

(2008) 07 AP CK 0076

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 27749, 27708 and 28373 of 2007 and 14433 of 2008

E. Shankar Reddy

APPELLANT

Vs

P. Ramaseshaiah and Others
 G.P. Vinod Kumar and
Ravela Vijayapaul Vs The Deputy General of Police,
Hyderabad Range, The Director General of Police, The State
of Andhra Pradesh
 Y.V. Ramana Kumar and Others Vs
Mohd. Khan, Inspector of Police City, Security Wing and
Others
 Sri Mohd. Taher Ali Vs Mohd. Khan, City
Security Wing and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 20
Andhra Pradesh (Andhra Area) District Police Act, 1859 — Section 10, 8
Andhra Pradesh (Telangana Area) District Police Act, 1329 — Section 6
Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 — Rule 12(2), 5(1)
Andhra Pradesh Police (Civil) Service Rules, 1998 — Rule 6
Andhra Pradesh Police Subordinate Service Rules, 1966 — Rule 2, 5, 6
Andhra Pradesh State and Subordinate Service Rules, 1962 — Rule 3(15)
Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 33
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 16, 226, 309, 32
General Rules — Rule 33
Hyderabad City Police Act, 1348 — Section 7

Citation : (2009) 1 ALD 785 : (2008) 6 ALT 738

Hon'ble Judges : Ghulam Mohammed, J;C.V. Ramulu, J

Bench : Division Bench

Advocate : B. Adinarayana Rao, in WP No. 27749 of 2007, K. Lakshmi Narasimha, in WP No. 27708 of 2007, D. Linga Rao, in WP No. 14433 of 2008 and K. Sudhakar Reddy, in WP No. 28373 of 2007, for the Appellant; GP for Services 1/A.G. for Respondent Nos. 1 to 6 in WP Nos. 27749, 27708 and 28373 of 2007 and 14433 of 2008, D. Prakash Reddy, for P. Raghavendra Reddy, for Respondent No. 11 and Mavidi Rama Rao, in WP No. 27749 of 2007, J.R. Manohar Rao, in WP No. 27708 of 2007 and S. Satyam Reddy and T. Surya Karan Reddy, in WP No. 28373 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Ramulu, J.—In all these Writ Petitions, the question that arises for consideration is whether mere seniority alone is the criteria or is there any eligibility criteria, apart from the seniority in a particular cadre, for the purpose of promotion to the higher post ?

2. Petitioners were all initially appointed as Reserve Sub-Inspectors (RSIs) of Category-3 of Class I of A.P. Police Subordinate Service. The RSIs are entitled to be appointed as Sub-Inspectors (Civil) in Category-1 of Class 1, against 5% of the vacancies earmarked for them. The RSIs, on transfer, are put on probation and sent for 6 months training. The RSIs, who had put in 5 years and more service in Class I Category-3 posts of the Andhra Pradesh Police Subordinate Service Rules (for short "Special Rules"), on conversion as SIs (Civil) and after completion of probation and training, according to them, are entitled for being promoted to the post of Inspector of Police (Civil) i.e. Category 4 of A.P. Police Service, on taking their seniority from the date of their initial appointment in the category of RSI; thus, they claim that they are entitled for being promoted to the post of Inspector immediately after completion of 6 years of service from the date of their initial appointment, on conversion as SI (Civil) under 5% quota. In fact, this was a subject matter of O.A. No. 1396 of 1999 and batch, wherein the A.P. Administrative Tribunal held that the RSIs are not entitled to claim their seniority from the date of their initial appointment and consequential promotion to the post of Inspector of Police. Challenging the same, Writ Petition No. 2120 of 2000 and batch were filed, which were disposed of by a Division Bench of this Court by an Order dated 15-6-2001. The Division Bench, while taking note of various Rules governing the field as to the claim of seniority of RSIs, ultimately held that in view of the legal position and fiction, they are entitled to reckon seniority right from the date of their initial appointment in the post of RSI and thus allowed the Writ Petitions filed by the RSIs and dismissed the Writ Petitions filed by direct recruits. Further, G.O.Ms. No. 188, dated 30.6.1999 was declared as invalid. Aggrieved thereby, though the Government did not carry the matter in appeal, direct recruit Civil SIs carried the matter by way of an appeal and it is given to understand that the Civil Appeal is pending; however, no interim orders were passed by the Apex Court. Thus, according to the RSIs, the question as to reckoning of the seniority and the consequent promotion on the basis of such seniority attained finality in the Judgment of this Court in W.P. No. 2120 of 2000 and batch. Therefore, the same cannot be reagitated in the O.As and hence, the Tribunal has committed an error in going beyond its jurisdiction and passing an Order contrary to the above Judgment of this Court and holding that in Judgment in Writ Petition No. 2120 of 2000 and batch, the eligibility criteria for the purpose of promotion was not taken into consideration and the relevant rules were not considered. On consideration of those rules, the Tribunal held in O.A. No. 5045 of 2007 and batch that though the RSIs are entitled for seniority as per the rule and legal fiction, but the seniority, as such, cannot be taken into consideration as a

matter of course for the purpose of promotion to higher posts. For the purpose of promotion to higher posts, the Rules govern the field and not the seniority alone. Challenging the same, these Writ Petitions are filed.

