

(1999) 07 AP CK 0086

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5834 of 1998 and Batch

Govt. of A.P. and another

APPELLANT

Vs

Sangaiah and others

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Andhra Pradesh Roads and Buildings Service Rules — Rule 3
Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 23, 29
Constitution (Thirty-Fifth Amendment) Act, 1974 — Article 141, 227, 32, 371
General Rules — Rule 33

Citation : (1999) 6 ALD 419 : (1999) 5 ALT 136

Hon'ble Judges : Vaman Rao, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : M/s. Nooty Rama Mohan Rao, K.V. Sudhakar Reddy, Y. Venkat Sastri, M. Ratna Reddy, K.V. Satyanarayana, S. Niranjan Reddy, N. Ram Mohan Rao, P. Bala Krishna Murthy and A.G. for Transport, for the Appellant;

Judgement

B. Subhashan Reddy, J

1. At issue, again, is the dispute relating to inter se seniority of direct recruits and promotees in the cadre of Deputy Executive Engineers of Roads and Buildings Department of State of Andhra Pradesh, hereinafter referred to as R&B Dept., which was carved out of erstwhile Public Works Department (PWD).

2. These five writ-petitions are filed questioning the common judgment dated 29-10-1997 rendered by A.P. Administrative Tribunal. The grievance of the petitioners is that the judgment is self-contradictory and runs even contra to the burning issues already resolved by Supreme Court and if the adverse findings are not set aside, the entire adjudication made so far in several cases gets re-opened taking the dispute back to square one.

3. While the Government and Engineer-in-Chief are the petitioners in WP No.5834 of 1998, in other writ petitions, the Engineers are the petitioners. The petitioners in WP Nos.23020, 25597 and 27778 of 1998 are the promotee

Deputy Executive Engineers, the petitioner in WP No.24462 of 1998 is the directly recruited Deputy Executive Engineer. It is pertinent to mention that the issue relates to the seniority in the cadre of Deputy Executive Engineer which is the basis for further promotions. Even though some of them are holding promotional posts, they are only in fluid state as the seniority issue is not being allowed to be finalised in view of series of litigation.

4. Roads and Buildings Department came into existence with effect from 1-4-1965. Special Rules were framed for the Service titled "Andhra Pradesh Roads and Buildings Engineering Service Rules" hereinafter referred to as R & B Service Rules. General Rules i.e., A.P. State and Subordinate Service Rules, operate wherever the special rules are silent.

5. The post of Deputy Executive Engineer was hitherto called as Assistant Executive Engineer. Under R&B Service Rules, the source of recruitment is (1) by direct recruitment of 37 1/2% of substantive vacancies and the rest (2) by promotion from the feeder categories.

6. At the time of formation of R & B Department, the permanent cadre strength consisted of 73 Assistant Engineers (30 from PWD and 43 from the High-ways Department). Out of 43 posts of erstwhile Highways Department, direct recruitment was in process for two vacancies, consequent to which, two directly recruited candidates, namely, V. Murahari Reddy and D.Rama Rao joined the services on 30-6-1966 and 18-7-1966 respectively.

7. The disputes started regarding seniority in the cadre of Deputy Executive Engineers and the above two persons have filed WP No.4151 of 1972 before this Court, claiming seniority over and above the promotee Assistant Engineers on the ground that the promotee Engineers were occupying the vacancies meant for direct recruits and that the above persons being direct recruits, should go up in the slots meant for direct recruits, even though the promotees were far senior to them. In fact, they were claiming seniority over the persons who were promoted to the post of Assistant Engineers in the year 1961. By order dated 29-3-1973, a learned single Judge of this Court issued certain directions to the Government to consider the grievances of the above two persons. The Government has then passed the orders, but the above two persons were not satisfied with same and again filed WP No.6157 of 1973, but, it was dismissed and was further upheld in writ appeal by the Division Bench. Aggrieved by the said orders, the matter was appealed against in C.A.No.1995 of 1977 before the Supreme Court (Desoola Rama Rao and another v. State of A.P. and others). When similar dispute arose regarding the seniority of Deputy Executive Engineers of Irrigation Department, whose service rules were analagous to R&B Services Rules, direct recruits of 1966 batch have filed RP No.1653 of 1982 before the State Administrative Tribunal (Constitutional under Article 371-D of the Constitution) and their plea was accepted against which, the aggrieved promotees had appealed to the Supreme Court (K.R. Prasad and Othote v. B. Rosaiah and others). They were pending adjudication by the Supreme Court.

