Das, learned counsel for the petitioner, and Mr. C. K. S. Baruah, learned Advocate General, Arunachal Pradesh, assisted by Mr. B.L. Singh, learned Sr. Govt. Advocate, appearing on behalf of the respondent Nos. 1 and 2. I have also heard Mr. R.P. Sharma, learned counsel, appearing on behalf of the respondent No. 3.

8. Presenting the case on behalf of the petitioner, Mr. B.C. Das has submitted that it is settled position of law that even while making temporary arrangement in higher grade, seniority position of the persons cannot be ignored and this

Court has indicated in CR No. 2551/93 as well as Writ Appeal No. 335/2001 aforementioned that the seniority of the petitioner cannot be ignored, while considering the question of making temporary arrangement. Hence, according to Mr. Das, while making the interim arrangement in the grade of the Chief Engineer (Power), the seniority position of the petitioner could not have been ignored inasmuch as the petitioner is, contends Mr. Das, senior to respondent No. 3, for, submits Mr. Das, seniority position of the petitioner and the respondent No. 3 has been, time and again, challenged before is Court and as per the orders of this Court passed, on 9.10.2001, in Writ Appeal No. 335/2001 as well as order, dated 12.12.2002, passed in Writ Appeal Nos. 160/2002 and 162/2002, the petitioner is senior to respondent No. 3 in the grades of Assistant Engineer as well as Executive Engineer. This apart, seniority list, according to Mr. Das, published by the State respondents clearly shows that the petitioner is senior to the respondent No. 3 and until this list is either withdrawn, modified or reviewed by the State Government and/or set at naught by any judicial pronouncement, the seniority list will hold the field.

9. Mr. B.C. Das has also taken me through the provisions contained in the Arunachal Pradesh Power Energy Service Rules, 1993 (hereinafter referred to as "the Recruitment Rules of 1993"). Drawing this Court's attention to Rule 9, Mr. Das points out that according to this Rule, a person becomes eligible for promotion to the post of Superintending Engineer after having put in, at least, five years of regular service in the grade of Executive Engineer. According to materials available on record, further points out Mr. Das, respondent No. 3 has been regularized in the post of Executive Engineer vide order, dated 13.4.1999, passed by the State respondents with effect from 20.7.1992 and till now, this seniority has not been reversed, superseded, modified and/or set at naught by any competent authority or judicial pronouncement. This apart, submits Mr. Das, even the Division Bench of this Court in W.A. Nos. 160/2002 and 162/2002 aforementioned, has upheld the order, dated 13.4.1999, aforementioned and, hence. Government cannot ignore this aspect of the matter and it cannot, now, contend before this Court that the matter of inter se seniority between the petitioner and the respondent No. 3 is still open to question.

10. Mr. B.C. Das has further submitted that the respondent No. 3, as per the order, dated 13.4.1999, stands regularized in the promotional post of Executive Engineer with effect from 20.7.1992 and, hence, the respondent No. 3, in the light of the provisions of Rule 9, could not have become eligible for promotion to the post of Superintending Engineer until 20.7.1997. The claim of the respondent No. 3, points out Mr. Das, that he had worked as a Superintending Engineer, though on ad hoc basis, since 28.5.1993, and has continued to hold the post in that grade and that the said period shall be counted for the purpose of determining his seniority in the grade of Superintending Engineer, is completely misconceived in law inasmuch as even if the respondent No. 3, according to what the respondent No. 3 claims, had been functioning as Superintending Engineer since 1993, the fact remains that he had not become eligible for promotion to

the grade of Superintending Engineer till 20.7.1997, and if the period during which the respondent No. 3 had, unauthorizedly, so functioned, is kept excluded from the consideration, he cannot be said to have become eligible for promotion to the post of Superintending Engineer at any time before 20.7.1997.

11. Pointing out also to Rule 8 of the Recruitment Rules of 1993, Mr. Das has submitted that for appointment to the post of Chief Engineer (Power), a person must have put in, at least, 8 years of regular service in the grade of Superintending Engineer. Since respondent No. 3 had not become, according to Mr. Das, eligible for promotion to the grade of Superintending Engineer until before 20.7.1997 and that he having, in fact, been, according to the final seniority list, dated 18.6.2003, promoted to the grade of Superintending Engineer with effect from 1.9.1998, the respondent No. 3 does not become eligible for consideration for promotion until the year 2006. Thus, when the respondent No. 3, according to Mr. Das, is not even eligible for promotion to the post of Chief Engineer (Power), he cannot be allowed to hold the charge of the office of the Chief Engineer ignoring the question of seniority of the petitioner, who is, otherwise, eligible to hold the office of Chief Engineer, Department of Power.

12. Drawing further my attention to Rule 28, Mr. Das has pointed out that even for making temporary arrangement. Government cannot appoint any one even temporarily to any post; rather, it can consider, submits Mr. Das, for such appointment only such a person, who is eligible for promotion to such post or grade. Hence, for the purpose of even making temporary arrangement. Government cannot, contends Mr. Das, ignore the fact that respondent No. 3 is not eligible for promotion to the post of Chief Engineer and he cannot, therefore, be allowed to hold the charge of the office of the Chief Engineer by taking recourse to Rule 28.

13. Projecting further the case of the petitioner, Mr. Das has submitted that the post of OSD of APSERC is an ex cadre post, which is not envisaged in the relevant Recruitment Rules, and hence, the petitioner could not have been transferred to a post outside the cadre without his option, but no such option was obtained by the State respondents from the petitioner. The impugned order is, thus, submits Mr. Das, wholly without jurisdiction and void ab initio.

14. Mr. Das has also submitted that the post of the OSD, APSERC is a non-functional post, this post is not equivalent in status to the post of the Chief Engineer as the post of Chief Engineer carries higher responsibilities, greater powers and heavier duties and the Government could not have used its powers under Rule 28 to transfer the petitioner to a post lower in status than the post, which the petitioner was holding, and substitute him in the higher post by an officer, who is junior and not even eligible for promotion to the post of Chief Engineer (Power).