3. Sri B. Adinarayana Rao, the learned Counsel appearing for RSIs, (petitioner in W.P. No. 27749 of 2007) stated that a provisional seniority list dated 2-8-2007 was prepared in pursuance of the earlier orders, which attained finality. Therefore, preparing another provisional seniority list does not arise. Rule 15(a) read with Rule 15(c) of the Special Rules and G.O.Ms. No. 35, dated 11-2-1999 were considered by this Court in W.P. No. 2120 of 2000 and batch and against the Judgment therein, though Civil Appeal is filed before the Apex Court, no stay has been granted. Further, all the points raised by the unofficial respondents herein before the Tribunal as to preparation of seniority list, putting the RSIs, on transfer, on probation and training etc., were all taken into consideration and this Court finally held that RSIs are entitled to reckon their seniority from the date of their initial appointment. In fact, some of them were also prompted and were given notional promotion in the cadre of Inspector. Whether one person is eligible for promotion or not is a matter of verification of the facts in each and every case. Many of the affected parties were not impleaded to these proceedings. Therefore, in an O.A. of this nature, a direction could not have been given to the authorities to prepare a panel for each year without laying down correct guidelines. The Tribunal cannot assume jurisdiction and decide eligibility on its own and cannot examine the academic questions in vacuum. The promotion of many of the RSIs, who were transferred to Class I of Category I services and were further promoted long ago was never challenged by any of the applicants before the Tribunal. The question whether the Government gives promotion with retrospective effect notionally or not has to be examined only in individual cases and not as a general. The eligibility cannot be on the basis of a general principle {Rule 5(F)(i)}. If the judgment of the Tribunal is to be accepted, every thing becomes otiose -all the settled things become unsettled. The seniority, promotion, probation etc., everything gets nullified and in view of the Order passed by the Tribunal it assumes a new dimension. In the present lis, the question of examining the eligibility criteria has no place. The Tribunal cannot decide the matter like the High Court under Article 226 of the Constitution. The powers and functions of the Tribunal are limited to Sections 19 and 20 of the Administrative Tribunals Act. In this regard, the learned Counsel relied upon B. Ananda Rama Rao and others Vs. State of Andhra Pradesh and others, wherein a Division Bench of this Court held that an application u/s 19 of the Administrative Tribunals Act questioning the provisional seniority list is not maintainable and mere apprehension of breach of service conditions does not give rise to cause of action to file the application. Learned Counsel also contended that the Government filed a counter before the Tribunal supporting the cause of RSIs, who were transferred and posted as SIs (Civil), whereas now a different stand is sought to be taken stating that the State Government can take such a stand while accepting the rationale adopted by the Tribunal, on advice.

4. Further, the legislative intendment was given effect to in the earlier Judgment as it does not offend Rule 15(c) of the Special Rules. Learned Counsel further contended that it is ridiculous to say that there was no seniority list, which attained finality or it is still open for the respondents to reopen such an issue, which was settled between the parties. Legislative fiction has to be taken into consideration as interpreted by the Division Bench earlier. The Division Bench in W.P. No. 2120 of 2000 and batch, at para-41 has made it very clear as to the legal fiction and seniority; therefore, Rule 6 or Rule 5(F)(i) of the A.P. Police Service Rules has no help to the unofficial respondents. In support of his contentions, Sri Adinarayana Rao, learned Counsel, relied upon a decision of the Apex Court in Union of India v. K.B. Rajoria 2000(3) SCC 562 wherein the recruitment rules prescribe "two years" regular service on feeder post for becoming eligible for promotion. Under those circumstances, it was held that the regular service did not mean actual service only and eligibility could be determined with reference to notional promotion granted from a retrospective date. Learned Counsel further relied upon a decision of the Apex Court in K. Jagannadha Rao v. State of A.P. AIR 1981 SC 1591 to impress upon the Court that in a similar case the seniority and promotion has attained finality and the same requires to be followed in this case and drawn attention of the Court to paragraphs 2 and 6 of the said judgment, which read as under:

2. Rule 5(1) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963, framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, classifies the civil services of the State into (a) the State Services, and (b) the subordinate services. The State Services are the superior class. The Andhra Pradesh Police Service is one of the State Services. The subordinate services include, among others, the Andhra Pradesh Police Subordinate Service. The Andhra Pradesh Police Service Rules, 1966, described as Special Rules for Andhra Pradesh Police Service, were also made in exercise of the powers conferred by the proviso to Article 309 of the Constitution. Rule 2 of the 1966, Police Service Rules sets out the three categories of officers constituting the service, namely : Category 1 composed of Commandants, Andhra Pradesh Special Police; category 2 which includes Deputy Superintendents of Police and Assistant Commissioners of Police, other than those in category 3; and category 3 comprising Deputy Superintendents of Police in various capacities including Assistant Commandants, Andhra Pradesh Special Police. Rule 3 of the Andhra Pradesh Police Service Rules, 1966, lays down the method and conditions for appointment to posts in the different categories. We are concerned in this appeal with Deputy Superintendents of Police belonging to categories 2 and 3 of the rules. Appointment as Deputy Superintendent of Police in category 2 is made by (a) direct recruitment, or (b) "recruitment by transfer" from Andhra Pradesh Police Subordinate Service, or (c) appointment from category 3 of this service with the concurrence of the Public Service Commission provided that the number of such appointments does not exceed two in a calendar year. Rule 3(15) of the Andhra Pradesh State and Subordinate Services

Rules, 1962, also framed under proviso to Article 309 of the Constitution, defines the expression "recruited by transfer"; from the definition it is clear that such recruitments are really by way of promotion. It is further prescribed by the 1966, rules that officers appointed Deputy Superintendents of Police from Category 3 to category 2 must pass certain tests and undergo further training and probation. It is also required that they must complete 8 years of service as Deputy Superintendent of Police in category 3 and shall be below 40 years of age.

6. There appears to be no dispute on the following points:

(1) categories 2 and 3 carry equal pay;

(2) qualifications for direct recruits to both categories are the same;

(3) promotion to either category is from the post of Inspector of Police which is a subordinate service, and the Inspectors of Police in the respective branches from whom promotions to the two categories are made also enjoy the same scale of pay.