8. In view of the agitations in the State of Andhra Pradesh and particularly, reflecting upon the irregularities in selections in Services, Constitution (32nd Amendment) Act, 1974 was enacted inserting Article 371-D and in exercise of the powers contained therein, A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 came into force with effect from 18-10-1975. The said order is hereinafter referred to as "the Presidential Order". A scheme of zonalisation for the cadre of Deputy Executive Engineers was evolved with effect from 18-10-1975 through G.O. Ms. No.654, dated 4-8-1977 read with G.O. Ms. No.995 Transport, R&B Department, dated 3-11-1975 and Zonal Cadre strength together with effective Cadre strength including the tenure post was finally fixed in G.O. Ms. No.685 Transport R&B Department, dated 22-10-1977 and allotment of the Members was made to each zone after calling for options. By the time direct recruitment was resorted to in the year 1980, there was 167 approved probationers.

9. The Andhra Pradesh Service Commission issued a notification on 2-9-1980 inviting applications for direct recruitment to the posts of Deputy Executive Engineers in Roads & Buildings Department on zonal basis and 36 direct recruits were appointed as per G.O. Ms. No.224 Transport R&B dated 24-6-1982 and G.O. Ms. No.280 Transport R&B dated 13-8-1982 and were allotted to different zones and were placed on probation on different dates between 17-8-1982 to 20-11-1982 vide G.O. Ms. No.110 Transport R&B dated 31-3-1983. T. Babu Raj, the petitioner in WP No.24462 of 1998 and K. Siva Reddy are among the said different recruits.

10. 94 Deputy Executive Engineer who were officiating on temporary basis were regularised covered by panel years 1972-73, 1973-74, and 1974-75 respectively from their dates of continuous officiation under General Rule 23(a) vide proceedings of the Chief Engineer, dated 8-6-1984.

11. Aggrieved by the said action, K. Siva Reddy and others belonging to 1982 direct recruitment batch, filed Writ Petitions No.17165 of 1984 and Writ Petition No.12401 of 1985 before the Supreme Court invoking Article 32 of the Constitution, challenging the retrospective regularisation of the above promotees complaining of under-recruitment of the direct recruits and excess recruitment of the promotees beyond their permissible quota and seeking for seniority in the respective slots meant for direct recruits, whereby, the promotees will be pushed down in seniority and direct recruits entered into service much later would have a march over the said senior-promotees. The said case is commonly referred as K. Siva Reddy's case. (K. Siva Reddy and Others v. State of A.P and others).

12. All these matters were heard by the Supreme Court together, but, separate judgments were rendered on the same day i.e., 24-2-1998. First of the judgment was Desoola Rama Rao and another v. State of A.P. and others, AIR 1998 SC 587, the second was in K. Siva Reddy and others Vs. State of Andhra Pradesh and others, and the 3rd was in K.R. Prasad and Others Vs. B. Rosaian and Others, .

13. Under the R&B Engineering Service Rules, there is no rule indicating the manner in which seniority has to be fixed and in the absence of such a rule, length of service is the basis for fixing the inter se seniority having regard to Rule 33 (c) of the General Rules. But, the contention of the direct recruits was that the seniority of the Deputy Executive Engineers had to be considered with reference to the date of their confirmation in the said category and not from the date of the first entry into service, which was on temporary basis. In D. Rama Rao's case (supra), order of regularisation of the promotees was passed by the Chief Engineer on 3rd May, 1967 retrospective from 19th May, 1961 i.e., the date of their first entry into service. But, the direct recruits of 1966 claimed seniority over the said promotees of the year 1961 on the ground that they were appointed in excess of their quota and that even if they were approved probationers, they had to be confirmed in the said posts as full members of the service and until then, were not entitled to the benefit of seniority in the cadre of Deputy Executive Engineers. But, their contention was repelled by the Supreme Court and held that - "there is no dispute that both directly recruited Assistant Engineers and also promotee Assistant Engineers are entitled to promotion as Executive Engineers. The rule requires direct recruits to have put in six years of service, while for promotees, the prescription is 5 years of service for being eligible to be considered for promotion. As in many other service rules, there is no provision in the rules in consideration that direct recruits have preference over promotees for purpose of inter se seniority . In the absence of such a rule, the High Court followed the guidelines indicated in General Rules, which provide that seniority shall be determined by the date of the first appointment to the service." The conclusion was that the regularisation of the promotees in the cadre of Deputy Executive Engineer with effect from 19th May, 1961 was not vitiated and accordingly dismissed the Civil Appeal in D. Rama Rao's case (supra).