15. Mr. Das has also pointed out that making a person hold a post of higher

status without even being eligible to hold such post by removing the senior one to an inferior post is humiliating for the senior person and cannot be said to be in public interest.

16. Mr. Das has further pointed out that vide order, dated 12.12.2002, passed in WA Nos. 160/2002 and 162/2002, the Division Bench of this Court had directed the Govt. to regularize the services of the Superintending Engineers and, then, make regular promotion to the post of Chief Engineer from eligible Superintending Engineers and in the light of these directions, contends Mr. Das, it was the duty of the State respondents not to indulge any further in ad hocism and it ought to have made regular appointment to the post of Chief Engineer (Power) from amongst the eligible persons, but ignoring the requirement of making regular promotion, as has been directed by the Division Bench, the Government has passed the impugned order indulging in ad hocism, which is neither in public interest nor in conformity with the mandate and spirit of the order, dated 12.12.2002, aforementioned.

17. Controverting the submissions made on behalf of the petitioner, learned Advocate General has submitted that question of inter se seniority between the parties is, now, open to question in view of the fact that the respondent No. 3 has lodged a complaint to the National Commission for SCST that his seniority position has not been considered by the State Government as is required to be done in the interest of the members of the Scheduled Tribe and the Commission has accepted the submissions made by the respondent No. 3 and has issued directives accordingly. This apart, points out learned Advocate General, Hon''ble Supreme Court has also indicated by issuing notice in SLP No. 18396/2003 that the question of seniority of the petitioner and the respondent No. 3 is open to question.

18. It is also pointed out by learned Advocate General that under Sub-rule (3) of Rule 28 (1) of the Recruitment Rules of 1993, no appointment made under Rule 28 by way of temporary arrangement can continue beyond a period of six months without prior approval of the Arunachal Pradesh Public Service Commission. In the case at hand, points out learned Advocate General, the petitioner was allowed to hold the charge of the office of the Chief Engineer by order, dated 28.2.2001. Thus, the petitioner has already put in, points out learned Advocate General, more than six months of service on the basis of this arrangement and since his further continuation would have been contrary to the provisions of Sub-rule (3) of Rule 28, the State Government had no option, but to remove the petitioner from the said post and send him as OSD to APSC, which carries the same pay scales as that of Superintending Engineer. It is for the Government, submits the learned Advocate General, to decide on the basis of public interest and in the interest of the administration as to which officer shall be posted at what place. The impugned order, according to learned Advocate General, has been passed not on the basis of any prejudice or mala fide against the petitioner and that the same, having been passed in public interest, may not

be interfered with.

19. At the time of hearing, the learned Advocate General has further submitted that the Government considered it necessary to transfer the petitioner on account of the fact that there are certain complaints that the petitioner floated a tender without approval of the Government and the Government is considering disciplinary action against him for such misconduct and, hence, a show cause notice has also been given to the petitioner asking for his comments and in view of such show cause notice, it was desirable that the petitioner be removed from the said post. In support of this submission, a copy of the Memorandum, dated 22nd October, 2003, has been placed before this Court by the learned Advocate General at the time of hearing.

20. Lending support to the submissions made on behalf of the State respondents, Mr. R.P. Sharma, learned counsel for the respondent No. 3, has submitted that the question of inter se seniority between the petitioner and the respondent No. 3 is still open to challenge on account of the directives issued by the National Commission for SCST and also due to the pendency of the Special Leave Petition. Mr. Sharma has also submitted that in view of the fact that the State Government is considering taking action against the petitioner, the impugned order of transfer cannot be said to be not based on public interest. Mr. Sharma has further submitted that the question of seniority of the petitioner had not been considered properly in the light of the reservation policy and, hence, the question of inter se seniority between the parties still remains open. Mr. Sharma has further pointed out that the respondent No. 3 started serving as Superintending Engineer since 1993, whereas the petitioner has been regularized as Superintending Engineer with effect from 1.1.1994. Thus, the petitioner, according to Mr. Sharma, was made Superintending Engineer subsequent to the respondent No. 3 and, hence, the petitioner cannot be said to be senior to the respondent No. 3.

21. Mr. Sharma has contended that even the respondent No. 3 was sent, on transfer, as OSD, APSERC, without his consent and, hence, it cannot be said that the petitioner cannot be transferred as OSD, APSERC, which is equivalent to the grade of Superintending Engineer, and if such a practice can be adopted in the case of the respondent No. 3, there is no reason why the same practice cannot be resorted to in the case of the petitioner as well.

22. Repelling the above submissions made on behalf of the respondents, Mr. B.C. Das has submitted that the provisions of Rule 28(3) is not mandatory inasmuch as Government has been making temporary arrangements all the time and continuing with the same for years together and, hence, Govt. cannot take resort to Rule 28 (3) in the present case only and contend that this provision has become mandatory in the case of the petitioner. It is also submitted by Mr. Das that the show cause notice produced by the learned Advocate General, at the time of hearing of this writ petition, has been invented by the Government to make out a case against the petitioner, but this notice shows that the action of

transfer taken against the petitioner is really penal and stigmatic in nature. Such an order, contends Mr. Das, cannot be sustained. Mr. Das has further submitted that the order, dated 12.12.2002, passed by the Division Bench of this Court in Writ Appeal Nos. 160/2002 and 162/2002 will remain final and binding on the parties until the time the same is reversed or superseded by appropriate judicial pronouncement, but till now, no such thing has been done and mere filing of the SLP aforementioned will not make the judicial order, dated 12.12.2002, ineffective, redundant and/or non est in law. Mr. Das has also submitted that the National Commission for SCST constituted under Article 338 can give general directions and cannot interfere with an order passed by a High Court under Article 226. A judicial order passed by the High Court, such as, the order, dated 12.12.2002, cannot be superseded, according to Mr. Das, on the basis of the directives of the Commission for SCST. Mere pendency of the SLP cannot, contends Mr. Das, make the order, dated 12.12.2002, non-existent, null and void.