5. Sri D. Linga Rao, learned Counsel appearing for the petitioners in Writ Petition No. 14433 of 2008, stated that when the judgment rendered between the parties once attained finality, the issue cannot be reopened. The issue relating to seniority between the parties attained finality in the judgment of the Division Bench in W.P. No. 2120 of 2000 and batch, dated 15-6-2001. In this regard, learned Counsel relied upon a Judgment reported in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, and drawn attention to paragraph-35, which reads as under:

35...In similar situation a Constitution Bench of this Court in *Daryao and Others Vs. The State of U.P. and Others*, held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same relief filed by the same parties will be barred by the general principle of *res judicata*. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the, plea as was observed at page 595 (of SCR) : (at p. 1467 of AIR) of the reported judgment, thus:

We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are subsequently the same.

The decision in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others*, , further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive *res judicata* underlying Explanation IV of Section 11 of the CPC was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of *res judicata*.

He further contended that the rights of the parties, which were concluded as per Rule 15(a) and (c) of the Special Rules read with Rule 33(c) of the General Rules cannot be taken away.

6. Dr. K. Lakshmi Narasimha, learned Counsel appearing for the petitioners in Writ Petition No. 27708 of 2007, reiterated the same stand as was taken by Sri B. Adinarayana Rao and further stated that only three persons objected for the provisional seniority list prepared in pursuance of the earlier judgment of this Court in W.P. No. 2120 of 2000 and batch and the said objections were repelled; therefore the Tribunal was not right in saying that the eligibility criteria was not decided in the earlier Writ Petition. Insofar as the criteria is concerned, learned Counsel relied upon the Judgment reported in *R. Ramaswamy v. Government of Tamilnadu* 1995 Supp (3) SCC 597 and drawn our attention to paragraphs 5 and 6, which read as under:

5. In view of the diverse contentions, the only question that arises for consideration is whether the appellant can be considered as senior to respondents 3 and 4 as Assistant Directors in the present Directorate. Rule 35(b) of the Tamil Nadu State and Subordinate Services Rules states thus:

35. (b) The transfer of a person from one class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred; where any difficulty or doubt arises in applying this sub-rule seniority shall be determined by the appointing authority.

6. In view of the order passed by the Government appointing the appellant substantively as Project Officer w.e.f 22-5-1979 and treating the said post as equivalent to the post of Assistant Director carrying the same status scale of pay, the necessary implication is that he is holding the status and scale of pay of the post of Assistant Director in the present Directorate. However, the question is whether the appellant is senior to Respondents 3 and 4. As already observed, respondents 3 and 4 were appointed on 10-12-1979 and 25-5-1981 respectively i.e., later than the appellant. Rule 35(b) clearly envisages that the seniority of

the transferred persons shall be determined with reference to the rank in the class or category from which he was transferred, which in the case of the appellant was the post of Project Officer. The necessary implication is that the appellant was deemed to have been transferred with the same status and scale of pay as Assistant Director, w.e.f. 21-5-1979. Consequently, he became senior to respondents 3 and 4 in that category, i.e. Assistant Director.

7. The sum and substance of the arguments of the learned Counsel for the petitioners is that the rights between the parties attained finality and it was held by the Court that the RSIs appointed as SIs (Civil) on transfer, are entitled to reckon their seniority from the date of their initial appointment in the post of RSI and when that is the guiding star for the purpose of fixation of seniority as well as promotion, the question of considering the further eligibility itself does not arise.

8. Sri J. Sudheer, learned Special Government Pleader appearing for the official respondents, contended that the Government can change its stand as per the advise as well as the rationale of the situation. In this regard, he relied upon the judgment reported in P. Nallammal Etc. Vs. State Rep. by Inspector of Police, whereunder it was held as follows:

7. Union of India was made a respondent before the Madras High Court and one Under Secretary to the Government of India had filed a counter-affidavit therein on 1-12-1998 conceding to the legal position espoused by the appellants. But Shri V.R. Reddy, learned senior counsel now appearing for the Union of India strongly supported the stand adopted by the State of Tamil Nadu. The volte-face of the Union of India cannot be frowned at, for, it is open to the State or Union of India or even a private party to retrace or even resile from a concession once made in the Court on a legal proposition. Firstly, because the party concerned, on a reconsideration of the proposition could comprehend a different construction as more appropriate. Secondly, the construction of statutory provision cannot rest entirely on the stand adopted by any party in the lis. Thirdly, the parties must be left free to aid the Court in reaching the correct construction to be placed on a statutory provision. They cannot be nailed to a position on the legal interpretation which they adopted at a particular point of time because saner thoughts can throw more light on the same subject at later stage.

9. Learned Special Government Pleader also brought to the notice of this Court, another judgment of the Apex Court reported in Sanjeev Gupta and Others Vs. Union of India (UOI) and Another, wherein following the said judgment in P. Nallammal's case (supra) held that a wrong concession of law cannot bind the parties, particularly when the constitutionality of a statute is in question. The only thing, which needs to be examined in a situation like this, is whether the changed stand is legally tenable or not. Learned Counsel also relied upon the decision in Commissioner of Endowments and Others Vs. Vittal Rao and Others, and drawn attention of the Court to paragraph-14 of the said decision, which reads as under:

14. It was not contended on behalf of the appellants, till it was raised for the first time during the course of arguments before the Division Bench in the Writ Appeal No. 429 of 1998, that the learned Advocate General did not appear before the learned single Judge and it is not the case of the appellants that the counsel representing the appellants before the learned single Judge were not authorized to make the consent statement to accept the compromise. However, it was contended before us that a concession made on the question of law by the learned Counsel does not bind the parties. Learned Single Judge disposed of the writ petition on the representation of learned Counsel for the parties recording the compromise as per the Government Memo No. 1295, dated 27-10-1989. The writ petition was disposed of in terms of the compromise with a direction to implement them within a period of four weeks. The representation so made or consent given for disposal of the Writ Petition before the Learned Single Judge, in our view, is not and does not amount to giving of concession on a point of law particularly, when we are taking a view that the provisions of the Act have no application to the property in question. The two decisions in Nedunuri Kameswaramma Vs. Sampati Subba Rao, and (2) B.S. Bajwa and Another Vs. State of Punjab and Others, have no application to the facts of the present case for the reasons that they were the cases dealing with concession on the point of law given by the counsel and those decisions were rendered on the facts of those cases. Further, we are of the view that in this case, there was no concession by the learned Counsel on behalf of the appellants on a point of law.