14. In K. Siva Reddy's case (supra), the same ratio laid down in D. Rama Rao's case was followed. But, the Supreme Court had shown the concern regarding the under recruitment of direct recruits and held that the scheme contained in Special Rules should be adhered to! Rule 3 of R & B Engineering Service Rules prescribes that all the substantive vacancies in the category of Deputy Executive Engineers, 37 1/2% shall be filled up by direct recruitment and the remaining 62 1/2% by transfer of Supervisors and Draughtsmen and by promotion of Junior Engineers and there is no justification for the State Government not to work out this provision of the rule and more so, when the direct recruits have been agitating over their rights arising out of this rule atleast from 1982, from which period, decisions were being rendered by the Tribunal pointing out the deficiency in the appointments of direct recruits and resultant agitation by the direct recruits. But, the Supreme Court felt that opening the entire issue of inter se seniority for the period upto 31-12-1982 would cause lot of complications and hardship and particularly to the promotees, and while taking this view, the Supreme Court was conscious of the Presidential Order and the need to implement the same. But, the factors leading to anomalies, scope for spate of

litigation, uncertainty in the seniority in the cadre of Deputy Executive Engineers, which has stakes in higher posts like Executive Engineers, Superintending Engineers, Chief Engineers and Engineer-in-Chief, outweighed the need to adhere to the Presidential Order for the period upto 31-12-1982 and as such, one time concession was given by the Supreme Court taking overall situation into consideration and to keep harmony of the service personnel in the cadre of Deputy Executive Engineers, both of R&B Department and Irrigation Department. The inter se seniority even if it was in contravention of the quota rule, was directed to be maintained, without re-opening the said question for the period upto 31-12-1982, But, the Supreme Court had taken a stricter view that from 31-12-1982, the State Government must adhere to the quota rule and the consequential seniority. In accordance with the said judgment of the Supreme Court, the State Government had to ascertain the exact substantive vacancies, which were left unfilled and available for recruitment as on 31-12-1982 and then adding up the substantive vacancies arising from 1-1-1983 to 31-12-1987, the State Government has to take steps to make recruitment of the short fall in the direct recruitment for the years within the limit of 37 1/2 % and not to apply the general rules with respect to the said limits of 37 1/2% of the substantive vacancies meant for direct recruits and even if promotees were placed in those posts, no seniority shall be counted. These directions of the Supreme Court to make-up the shortfall in recruitment of the direct recruits conforming to their quota of 37 1/2% of substantive vacancies is only applicable for such of those substantive vacancies which were unfilled and were available as on 31-12-1982 for recruitment.

15. The Government then issued integrated seniority list of Deputy Executive Engineers appointed after 1-4-1965 comprising of promotees upto the panel year 1974-75 and direct recruits of 1982 vide G.O. Ms. No.281, dated 21-11-1989. This G.O. was questioned by D. Hanumantha Rao and others in WP No.7661168 and 1275 of 1989, commonly known as D. Hanumantha Rao v. State of A.P., 1991 (3) SLR. 3 but the Supreme Court upheld the above G.O. Ms. No.281, by its order dated 25-4-1990. Again promotees (another batch) filed fresh OA Nos.36563 to 36566 of 1990 and 42648 to 42651 of 1990 challenging the seniority list in G.O. Ms. No.281, dated 21-11-1989 on the ground of non-implementation of the Presidential Order etc., but the A.P.A.T. dismissed the above OAs. by judgment dated 17-8-1990 against which SLPs. 12015 to 16 of 1990 were filed in the Supreme Court. But, the Supreme Court dismissed the same on 24-10-1990 and 11-2-1991. As. G.O. Ms. No.281, dated 21-11-1989, as confirmed by the Supreme Court was not being implemented, contempt petition was filed by Mr. Babu Raj, the petitioner in WP No.24462 of 1998 and others, who were all direct recruits of 1982 Batch and pursuant to the directions of the Supreme Court, were promoted to the post of Executive Engineers cadre in April, 1991. Notwithstanding the above, some of the direct recruits of the year 1986 filed OANos.41716 and 41717 of 1991 claiming seniority over the promotees in the category of Deputy Executive Engineers in the final seniority list in G.O. Ms.