23. Let me, now, determine the correctness or otherwise of the rival submissions made before me on behalf of the parties. Before coming to the merit of the writ petition, it is imperative to point out that the petitioner as well as the respondent No. 3 are both degree holders in Engineering and not diploma holders and there does exist recruitment rules governing the service conditions of the parties concerned. There is no dispute before me that the relevant rules are the Arunachal Pradesh Power Engineering Service Rules, 1993 (hereinafter referred to as "the Recruitment Rules of 1993") which have been framed under the proviso to Article 309 of the Constitution of India. The feeder post in this service is the post of Assistant Engineer. For the purpose of promotion to the post of Executive Engineer from Assistant Engineer, a person, who holds degree in Engineering, requires, under Rule 10, at least, 8 years of regular service in the grade of Assistant Engineer. For an Executive Engineer to become eligible for promotion to the post of Superintending Engineer, he, according to Rule 9, must have put in, at least, 5 years of regular service in the grade of Executive Engineer. As far as the post of Chief Engineer is concerned, the same requires under Rule 8 of the Recruitment Rules of 1993 that a Superintending Engineer must have rendered not less than 8 years of regular service in the grade of Superintending Engineer.

24. Upon hearing the learned counsel for the parties and on perusal of the materials on record, what becomes transparent is that the present writ petition is not really for determining the question of inter-se-seniority between the petitioner and the respondent No. 3. However, in view of the fact that the writ petitioner as well as the respondents agree that even for making stop-gap or temporary arrangement in a promotional post, the factum of seniority of the parties concerned cannot be ignored, the question as to who between the two, namely, the writ petitioner and the respondent No. 3 is senior cannot be said to be wholly irrelevant in the present writ petition. The present writ petition proceeds on the premises that the writ petitioner is senior to the respondent No. 3. While the respondent No. 3 lays counter-claim of seniority over the writ

petitioner, the State-respondents have adopted the stand that the question of inter-se-seniority between the parties concerned is still open for challenge. Is this approach of the State-respondents correct on the basis of the materials on record and the law relevant thereto ?

25. The answer to-the above question is not very far to seek. The writ petitioner entered into service on ad-hoc basis on 12.6.1980 as an Assistant Engineer, whereas the respondent No. 3 entered into the service as an Assistant Engineer on ad hoc basis on 20.7.1984. While the service of the respondent No. 3 was regularized in the grade of Assistant Engineer with effect from 20.7.1984 by order dated 22.8.1994 (Annexure-III), the service of the writ petitioner in the grade of Assistant Engineer was regularized with effect from 12.6.1980 by order, dated 13.4.1999 (Annexure-IV). The ad hoc promotion of both the writ petitioner as well as the respondent No. 3 was regularized in the posts of Executive Engineer with effect from 12.6.1988 and 20.7.1992 respectively by order, dated 13.4.1999. Thus, if the regularization of the services of the writ petitioner and the respondent No. 3 in the grade of Assistant Engineer, with effect from 12.6.1980 and 20.7.1984 respectively, are treated as correct, the dates of regularization of their ad-hoc promotion to the posts of Executive Engineer, given with effect from 12.6.1988 and 20.7.1992 respectively, cannot be disputed inasmuch as promotions had been accorded after they have put in 8 years of regular service in the grade of Assistant Engineer, as is required under Rule 10 of the Recruitment Rules of 1993. The final seniority list of Assistant Engineers as on 1.11.2000 (Annexure-VII) published on the basis of the recommendations of the Screening Committee and approved by the Government reflects the date of appointment of the petitioner to the post of Assistant Engineer as 12.6.1980 and the date of promotion to the post of Executive Engineer as 12.6.1988. This seniority list also reflects that the date of appointment of the respondent No. 3 as Assistant Engineer is 20.7.1984 and his regular promotion to the post of Executive Engineer took place on 20.7.1992.

26. The claim and counter-claim between the parties over the question of seniority came into fore, when the respondent No. 3 was given promotion on ad hoc basis to the post of Superintending Engineer for a period of six (6) months by order, dated 25.8.1993. This order was challenged by the present writ petitioner in Civil Rule No. 2551 of 1993. The learned single Judge by order, dated 24.1.1994, disposed of the said writ petition and while disposing of the writ petition, the learned Single Judge observed to the effect that the present writ petitioner was senior to the respondent No. 3. In the said writ petition, the categorical submission made on behalf of the respondent No. 3 was that the ad hoc promotion given to him to the grade of Superintending Engineer would not affect the seniority of the present petitioner as and when regular appointment would be made. However, as the term of the ad hoc promotion of the respondent No. 3 was for a period of six months and the same was about to expire, the Court did not interfere with the matter, though it was held that the impugned order was arbitrary and directed the State-respondents not to extend the period

of promotional appointment after expiry of six months. This order stands modified on the basis of the submissions made by the learned Advocate General, Arunachal Pradesh by order, dated 21.2.1994, passed in Writ Appeal No. 49 of 1994, whereby the Court directed that the question of promotion of the parties concerned including that of the present writ petitioner would be considered by the State-respondents on the basis of the Draft Service Rules and that the State respondents would take steps to accommodate all the three contending persons till the matter was finalized.

27. When the petitioner was allowed vide order, dated 28.2.2001 (Annexure-VIII), to hold the charge of the office of the Chief Engineer (Power) in addition to his own duty without any financial benefits, the second round of litigation between the parties commenced. The respondent No. 3 filed Writ Petition (Civil) No. 113 of 2001 challenging the legality of the order, dated 28.2.2001 aforementioned, and in Misc. Case No. 135/2001 arising therefrom, the learned single Judge passed an interim order, on 17.8.2001, holding to the effect that the present respondent No. 3 was senior to the present writ petitioner and even for ad hoc promotion, the question of seniority cannot be ignored. By this order, dated 17.8.2001, the learned Single Judge directed the State-respondents to allow the present respondent No. 3 to hold the charge of the office of Chief Engineer (Power) on the ground that there was no one senior to the respondent No. 3 in service. This interim order came to be challenged before a Division Bench in Writ Appeal No. 335 of 2001. By order, dated 9.10.2001, the writ appeal was disposed of, wherein the Division Bench clearly held that in the presence of the orders, dated 13.4.1999, (i.e., the order, whereby the service of the present writ petitioner was regularized as an Assistant Engineer with effect from 12.6.1980 and the promotion was accorded to the present petitioner and the respondent No. 3 in the grade of Executive Engineer with effect from 12.6.1988 and 20.7.1992 respectively), it cannot be said that the present respondent No. 3 was senior to the present writ petitioner. In these premises, the interim directions issued by the learned Single Judge in Misc. Case No. 135 of 2001 on 17.8.2001 were set aside.