10. Learned Special Government Pleader further stated that the Tribunal has laid a correct law; therefore, the Government accepted the same and as such, has not preferred any Writ Petition before this Court. He also stated that Rule 5(F)(i) of the A.P. Police Service Rules is a rule available on the statute book and in a matter of seniority everything can be gone into, such as, eligibility etc. Special Rules were looked into and the Tribunal thus while examining as to the eligibility criteria laid down the law in the impugned Order in the O.As. Therefore, it cannot be said that a mere academic exercise was made. Further, he stated that fresh training was imparted and the RSIs were put on probation even after their transfer and appointment as SI (Civil). Further, the Division Bench in the judgment in W.P. No. 2120 of 2000 and batch has not decided as to the eligibility criteria for promotion/transfer to higher category. As the whole issue revolved around the General Rules, the A.P. Police Service Rules were never considered for the purpose of eligibility. This is the first time the issue has come up for consideration. Rule 10(1)(b) of the Special Rules contemplates appointment, putting on probation on transfer etc. Assuming that some of the petitioners were promoted temporarily, that does not confer any right on them. The seniority and eligibility are altogether different facets of service jurisprudence. The seniority alone cannot be a criterion for the purpose of eligibility for being promoted to the higher post.

11. In this regard, learned Counsel relied upon the judgment reported in R. Prabha Devi and Others Vs. Government of India, through Secretary, Ministry of

Personnel and Training, Administrative Reforms and Others, and drawn attention to paragraphs 11 and 15, which read as under:

11. Mr. T. S. Sundara Rajan, a promotee Section Officer, Respondent No. 2 has submitted that the appellants who are directly recruited Section Officers on the result of examination held by the Union Public Service Commission in 1978 and 1980 against substantive * vacancies, have become senior to the promotee Section Officers on the basis of the quota reserved for direct recruits even though the promotee Section Officers have rendered more than thirteen years" service as section Officers. This fixation of seniority has no reference to the length of service. The inter se seniority between the direct recruits and the promotee Section Officers being determined on the basis of the quota, the promotee Section Officers even though they have been promoted to the post of Section Officers and have rendered service for a considerable period have become juniors to them in service and were not considered for promotion even. These promotee Section Officers like the Respondent No. 2 have not been considered for promotion in spite of their rendering service as such for more than thirteen years whereas the direct recruit Section Officers who were appointed much later were considered and promoted purely on the ground of seniority. This has created frustration in the minds of the promotees. To obviate this the Government after due consideration of all aspects has by Notification dated December 29, 1984 amended the proviso to Sub-rule (2) of rule 12 of C.S.S. Rules prescribing a uniform eligibility of rendering eight years" approved service as Section Officers by both the direct recruit Section Officers and the promotee Section Officers for being considered for promotion to Grade I (Under Secretary). The said amendment, it has been submitted, is neither arbitrary nor unjust. It has been further submitted that the promotee Section Officers if given promotion will render their service duly and efficiently as has been rendered by the direct recruit Section Officers promoted to Grade I.

15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years" approved service in the grade of Section Officer as a condition of eligibility for being considered for promotion to Grade I post of C.S.S. This rule is equally applicable to both the direct recruit Section Officers as well as the promotee Section Officers. The submission that a senior Section Officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section Officers including senior direct recruits in order to be eligible for being considered

for promotion when qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post. The rule in question which prescribes a uniform period of qualified service cannot be said to be arbitrary or unjust violative of Articles 14 and 16 of the Constitution. It has been rightly held by the Tribunal:

When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience.

12. Sri D. Prakash Reddy, learned senior counsel appearing for the direct recruit SIs (Civil) (unofficial respondents in Writ Petition No. 27749 of 2007) contended that it was only a provisional seniority list, which was prepared in pursuance of the earlier orders of this Court in W.P. No. 2120 of 2000 and batch. Objections were filed and they were rejected and the appeals filed thereagainst were also dismissed. Therefore, the present O.As. Thus, it cannot be said that an application u/s 19 read with Section 20 of the Administrative Tribunals Act is not maintainable before the Tribunal. Rule 5(F)(i) of the A.P. Police Service Rules was not considered in the earlier judgment. The said Judgment has no bearing for deciding as to the eligibility of a person for promotion etc. The very rule available on the statute book was not challenged at any point of time. What was challenged was that SIs (Civil) drawn from the category of RSIs would not have been promoted by reckoning their seniority from the date of their initial appointment in the post of RSI, ignoring the eligibility criteria.

13. Sri J.R. Manohar Rao, learned Counsel appearing for the unofficial respondents in Writ Petition No. 27708 of 2007 stated that his clients have filed implead petitions in the O.A. and challenge was made to the rejection of the objections by the authorities concerned. Therefore, it may not be correct to say that only the provisional seniority list was challenged by them. In this regard, learned Counsel relied upon the decision in P. Mohan Reddy etc. Vs. E.A.A. Charles and Others etc., wherein it was held even though an employee cannot claim to have a vested right to have a particular position in any grade, but all the same he has the right of his seniority being determined in accordance with the Rules which remained in force at the time when he was borne in the Cadre. Further, the question of re-determination of the seniority in the cadre on the basis of any amended criteria or Rules would arise only when the amendment in

question is given a retrospective effect. If the retrospectivity of the Rule is assailed by any person then the Court would be entitled to examine the same and decide the matter in accordance with the law and if the retrospectivity of the Rule is ultimately struck down, necessarily the question of re-drawing of the seniority list under the amended provisions would not arise, but if however, the retrospectivity is upheld by a Court then the seniority could be re-drawn up in accordance with the amended provisions of the employees who are still in the cadre and not those who have already got promotion to some other cadre by that date.