28. Subsequent to the passing of the order, dated 9.10.2001, aforementioned, in Writ Appeal No. 335 of 2001, the State-respondents published a seniority list of Executive Engineers (Annexure-VIII) on 25.2.2002. As per this seniority list too, the present writ petitioner was confirmed on the recommendations of the APPSC as Executive Engineer with effect from 12.6.1988 whereas the respondent No. 3 was so confirmed with effect from 20.7.1992. The Government also Issued on 22.3.2002 (Annexure-XIII) an order indicating therein that as per the seniority list of the officers in the grade of Executive Engineers, the petitioner is senior to the respondent No. 3 and that the respondent No. 3 would become eligible for promotion to the post of Chief Engineer (Power) only during the year 2005 and that too subject to regularization of his ad hoc period in the grade of Superintending Engineer by the DPC. When the Government by another order, dated 28.10.2002 (Annexure-XIV) allowed the present petitioner, as

Superintending engineer, to hold the charge of the office of Chief Engineer (Power), this order too was brought under challenge by the respondent No. 3 by making a miscellaneous application in his pending writ petition, namely, WP(C) No. 113 of 2001 aforementioned. This Miscellaneous application was registered as Misc. Case No. 135 of 2001 and the same was subsequently registered as an independent writ petition, namely, WP(C) No. 56(AP)/2002. By a common judgment and order, dated 27.3.2002, all the pending writ petitions, namely, WP(C) Nos. 113 of 2001, 56 of 2002 and 68 of 2002 were disposed of. By this judgment and order, the two orders, dated 13.4.1999, whereby the service of the present writ petitioner was regularized with effect from 12.6.1980 as an Assistant Engineer and he was given regular promotion to the grade of Executive Engineer with effect from 12.6.1988 were set aside. The order dated 27.3.2002 aforementioned, passed by the learned Single Judge was impugned before a Division Bench in Writ Appeal Nos. 160/2002 and 162/2002. Those writ appeals were disposed of by order, dated 12.12.2002. The relevant observations and directions of the Division Bench in these two Writ Appeals are reproduced hereinbelow :

"12.12.2002

.....The learned Single Judge, has set aside the order dated 13.4.1999 regularizing the, services, of the appellant Mr. B.P. Singh. Learned Single Judge has also set aside the order dated 13.4.1999 whereby the 14 persons in the post of Executive Engineer were regularized. The learned Single Judge also set aside the order dated 28.9.1999 whereby the ad hoc promotion was given to the appellant.

In terms of the agreement of the learned counsel, we modify the order to the effect that the order passed on 13.4.1999 regularizing the services of the appellant Mr. B.P. Singh as Assistant Engineer is maintained. Similarly, the order passed on 13.4.1999 regularizing the services of 14 persons in the post of Executive Engineer including the appellant and respondent No. 1 shall remain as it is. However, the order dated 28.9.1999 giving ad hoc promotion to the appellant is set aside. As a result of this order, the appellant and the respondent along with other persons named in the order dated 13.4.1999 shall be taken to be regularized in the post of Executive Engineer from the date mentioned in the order itself..." (Emphasis is supplied)

29. From a bare reading of what has been observed above by the Division Bench, it is clear that both the orders, passed on 13.4.1999, were maintained by the Division Bench. The resultant effect was that the present writ petitioner became senior to the respondent No. 3 in the grade of Executive Engineer and the only question, which was thrown open was the question of promotion of the parties concerned to the grade of Superintending Engineer.

30. Thus, the question of inter-se-seniority between the parties upto the grade of Executive Engineer stands judicially settled and pronounced by the Division

Bench of" this Court. The State-respondents, as the chronology of the events shows, never challenged the fact that the present writ petitioner was senior to the respondent No. 3. In the face of such a judicially pronounced verdict, can the Government, now, submit before this Court that on account of the directions issued by the National Commission for SC and ST, the question of seniority stands open to challenge. This question brings me to one of the core issues raised in the present writ petition, namely, as to whether the directives issued by the National Commission for SC ST, which is constituted under Article 338, can re-open a judicially settled position of seniority.

31. Without entering into the controversy as to whether the National Commission for SC and ST can give directives in individual cases or can only issue directions and make recommendations, in general, what is of paramount importance to note is that the power of judicial review of administrative actions has been held to be a basic structure of the Constitution. Viewed from this angle, Article 226 of the Constitution forms the basic structure of the Constitution. Can any law be made to over-ride the powers of the High Court under Article 226 of the Constitution ? The answer to this question has to be an emphatic "no", for, if it is held otherwise, then, the power of judicial review of administrative action will be set at naught. A judicial decision or verdict can be superseded only by another judicial order. Thus, it is clear that so long as the order, dated 12.12.2002 aforementioned, passed in Writ Appeal Nos. 160/2002 and 162/2002 stands good on record, and/or not superseded by another judicial order, the State-respondents cannot be heard to say that the question of seniority between the parties stands open to challenge as a whole.

32. What logically follows from the above discussion is that as long as the order, dated 12.12.2002 aforementioned, is not superseded by another judicial order, no directive can be given by any authority to reopen the question of seniority between the parties concerned in the grade of Executive Engineer. Viewed from this angle, it is clear that in the grade of Executive Engineer, the petitioner is senior to the respondent No. 3, regular promotion to the grade of Executive Engineer having been received by the petitioner with effect from 12.6.1988 and the respondent No. 3 having received the same with effect from 20.7.1992. As to whether the relevant reservation policy or provisions of law connected therewith have been followed, while granting promotion to the parties concerned, is a question, which can be opened only in a judicial proceeding and not otherwise. Hence, on account of the directive issued by the National Commission for SC and ST, the State-respondents cannot shift their stand and say that the question of seniority between the parties in the grade of Executive Engineer is still open to question.

33. There can, therefore, be no escape from the conclusion that the present writ petitioner will remain senior to the respondent No. 3 in the grade of Executive Engineer till the time the order, dated 12.12.2002, passed in Writ Appeal Nos. 160/2002 and 162/2002 is superseded, modified and/or re-opened by any other

competent judicial pronouncement or order.

34. Having, thus, settled, the question that the present writ petitioner is senior to the respondent No. 3 in the grade of Executive Engineer, let me, now, turn to Rule 9 of the Recruitment Rules of 1993. A careful reading of this rule shows that for a person to become eligible, as already indicated hereinabove, for consideration to the post of Superintending Engineer, he must have put in, at least, 5 years of regular service in the grade of Executive Engineer. In view of the fact that the present writ-petitioner has received regular promotion in the grade of Executive Engineer with effect from 12.6.1988, it becomes transparent that he became eligible for promotion (until contrary is shown) on 12.6.1993, i.e., the date, when he completed 5 years of regular service in the grade of Executive Engineer. When so counted in the similar way, the respondent No. 3 became eligible for consideration for promotion to the post of Superintending Engineer with effect from 20.7.1997, when he completed 5 years of regular service in the grade of Executive Engineer with effect from 20.7.1992. Thus, the fact that the respondent No. 3 had been functioning as a Superintending Engineer since 1993 is wholly irrelevant inasmuch as his date of regular promotion in the grade of Executive Engineer being 20.7.1992, he could not have been considered eligible for promotion to the post of Superintending Engineer before 20.7.1997.

35. Similarly, since Rule 8 of the Recruitment Rules of 1993 makes 8 years of regular service in the grade of Superintending Engineer a condition precedent for a person to become eligible for promotion to the post of Chief Engineer, it clearly follows that since the writ petitioner became eligible for promotion to the post of Superintending Engineer with effect from 12.6.1993, his turn for consideration for promotion to the post of Chief Engineer fell due with effect from 12.6.2001. When counted in the same way, the respondent No. 3 would become eligible for consideration for promotion to the post of Chief Engineer, when he completes the requisite 8 years of regular service in the grade of Superintending Engineer, i.e., 20.7.2005. Thus, even for promotion to the post of Chief Engineer, the respondent No. 3 does not, according to the materials on record, become eligible for consideration. This finding, though tentative, is reached on the basis of the materials on record as they stand as on date.

36. Let me, now, come to, and deal with, Rule 28 of the Recruitment Rules of 1993. For the sake of brevity, Sub-rule (1) of Rule 28 is reproduced hereinbelow :

"28(1) Powers of the government for making temporary arrangements. --(1) Notwithstanding anything contained in these rules, if appointment to a post/grade of any cadre included in the service is to be made purely as local agreement (ad hoc) (sic) for short period, such appointment may be made by the government or the Appointment Authority, as the case may be from the persons who are otherwise eligible for promotion to such post under these rules, subject to their merit-cum-seniority in all respects as to recruitment of the post."

37. A bare reading of Rule 28(1) shows that though the Government has the

power to make temporary arrangements, such arrangements can be resorted to by making appointment from amongst only those persons, who are eligible for promotion to such post. Since the respondent No. 3 has not put in, as indicated hereinabove, the requisite years of service in the grade of Superintending Engineer, he cannot, under Rule 28(1), be considered eligible for appointment as a matter of even stop-gap arrangement. As against this, the writ petitioner is, until contrary is shown, eligible for appointment as Chief Engineer under Rule 28(1). Coupled with this, it is also necessary to bear in mind that even for the purpose of making a stop-gap arrangement under Rule 28, the question of seniority of the persons eligible to receive such appointment is not irrelevant and cannot be wholly ignored. Viewed from this angle, it is clear that while the respondent No. 3 cannot be a beneficiary of Rule 28(1), the writ petitioner is eligible to receive the benefit of this sub-rule so far as the holding of the charge of the office of the Chief Engineer (Power) is concerned.

38. Let me, now, come to the question as to whether the writ petitioner could have been transferred to the post of OSD, APSERC. While dealing with this aspect of the matter, it is of utmost importance to note that the Recruitment Rules of 1993 do not, admittedly, cover the post of OSD, APSERC. Thus, the post of OSD aforementioned is an ex-cadre post. To an ex-cadre post, an employee cannot be sent without his or her consent. Transfer of a person to an ex-cadre post basically can be only on deputation and if he has to be sent on deputation, his consent is required to be obtained. In the case at hand, no consent whatsoever of the writ petitioner was, admittedly, obtained and no such consent exists on record. Thus, the impugned order transferring the writ petitioner to an ex-cadre post, such as, OSD, APSERC, is wholly illegal and cannot be sustained in law. Reference made by Mr. B.C. Das, in this regard, to *Tilak Raj v. State of Punjab*, reported in 1988 LIC 167 is not wholly misplaced inasmuch as in *Tilak Raj* (supra), the High Court has laid down to the effect that a Government servant cannot, against his wishes, be transferred to a post outside the cadre of his service.

39. Let me, now, turn to the question of effect of the show cause notice, dated 17/22.10.2003, produced before this Court by the learned Advocate General, which, according to the learned Advocate General, Arunachal Pradesh, Mr. C.K. Sarma Barua, furnished the ground for removal of the writ petitioner from the post of Chief Engineer (Power). While dealing with this aspect of the case, it needs to be noticed and emphasized that in their affidavit-in-opposition, the State-respondents have not even whispered about the said show-cause notice. Apart from the question as to whether the allegations contained in the said show-cause notice are invented for the purpose of fabricating a ground to justify the transfer of the petitioner or not, what is of immense importance to note is that the show-cause notice is shown to have been given to the writ petitioner for his alleged misconduct. The transfer of the petitioner cannot, therefore, be treated to be a transfer simpliciter. Reference may be made to *State of U.P. and Ors. v. Jagdeo Singh*, reported in 1984 (Supp) SCC 413 wherein it has been held that

when a transfer is penal, such a transfer is not valid. Reference may also be made to the *The Management of the Syndicate Bank Ltd. Vs. The Workmen*, wherein the Apex Court has made it explicit that if an order of transfer is made as a measure of punishment or with ulterior motive or mala fide, the Court should interfere.