14. Further, it cannot be said that the seniority of an employee has to be changed over and over again as and when the criteria changes.

15. Sri J.R. Manohar Rao, learned Counsel, also submitted that the old as well as the new Rules contemplate as to the eligibility criteria. Therefore, putting up the minimum service of 6 years in the cadre of Class I Category I for being considered for promotion by transfer to the post of Inspector of Police is a must. This was not taken into consideration and notional promotions were given from the date prior to their transfer into the post of SI (Civil). In this regard, the learned Counsel drawn attention of the Court to SI. Nos. 136 and 137 of the provisional seniority list published on 4-8-2007 whereunder one S. Mohan Reddy, RSI, who was appointed as RSI on 15-2-1985 was appointed as SI (Civil) with effect from 10-6-1992 was given notional date of seniority in the post of Inspector of Police - Category-4 with effect from 21-1-1992 i.e. 5 months prior to his transfer as SI (Civil). Similar is the case of E. Shanker Reddy at SI. No. 137 of Hyderabad Range. Learned Counsel, in this regard, cited a judgment reported in K. Madhavan and Another Vs. Union of India (UOI) and Others, and drawn attention of the Court to paragraph 6, which reads as under:

6. The petitioners have, in the first instance, challenged that respondent 5 was not even eligible for appointment to the post of SP, CBI. Respondent 5 was a deputationist and under the 1963 Rules that were prevailing at the material time, he was to complete eight years, service in the grade. There has been much controversy over the expression "in the grade". According to the petitioners, the expression should be understood as meaning in the grade of SP in the CBI. In other words, the contention of the petitioners is that respondent 5 should have been for eight years in the CBI as DSP before he would be eligible for appointment to the post of SP in the CBI. As respondent 5 joined the post of DSP in the CBI on deputation on 1-7-1967, he could not be appointed to the post of SP even on 28-10-1972, far less on 21-7-1971 (FN), for on either date, he did not complete eight years of service in the CBI. We are, however, unable to accept, the contention, "eight years" service in the grade" would mean "eight years" service in the grade of DSP". The 1963 Rules do not provide that the period of eight years should be computed from the date of deputation to the CBI as DSP. In the absence of any such express provision, it must be held that the period during which one held the post of DSP in the State Police Service should

also be taken into account for computing the period of eight years. The 1963 Rules provide that two years must be spent on probation as DSP in the CBI. The position, therefore, comes to this that of the total period of eight years, two years must be on probation basis in the CBI. An officer may have been in the State Police as DSP for a period of six years and, thereafter, if he joins the CBI on deputation and spends two years on probation, he would be eligible for consideration for appointment to the post of SP. If this view is not taken, no officer would be available to join the CBI on deputation. It has already been noticed that the CBI requires efficient and * experienced police officers and if the period spent by police officers in the State Police Service is not taken into account for the purpose of computing the period of eight years, it would be doing injustice to such police officers who join the CBI on deputation. In our view, therefore, there is no substance in the contention of the petitioners that in order to be eligible for appointment to the post of SP in the CBI, one should be in the rank of DSP in the CBI for a period of eight years including a period of two years on probation. Respondent 5 having held the post of DSP for five years in the Rajasthan State Police and more than three years in the CBI. that is to say, over eight years, he was quite eligible for appointment to the post of SP. The two petitioners, Madhavan and Sen, and respondent 50. P. Sharma are all now holding the post of DIG....

16. Learned Counsel has also drawn attention of the Court to the decision reported in Scientific Advisor to Raksha Mantri and Another Vs. V.M. Joseph, for the proposition and as to the scope of Sections 19 and 20 of the Administrative Tribunals Act. It is further stated that the basic qualification required for the purpose of recruitment to the post of RSI was Intermediate, whereas for the purpose of recruitment to the post of SI (Civil) was Graduation (of course, it appears that those who were converted as Civil SIs from RSIs against 5% quota were all holding Graduation qualification).

17. Sri S. Satyam Reddy, learned Counsel appearing for the 8th respondent in Writ Petition No. 28373 of 2007 reiterated the same stand as was taken by the learned Counsel appearing on behalf of unofficial respondents in other Writ Petitions.

18. Mr. T. Suryakaran Reddy, learned Counsel appearing for the Civil SIs of 1985 batch (Writ Petition No. 28373 of 2007) drawn attention of the Court to prayer portion of O.A. No. 5130 of 2007 and contended that the eligibility criteria for the purpose of promotion by way of transfer and appointment was available in the original rules of A.P. Police Service Rules and this was never brought to the notice of the Court for the purpose of considering eligibility with regard to promotion to the post of Inspector and higher posts. Even the new Rule 6, which is nothing but reproduction of old rule and which came into force from 1-6-1998 also speaks of the same thing. RSIs are not entitled for further promotion to the post of Inspector even before they completed 6 years of service in the category of SI (Civil).

19. Sri M. Ramarao, learned Counsel appearing for some of the unofficial respondents stated that the provisional seniority list was issued and it was communicated on 5-8-2007 and the affected persons were asked to submit objections within one day. Therefore, the affected persons have filed O.As., which were allowed and they were given one month time for filing objections. He has also taken the same stand as was taken by other counsel supporting the case of SIs (Civil) (direct recruits).

20. We have given our earnest consideration to the respective submissions of the learned Counsel on either side and perused the impugned Order and other material made available on record.

21. Before going into the merits of the cases, it may be necessary to notice the relevant rules governing the field of seniority in the cadre of SI (Civil) i.e. Class I, Category 1 of Special Rules.