40. As to what amounts to stigma has been considered in *Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others*, wherein the Court explained the meaning of "stigma" by quoting, from the Webster's New World Dictionary as "something that detracts from the character or reputation of a person, a mark, sign etc., indicating that something is not considered normal or standard". Reference was made to legal thesaurus by Burton, which defines "stigma" as blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Court also referred to the Webster's New International Dictionary, which defines the stigma as a matter of moral reproach. Similar observations were made in *Allahabad Bank Officers Association and another Vs. Allahabad Bank and others*, All these cases were referred to with approval by the Supreme Court in the case of *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*,

41. Since the transfer of the petitioner is on his alleged misconduct, the transfer is ex-facie penal and could not have been made without opportunity having been given to the petitioner to, at least, show cause against the alleged misconduct. Far from this, the transfer order has been made even before giving him opportunity of showing cause against the alleged misconduct.

42. It is, thus, settled position of law that a person cannot be transferred on allegation of misconduct. Such a transfer will be penal and stigmatic in nature and cannot be made without affording an opportunity of hearing in accordance with the relevant disciplinary Rules. Thus, the impugned order of transfer is ex facie penal and stigmatic in nature and the same suffers from lack of bona fide. Such an order, if allowed to stand good on record, will be in violation of the principles of natural justice and shall cause serious miscarriage of justice.

43. Coming to the submission of Mr. B.C. Das that a person cannot be transferred to a post unless the post to which he is transferred is equivalent, in status, to the post, which he is holding, it is important to bear in mind that the writ petitioner, though Superintending Engineer, is (according to materials on record) eligible for promotion to the post of Chief Engineer. Since the writ petitioner has been replaced as a Chief Engineer by an officer, namely, respondent No. 3, who is junior to the writ petitioner, and the writ petitioner is transferred to the post of OSD, APSERC, it needs to be examined if the post of OSD aforementioned is an equivalent post in status to that of the Chief Engineer (Power). A cursory glance at the impugned order, dated 7.10.2003, shows that the post of OSD aforementioned is of the level of Superintending Engineer. This apart, the post of OSD, APSERC, can, in no way, be equated to the post of Chief Engineer (Power) which is the highest post in the hierarchy envisaged under the

Recruitment Rules of 1993. It is not even contended on behalf of the respondents, at the time of hearing, that the post of OSD aforementioned is a post equivalent, in status, to the post of Chief Engineer (Power). Seen thus, it is clear that the petitioner could not have been transferred to the post of OSD, APSERC, from the post of Chief Engineer (Power) on being replaced by an officer junior to him. Viewed from this angle also, the impugned order cannot be maintained. Reliance placed by Mr. Das on the case of Vice-Chancellor, L.N. Mithila University Vs. Dayanand Jha, cannot be ignored inasmuch as in this case, the Apex Court has clarified that the true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts.

44. Thus, although the posts, in question, may carry equal scale of pay, the two posts may still not be equivalent in status if the post carry unequal duties and the responsibilities. In the case at hand, though the post of OSD, APSERC, carry same scale as that of the Superintending Engineer, the fact remains that the petitioner has been transferred from a post much higher in status to the post to which he has, now, been posted and he stands substituted by an officer, who, as materials on record exist today, is junior to the petitioner. Such an order cannot be treated as just, fair, bona fide and legal and the High Court, while exercising basically the powers of a Court of equity, cannot allow such an order to stand good on record. Reference may also be made to Governing Body, Governing Body, St. Anthony's College, Shillong and Others Vs. Rev. Fr. Paul Petta of Shillong East Khasi Hills, wherein it has been laid down that when an order of transfer adversely affects the status, which the incumbent was enjoying, such a transfer cannot be made without giving him any opportunity of showing cause. In the case at hand, when transfer is not only penal and stigmatic in nature, but also to a post, which is not equivalent in status to the post of Chief Engineer, and when the petitioner, at the same time, stands substituted by an officer junior to him, such an order of transfer can, by no means, be held to be legal and just.

45. Though Mr. R.P. Sharma, learned counsel appearing for the respondent No. 3, has submitted that even the respondent No. 3 was sent to the post of OSD, APSERC, without obtaining his option, there is no harm if the writ petitioner is transferred to the said post without obtaining his option, it is to be noted that since the respondent No. 3 had no objection to his transfer to the post of OSD aforementioned, it does not, as a corollary, mean that the writ petitioner could have also been transferred to the said post of OSD without his having given option thereto.

46. Let me, now, advert to the question raised by the learned Advocate General that on account of the bar imposed by Sub-rule (3) of Rule 28 of the Recruitment Rules of 1993, the impugned transfer order had to be made by the State-respondents. While dealing with this submission made on behalf of the State-respondents, it is necessary, once again, to refer to and reproduce hereinbelow Rule 28 of the Recruitment Rules of 1993 as a whole :

"28. Powers of the government for making temporary arrangements. -- (1)

Notwithstanding anything contained in these rules, if appointment to a post/grade of any cadre included in the service is to be made purely, as local agreement (ad hoc) for short period, such appointment may be made by the government or the Appointment Authority, as the case may be from the persons who are otherwise eligible for promotion to such post under these rules, subject to their merit-cum-seniority in all respects as to recruitment of the post.

(2) Any appointment made under Sub-rule (1) above, shall be reported by the Appointing Authority or the government as the case may be, to the Commission.

(3) Any appointment made under this rule shall not continue beyond a period of six (6) months without prior approval of the Commission."

47. A close and dispassionate reading of Rule 28 shows that this rule confers on the Government the power to make temporary arrangements. Sub-rule (1) of Rule 28 shows that if an appointment to a post or grade of any cadre is to be made purely as a local arrangement on ad hoc basis, for a short period, such appointment shall be made by the government or the appointing authority from amongst persons, who are, otherwise, eligible for promotion to such post. This sub-rule shows that the appointment, so made, is purely on ad hoc basis and for a short period.

48. Now, the question is as to what is the effect of Sub-rule (3) of Rule 28, which lays down that any appointment made under Rule 28(1) shall not continue beyond a period of six (6) months without prior approval of the APPSC ? The word "any" occurring in Sub-rule (3) is of great significance. While interpreting any rule, the language, employed therein by the framers of the Rules, has to be given its natural meaning unless the context, otherwise, demands. For this purpose, it is necessary to understand the meaning, purport and import of the word "any" appearing in Sub-rule (3).

49. It is well settled rule of interpretation of statutes that the provisions of any Act or Rule should be interpreted in such a manner as not to render any of its provisions otiose unless there are compelling reasons for the Court to resort to such extreme contingency. In P. Ramanatha Aiyar's Law Lexicon, 2nd Edition 1997, the meaning of the word "any" is given thus :

"The word "any" may have one of several meanings, according to the circumstances, it may mean "all"; "each"; "ever"; "some" "or one or more out of several". "Any", is not confined to a plural sense. "Any" is a word which excludes limitation or qualifications. When "any" is preceded by a negative, expressed or implied, the two are together equivalent to an emphatic negative, "none at all", "not even one", as there has never been any doubt about that. "Any" is used in the sense of any body, any person. The word "any" has the following meaning - "some", one out of many; an infinite number, one indiscriminately of whatever kind or quantity of may be employed to indicate "all" or "every" as well as "some" or "one"."

50. The State-respondents appear to have treated the word "any" to mean "an" or "ever". It is of prime importance; to note that neither Sub-rule (2) nor Sub-rule (3) of Rule 28 of the Recruitment Rules of 1993 speaks of "an appointment made under Sub-rule (1) or "every appointment" made under Sub-rule (1) ; rather, it speaks of "any appointment". Hence, the word "any" used in Sub-rule (3) cannot be interpreted to mean "an appointment" or "every appointment" made under Sub-rule (1). If Sub-rule (3) is stretched to mean "on appointment" or "every appointment", the same will make Sub-rule (3) redundant and otiose. The Apex Court has made this position clear in *Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others*, in the following words :

"It is a well settled rule of interpretation of statutes that the provisions of an Act should be interpreted in such a manner as not to render any of its provisions otiose unless there are compelling reasons for the Court to resort to that extreme contingency."

51. I may pause here to refer to *Ahmed Yar Jung Vs. The Collector Land Acquisition, Hyderabad*, wherein the Apex Court quoted the meaning of the word "any" thus :

"The word "any" dictionaryally means "one or some or all". In Black's Law Dictionary, it is explained thus, word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "same" or "one" and its meaning in a given statute depends upon the context and subject matter of the statutes. The use of the word "any" in the context it has been used in Clause (o) indicates that it has been used in wider sense extending from one to all."

52. What emerges from the above discussion is that the word "any" may include "all" and not necessarily "one". If the word any occurring in Rule 28(3) is interpreted otherwise, it will set at naught the very object of framing Rule 28(3) and make the Rule 28, as a whole, otiose inasmuch as the Government or the appointing authority will, then, remain at liberty to continue with ad hoc arrangements under Rule 28 indefinitely. Viewed from this angle, Rule 28(3) has to be held, and I do hold, as mandatory and not directory.

53. If the word "any" appearing in Sub-rule (3) is interpreted as "an appointment" or "every appointment", the consequences will be that a person can be appointed under Sub-rule (3) and just before the end of the expiry of the period of six months, there would be an artificial discontinuance of his service and similar order of appointment would be repeated and the process may continue indefinitely. Similarly, if the word "any" is interpreted as "an appointment" or "every appointment", the result will be that the Government can appoint a person for a period of less than six months under Sub-rule (1) and, then, substitute him by another person for a period less than six months and the process, thus, can be allowed to continue indefinitely making the chair of the Chief Engineer a musical chair and thereby making a mockery of Sub-rule (3). Hence the word "appointment" appearing in Sub-rule (2) or (3) will mean a

temporary arrangement made, as a whole, by the Government or the appointing authority under Rule 28(1). The realistic interpretation of Sub-rule (3) will, therefore, be that "any appointment" means "all" appointments made, in the context of one ad hoc arrangement under Rule 28(1), and shall be read in the negative as "no appointment" and this will mean that none of the appointments, made under Sub-rule 28(1) as a result of the Government or appointing authority's decision to make an ad hoc arrangement in respect of any post or grade, can be continued beyond a period of six months without prior approval of the APPSC. In other words, if a temporary arrangement is made by giving appointment to a person, then, the whole arrangement cannot be continued for more than six months except with prior approval of the APPSC and the Government or appointing authority cannot wriggle out of the situation substituting the incumbent, whose period of six months has come to an end, by another appointee.

54. Let me, now, turn to the question as to what will be the effect of an arrangement made by the Government in exercise of its powers under Sub-rule (1) of Rule 28, if the appointment made under Sub-rule (1) is allowed to be continued without prior approval of the APPSC beyond a period of six months ? While interpreting Sub-rule (3) on this aspect of the matter, it is important to bear in mind that if for any reason and not on account of the efforts made by an appointee, the Government allows a temporary appointment to continue beyond a period of six months without prior approval of the APPSC, then, the incumbent will have no option, but to continue inasmuch as he does not have the power to go back, on his own, to his parent post from where he was brought on the strength of the appointment made on ad hoc basis. Sub-rule (3), therefore, cannot be interpreted, in such a way, which will cause harm to the incumbent for some act of omission on which he has no control. While interpreting Sub-rule (3), it is of great significance to note that this sub-rule does not say that any appointment made under Sub-rule (1) shall expire or cease to be effective beyond a period of six months if approval of the APPSC is not obtained. Hence, Sub-rule (3) cannot be read to mean that by efflux of time, an appointment made under Rule 28(1) will expire on completion of a period of six months.