22. Rule 33 of A.P. State and Subordinate Service Rules, 1996 reads as under:

33. Seniority: (a) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade.

Provided that....

(b) The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it.

Provided further that the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed inter se with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary, shall be assigned to the persons concerned, with reference to the order of merit or order of preference assigned to them in the said list.

(c) ...

(d) The transfer of a person from one class or category of a service to another class or category of the same service, carrying the same pay or scale of pay shall not be treated as first appointment to the latter class or category for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the date of his regular appointment in the class or category from which he was transferred. Where any difficulty arises in applying this sub-rule, seniority shall be determined by the Government, if they are the appointing authority and in other cases, the authority next higher to the appointing

authority shall determine the seniority.

(e) to (f) ...

"Seniority" was also defined in Rule 15 of the Special Rules, which reads as under:

Rule 15. Seniority:- (a) The seniority of a person in the class or category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such class or category or grade. If any portion of the service of such person does not count towards his probation under the General Rules, his seniority shall be determined by the commencement of his service which counts towards probation:

Provided that in the case of Sub-Inspectors, *{Sub-Inspectors of Police (Intelligence)} and Reserve Sub-Inspectors, the seniority inter se shall be fixed on completion of training in the Police Training College or with the Andhra Pradesh Special Police, as the case may be, instead of at the time of selection in accordance with the list which shall be arranged in order of merit, which shall be determined in accordance with the aggregate of marks obtained by each probationer:

*(G.O.Ms. No. 565, Home (P-C) Dt. 24-11-1992)

(i) in respect of his record in the Police Training College or with the Andhra Pradesh Special Police, as the case may be; and

(ii) at the final examination.

In determining such order of merit, no account shall be taken of marks awarded to a probationer in any subject in which he has failed. But such seniority shall be liable to revision by the Deputy Inspector General of Police concerned, if he considers it necessary, before completion of probation.

...

The seniority of the Sub-Inspectors of Police (Intelligence) appointed by transfer from among Sub-Inspectors of Police (Civil) or equivalent ranks of this service carrying the same scale of pay shall not be treated as first appointment, but shall be determined with reference to the date of his seniority in the Class or Category from which he was transferred.

(Added by G.O.Ms. No. 565, Home (Police-C) Dt. 24-11-1992)

{Provided also that the inter se seniority of the Sub-Inspectors selected from among the Reserve Sub-Inspectors of Armed Reserve and Andhra Pradesh Special Police Battalions by transfer shall be fixed in the order of merit for each Range (Zone) separately based on the aggregate marks obtained by them in the final examination conducted at the Police Training College, at the end of six months training. In determining such order of merit, the marks secured in the failed subjects need not be taken account.}

(Subs. by G.O.Ms. No. 35, Home (Police-C) dt. 11-02-1998, w.e.f. 15-5-1992)

(b) ...

(c) The transfer of a person from one class or category of the service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of person so transferred shall be determined with reference to the date of his first appointment to class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority.

(d) to (f) ...

By reason of G.O.Ms. No. 638, dated 5-9-1994, which was given retrospective effect and retroactive operation with effect from 15-5-1992 it was directed that the past seniority in the category from which they are transferred would not be protected and the seniority would be reckoned from the date of appointment as SI (Civil) for all purposes. The said amended rule, which was published in the Gazette on 12-9-1994 reads as under:

Provided further that the inter se seniority of the Sub-Inspectors selected from among the Reserve Sub-Inspectors of Armed Reserve and Andhra Pradesh Special Police Battalions by transfer shall be fixed in the order of merit for each Range (Zone) separately based on the aggregate marks obtained by them in the final examination conducted at the Police Training College, at the end of six months training. In determining such order of merit, the marks secured in the failed subjects need not be taken account. Their past service and seniority in the category from which they are transferred as Sub-Inspectors (Civil) will not be protected, and their seniority shall be reckoned from the date of appointment as Sub-Inspector (Civil) for all purposes.

23. Thereafter, Rule 15(a) of the Special Rules was amended by issuance of G.O.Ms. No. 35, dated 11-2-1999 with retrospective effect from 15-5-1992, whereunder the following words were deleted:

Their past service and seniority in the category from which they are transferred as Sub-Inspectors (Civil) will not be protected, and their seniority shall be reckoned from the date of appointment as Sub-Inspector (Civil) for all purposes.

The said G.O. reads as under:

The following notification will be published in the A.P. Gazette:

NOTIFICATION

In exercise of the powers conferred by Section 8 and 10 of the A.P. (Andhra Area) District Police Act, 1859 (Act XXIV of 1859), Section 6 of the Andhra Pradesh (Telangana Area) District Police Act, 1329 Fasli (Andhra Pradesh Act X of 1329 Fasli) and Section 7 of the Hyderabad City Police Act 1309 Fasli (Hyderabad

Act No. IX of 1348 Fasli) read with the proviso to Article 309 of the Constitution of India, the Governor of Andhra Pradesh hereby makes the following amendment to the Special Rules for the Andhra Pradesh Police Subordinate service issued in G.O.Ms. No. 1263, General Administration (Rules) Department, dated 26th August, 1959 as subsequently amended.

2) This amendment shall be deemed to have come into force with effect from the 15th May, 1992.

AMENDMENT

For the third proviso to Rule 15(a) of the said rules, the following shall be substituted, namely:

Provided also that the inter se seniority of the Sub-Inspectors selected from among the Reserve Sub-Inspectors of Armed Reserve and Andhra Pradesh Special Police Battalions by transfer shall be fixed in the order of merit for each Range (Zone) separately based on the aggregate marks obtained by them in the final examination conducted at the Police Training College, at the end of six months training. In determining such order of merit, the marks secured in the failed subjects need not be taken account.