55. Considered thus, I am of the firm view that Sub-rule (3) is mandatory to the extent that it commands the Government to seek approval of the APPSC to an appointment made as a result of ad hoc arrangement under Rule 28 if such an ad hoc arrangement is to be continued for longer than six months ; but upon expiry of six months, there will be no automatic termination of the service of the incumbent and the services rendered by such an incumbent on ad hoc appointment will not stand wiped out. Since the remedy of the Government does not lie in substituting A by B in order to continue with such ad hoc appointment, the incumbent shall continue to hold the appointment as long as the arrangement is continued by the Government. This does not mean, I must hasten to add, that once a person is appointed, on the basis of ad hoc arrangement made under Rule 28(1), he cannot be removed, if a period of six

months elapses and/or that he cannot, under any circumstances, be removed and/or replaced by another eligible person. A person, who comes to occupy an office on ad hoc basis under Rule 28(1), can, indeed, be removed or transferred on administrative reasons provided that the transfer is not mala fide, stigmatic, with ulterior motive or as a measure of punishment, but he cannot be removed on the mere ground that he has remained in the post for six months without the Government or appointing authority having obtained approval thereto by the APPSC, for, if the Government or the appointing authority is allowed to adopt such a course, it will, as already indicated hereinabove, set at naught the very object of Rule 28 and make thereby the rule redundant and otiose as a whole inasmuch as the Government or the appointing authority will continue with ad hoc system of appointments by substituting one ad hoc appointment by another ad hoc appointee. Such on ad hoc appointee's removal on the ground of completion of six months is possible only if the APPSC refuses to accord approval thereto or if the Government (or the appointing authority) decides either to do away with the ad hoc arrangement completely by giving no further ad hoc appointment or if it decides to make permanent appointment instead of indulging in ad hocism.

56. Rule 28, while on the one hand, allows the Government or the appointing authority to make ad hoc arrangement to meet the exigency of situation, it also, at the same time and on the other hand, restricts the Government or appointing authority from continuing with such ad hoc appointment indefinitely with the novel process of substituting one ad hoc appointee by another ad hoc appointee making thereby an ad hoc arrangement a continuous arrangement, for, in such a case, the ad hocism may indefinitely continue and the APPSC will have no role to play, which certainly does not appear to be the aim and object with which Rule 28 stands framed.

57. In the case at hand, the State respondents have taken contradictory stand on the question of transfer of the writ petitioner inasmuch as while, on the one hand, they claim to have removed the petitioner from the post of Chief Engineer (Power) on the ground of alleged misconduct, they, on the other hand and in the same breath, endeavour to plead that the removal had become inevitable on account of the fact that the petitioner had completed six months on the basis of the ad hoc appointment. If a person is removed from his ad hoc appointment merely on the ground that he has completed six months without APPSC having accorded approval to his ad hoc appointment, the fault is not really of the incumbent and Government or appointing authority cannot be allowed to substitute him by another person, for, if such a process is allowed to continue, the process of ad hoc appointments, which is envisaged to be rare, will become the order of the day and it will make, as already indicated hereinbefore, the whole object of Rule 28 otiose and such a process will be contrary to the whole concept for which Rule 28 has been framed.

58. Since the Government has been restrained by a Division Bench of this Court,

vide order, dated 12.12.2002, passed in WA Nos. 160/2002 and 162/2002 from making regular promotion to the post of Chief Engineer (Power) without completing the exercise of regularizing the promotions in the posts of Superintending Engineer and since the Government, by issuing the impugned order, has shown its intention to continue with the stop-gap arrangement in respect of the post of Chief Engineer (Power), the remedy, as already indicated hereinabove, does not really lie in substituting the writ petitioner by someone else, for, under no circumstances, the appointment made by way of temporary arrangement under Rule 28 of the Recruitment Rules of 1993 can continue in the manner as has been done in the present case beyond the period of six months. The remedy, therefore, is that the Government shall obtain approval of the APPSC for enabling it to continue with the temporary arrangement.

59. In view of the fact that this Court has already held that the transfer of the petitioner to the post of OSD aforementioned is illegal and void ab initio, this Court is, now, duty bound to strike down the impugned order and the effect thereof would be that the order, dated 28.10.2002, (Annexure XIV to the writ petition) shall stand revived and restored. It is also worth noticing that the Government has substituted the present writ petitioner by the respondent No. 3 indicating thereby that none senior to the petitioner in the Department of Power can be considered for holding the post of Chief Engineer at the moment. Ideally, therefore, it will be for the Court to direct that while allowing the writ petitioner to hold the post of Chief Engineer (Power) on ad hoc basis, the State-respondents shall seek approval as regards ad hoc arrangement made under Rule 28(1) from the APPSC and undertake, in the meanwhile, the exercise of regularizing the promotion in the grade of Superintending Engineer in terms of the directions given by the Division Bench in its order, dated 12.12.2002 aforementioned, passed in Writ Appeal Nos. 160/2002 and 162/2002.

60. In the result and for the reasons discussed above, this writ petition partly succeeds. The impugned order, dated 7.10.2003, is hereby set aside and quashed meaning thereby the order, dated 28.10.2002, aforementioned shall accordingly stand revived and restored. The State respondents shall apply to the APPSC for approval as regards the ad hoc arrangement made under Rule 28(1) of the Recruitment Rules of 1993 for the post of Chief Engineer (Power) and do the needful accordingly. It is further directed that the State respondents shall, unless directed, otherwise, by any judicial order, complete the exercise as expeditiously as possible regarding regularization of the services of the persons in the grade of Superintending Engineers in the Department of Power in terms of the order, dated 12.12.2002, passed in Writ Appeal Nos. 160/2002 and 162/2002.

61. With the above observations and directions, this writ petition shall stand disposed of.

62. There shall be no order as to costs.