24. Thereafter, it appears, Government of Andhra Pradesh issued Memo No. 7067/Pol.C/Al/99-I, dated 25-2-1999 whereby the Director General of Police was asked to regulate the seniority of RSIs transferred as SIs (Civil) as per Rule 15(c), obviously, keeping in view the amendment issued to Rule 15(a) in G.O.Ms. No. 35, dated 11-2-1999. Paras-2 and 3 of the said letter reads as under:

2. In the reference second cited, certain RSIs requested that their seniority be fixed in accordance with Rule 15(c) of Andhra Pradesh Police Subordinate Service Rules duly giving effect the amendment already issued in the Government Order first cited. The representations are enclosed herewith.

3. Government have examined the matter carefully and direct that the seniority of RSIs transferred to Civil S.I. category shall be regulated as per Clause (c) of Rule 15 of Andhra Pradesh Police Subordinate Service Rules.

The whole judgment of the Division Bench in Writ Petition No. 2120 of 2000 and batch was proceeded on the footing that the scheme of Rule 15(c) appears to be that when the pay scales are identical, the seniority should be protected and as the posts of RSIs and SIs (Civil) are equivalent having regard to the fact that they have identical scales of pay, their past seniority should be reckoned. However, it appears, the Director General and other Subordinate Officers refused to follow the said Rules and Government instructions, and they had been promoting the juniors to the post of Inspector of Police (Civil). At that stage, i.e., when the authorities did not reckon their (RSIs) seniority in the category of RSI and promoting the persons belonging to SI (Civil) category to the rank of Inspector of Police ignoring their cases, some of the RSIs filed O.A. No. 1396 of 1999 and batch. During the pendency of the said O.As before the Tribunal, the

Government issued G.O.Ms. No. 188, dated 30-6-1999 by reason of which, it was directed:

4. However, the Director general and Inspector General of Police, Andhra Pradesh, Hyderabad is time and again reporting that implementation of Rule 15(c) of Andhra Pradesh Police Subordinate Service Rules will adversely affect the seniority of Sub-Inspectors Civil, who were recruited directly during the years 1985, 1989, 1991. The Government keeping in view the orders issued in G.O.Rt. No. 176, Home (Police-C) Department, dated 21.1.1993 and with a view to avoid hardship to any direct recruit civil Sub-Inspector or the Reserve Sub-Inspector appointed by transfer as Civil Sub-Inspectors, the following orders are issued to determine the seniority between Sub-Inspectors Civil and Reserve Sub-Inspectors appointed by transfer as Civil Sub-Inspectors by the concerned appointing authorities:

i) The Reserve Sub-Inspectors, who were recruited as such prior to 9/1985 but appointed as Sub-Inspectors Civil by transfer after 9/1985 shall be placed en bloc below the directly recruited Sub-Inspectors (Civil) of 1985 batch.

ii) The Reserve Sub-Inspectors, who were recruited as such between 9/1985 and 1/89 and appointed as Sub-Inspectors Civil on transfer after 1/89 shall be placed en bloc below the directly recruited Sub-Inspectors (Civil) of 1989 batch.

iii) Similarly, the Reserve Sub-Inspectors, who were appointed between 1/89 and 7/91 but appointed as Sub-Inspectors Civil on transfer subsequent to 7/91 shall be placed en bloc below the direct recruit Sub-Inspectors of 1991 batch.

iv) The same principle shall be followed in determining the seniority of Reserve Sub-Inspectors appointed from time to time on transfer as Sub-Inspectors Civil.

25. By reason of the aforesaid G.O.Ms. No. 188, dated 30-6-1999, the RSIs recruited between September, 1985 and January, 1989 and appointed as SIs (Civil) on transfer after September, 1989 were to be placed en bloc below the directly recruited SIs (Civil) of 1989 and batch. Aggrieved thereby, both the RSIs who had been transferred as SIs (Civil) and directly recruited SIs (Civil) of 1989 batch filed O.A. No. 6801 of 1999 and batch. Further, some of the RSIs filed O.A. No. 6367 of 1999 for declaration that they are entitled to be promoted in preference to direct recruit SIs of 1989 and batch and the Tribunal by an interim order dated 29-10-1999 granted directions in their favour. Challenging the said order, direct recruit SIs (Civil) filed Writ Petition Nos. 1761, 2938, 14247 and 25902 of 2000. The Tribunal heard the matters together and passed a common Judgment dated 31-12-1999. As regards the claim of 1985 batch of RSIs i.e. O.A. Nos. 1811, 1815 and 1396 of 1999, it was held that having regard to the issuance of G.O.Ms. No. 188, a new cause of action has arisen and, therefore, the said applications had become infructuous. Although it was held that RSIs, having regard to Rule 15(c) of the Special Rules became eligible to get their past service counted for the purpose of seniority in the category of SI (Civil), it was opined that the impugned G.O. while protecting the rights of Reserve Sis for

retrospective seniority and for counting their past service as Reserve SIs had sought to do justice to the seniority claims of the Sub-Inspectors (Civil) also and the impugned G.O. is a compromise and it has succeeded in protecting the interests of both the groups of Sub-Inspectors. Aggrieved thereby, both those who were initially appointed in the category of RSIs in 1985 and SIs (Civil) of 1989 batch have filed Writ Petitions. W.P. Nos. 2120, 1638, 2135, 6693 and 15808 of 2000 have been filed by RSIs, Writ Petition Nos. 744, 25902, 2643, 1761, 2938 and 14247 of 2000 were filed by directly recruited SIs (Civil). The interim orders passed by the Tribunal were also questioned in the said Writ Petitions, whereunder, as noticed above, the Tribunal has held that the RSIs are entitled for the seniority from the date of their initial appointment in the cadre of RSI and their Writ Petitions were allowed and the Writ Petitions filed by SIs (Civil) were dismissed, which are the subject matter of Civil Appeals before the Apex Court.

26. We have gone through in detail the judgment in W.P. No. 2120 of 2000 and batch and the statutory rules and also the criteria for the purpose of promotion to the post of Inspector of Police/Deputy Superintendent of Police. In the entire judgment, it never came up for consideration as to the criteria for the purpose of promotion nor was it discussed. The eligibility criteria for the purpose of promotion to the post of Inspector of Police/Deputy Superintendent of Police under the A.P. State Police Service Rules is as under:

Rule 5(F)(i). No Sub-Inspector of Police (Category I, Class I of Andhra Pradesh Police Subordinate Service) shall be eligible for appointment as Inspector of Police, Category 4, by transfer, unless he has put in a minimum period of service as specified in the table hereunder:

TABLE -----						Sl.
Sub-Inspector of Police, Minimum service required for No. Category I, of A.P. appointment by transfer as Inspector Police Subordinate of Police, Category 4 Service -----						1.
Sub-Inspectors (Direct Six completed years Recruits)						
-----						2
Inspectors	Four	completed	years			Sub-
-----						(promotees)
Inspectors	(Recruited	Six	completed	years	by	3. Sub-
-----						transfer)
Inspectors (Absorbed Four completed years, provided he has put from Sub-Inspectors of Ex- in not less than Two continuous years of Prohibition Department) service as Sub-Inspector in the ex- Prohibition Dept. or six completed years otherwise.						4 Sub-

27. From the above Rule, it is clear that no Sub-Inspector of Police (Category I of Class I of the Special Rules) is eligible for appointment as Inspector (Category 4)

by transfer, unless he has put in a minimum service of 6 years. In fact, the table, as noticed above, categorically indicates that S.I. of Police (Category I of Special Rules) includes the SIs (direct recruits), SIs (promotees) and SIs (recruited by transfer). RSIs are SIs recruited by transfer. They are also supposed to put in a minimum service of 6 years in the category I of Class I posts for being appointed as Inspector of Police (Category-4). Insofar as the existence of this Rule and its validity are concerned, it is not in dispute. Therefore, one thing is clear that apart from the protection available to the RSIs under Rule 15(a) and (c) of the Special Rules for the purpose of reckoning seniority from the date of their initial appointment, irrespective of the fact they were also put on probation, on transfer as Civil SIs and sent for training for 6 months, for the purpose of promotion to Category-4 Inspector of Police, the RSIs, after being appointed by way of transfer and being on probation and completion of training, they should put in a minimum 6 years of service in the cadre of SI (Civil) (Category-I of Class I of the Special Rules). Rule 5(F)(i) of A.P. Police Service Rules read with Rule 15(a) and (c) of the Special Rules would make the things very clear. May be, the intention of the legislature was made clear in G.O.Ms. No. 35, Home (Police-C) Department, dated 11-2-1999 which was given retrospective effect from 15-5-1992. This is only for the purpose of reckoning seniority of the SIs (Civil) appointed from among the RSIs from the date of their initial appointment in the category of RSI i.e. Category-3 of Class I of the Special Rules. Here, it is necessary to refer Rule 6 of the A.P. Police (Civil Police) Service Rules, 1998, issued in G.O.Ms. No. 137, dated 1-6-1998 in supersession of the Rules issued in G.O.Ms. No. 2437, dated 8-11-1966 which reads as under:

Rule 6. Minimum Service:

No person shall be eligible for appointment by transfer or promotion unless he is an approved probationer and has put in service in the category from which promotion or transfer is made as specified below:

(a) not less than five years for a Deputy Superintendent of Police to be promoted as Additional Superintendent of Police (Non-cadre)

(b) not less than six years for Sub-Inspector of Police and for Inspector of Police to be promoted as Inspector of Police and Deputy Superintendent of Police respectively.

The question of considering the prospective or retrospective operation of Rule 6 of the new Rules does not arise, since Rule 5(F)(f) was there in the Special Rules even before the parties herein were appointed into the service. The amendment has not taken away the rigor of old rule i.e. Rule 5(F)(i) insofar as deciding eligibility criteria for promotion to the post of Inspector/Deputy Superintendent of Police is concerned. Further, the judgments relied upon by the learned Counsel for the petitioners were not in line with the seniority vis a vis eligibility. They all dealt with only as to seniority in a particular cadre in the light of Rule 33 of A.P. State and Subordinate Service vis a vis the Special Rules. Therefore, there is no

necessity of dealing with all the judgments cited by the learned Counsel for the petitioners, in detail, again. Further, the challenge made before the Tribunal was as to the orders passed by the appellate authority on the objections filed by the affected parties, as to the provisional seniority list. Therefore, the contention of the learned Counsel for the petitioners that the O.As. in the shape in which they were filed are not maintainable cannot be countenanced, since it is not mere challenge made to the provisional seniority list, but the challenge was made as to the rejection orders passed by the appellate authority on the objections filed to the provisional seniority list. Further, in view of the ratio laid down by the Supreme Court in Nallammal's case (supra) and Gopalakrishnan Nair's case (supra), the Government can change its stand as per the advice, unless it is patently illegal or immoral.

For all the above reasons, we are of the view of that the Tribunal was right in saying that the judgment rendered in Writ Petition No. 2120 of 2000 and batch does not deal with the eligibility criteria for the purpose of promotion to the post of Inspector of Police/Deputy Superintendent of Police under the A.P. Police Service and thus rightly proceeded in holding that the seniority is altogether different from that of the eligibility criteria as per Rule 5(F)(1) of the A.P. Police Service Rules. We are of the considered opinion that the Tribunal has not committed any error calling for interference of this Court under Article 226 of the Constitution of India. The Writ Petitions are devoid of merits and are liable to be dismissed.

Accordingly, the Writ Petitions are dismissed. No order as to costs.