No.281, dated 21-11-1989. The promotees got themselves impleaded in the said OAs. besides filing separate OAs. The A.P. Administrative Tribunal issued interim directions on 16-4-1993 pursuant to which G.O. Ms. No.314, dated 29-11-1994 was issued fixing the seniority upto 18-10-1975 after considering the objections received against the provisional seniority list dated 20-6-1994 and G.O. Ms.No.147, dated 30-7-1996 containing combined seniority list for the period from 18-10-1975 to 31-12-1992. In the seniority list, the direct recruits of 1982 Batch were shown in Annexure-IT in their respective zones as per the ranking assigned by A.P. Public Service Commission in the year 1982, while the direct recruits of 1986 were shown in Annexure-III in their respective zones, having regard to the substantive vacancies as on 31-12-1982 and upto 31-12-1987, as their appointment was made during the year 1986 duly displacing the excess promotees-Deputy Executive Engineers. In the meanwhile, directly recruited Deputy Executive Engineers, namely, J. Chandrasekhar Reddy and K. Mahender of 1986 batch filed Contempt Petition Nos.294 of 1992 and 63 of 1993 in WP No.17165-86 of 1984, 12401 of 1985 and 369 of 1989 complaining that the decision rendered by the Supreme Court in the above writ petitions were deliberately violated, but the said contempt petitions were dismissed by the Three-Member Bench of the Supreme Court by orders dated 7-10-1993 J. Chandrasekhar Reddy and K. Mahendra Vs. D. Arora, Chief Secretary to Govt. of Andhra Pradesh and Another, . The following is what the Supreme Court held:

(a) That all appointments made prior to 31-12-1982 either of promotees or direct recruits and their inter se seniority was not to be disturbed at all. This would be true also with respect to the promotees who were regularised in the posts in the years 1972-74.

(b) All substantive vacancies (not posts) as on 31-12-1982 plus the vacancies between that date and 31-12-1987 were to be made for adjustment of the appointment of the direct recruits; and

(c) The substantive vacancies would, therefore, be both in permanent as well as temporary posts, if any.

Because of the said clarification given by the Supreme Court, neither appointments nor inter se seniority of Deputy Executive Engineers who were appointed in the vacancies prior to 31-12-1982 was to be disturbed, while giving seniority to the direct recruits who were to be appointed as per the directions given in Siva Reddy's case (supra) in the vacancies existing as on 31-12-1982 plus the vacancies occurring thereafter till 31-12-1987. The seniority list issued in G.O. Ms. No.281, dated 21-11-1989 represents the Deputy Executive Engineers appointed between 1-4-1965 and 18-10-1975. In the State-wide seniority list, the direct recruits of 1982 Batch whose recruitment was made on zone-wise basis was shown at SI.Nos.235-269 which violates the Presidential Order and in view of the clarification given by the Supreme Court in the above case, a necessity had arisen to re-draw the seniority list on zone-wise basis and that was the reason why a revised seniority list was prepared and communicated

in G.O. Ms. No.314, dated 29-11-1994.

16. Then, Mr. P. Ravinder Rao had filed SLP Nos.16785-86 of 1993 (Civil Appeal Nos.7592-93 of 1993) in the Supreme Court questioning the interim orders dated 16-4-1993 passed by the A.P. Administrative Tribunal in MA No.524 of 1993 and the Supreme Court passed orders in the Civil Appeals on 31-10-1996 to the following effect:

"It is not disputed by the learned Counsel for parties that these appeals are directed against the interim order passed in the main matter pending before the A.P. Administrative Tribunal. The matter is pending before the Tribunal since 1991. It is high time that the Tribunal should finally dispose of the matter. We direct the Tribunal to dispose of the matter within one month of the receipt of this order. Meanwhile, no further promotion be made from the post of Executive Engineer. This direction shall not be applicable to promotion from the rank of Deputy Executive Engineer to that of Executive Engineer. Needless to say that the appellant shall be entitled to be heard before the Tribunal."

The matter was then heard by A.P. Administrative Tribunal and as it felt that important points arose for consideration, it made a reference on 2-8-1997 to the Full Bench -- and the Full Bench had rendered judgment on 29-10-1997. Part I of the said judgment consists of summary of pleadings. Part II consists of main arguments on behalf of direct recruits/ promotees/State Government and Part III covers main points for consideration including the points that have been referred to Full Bench and Part IV covers the conclusions and decisions of the Full Bench on the question referred to and the directions thereon.

17. The Tribunal had considered several contentions advanced by several learned Counsel appearing in the case including the learned Advocate-General in its judgment running to 110 pages. We appreciate the endeavour of the Tribunal to deal with the matter so elaborately. But, such effort is required in fresh cases wherethe lis arises for the first lime and recording of factual finding is necessary and so also the application of legal principles thereto. But, in the instant case, the matter was already 31 year old (1996 to 1997) and had a checkered history doing several rounds before this Court, the A.P. Administrative Tribunal after it was constituted, both under Article 371-D of the Constitution as also the Administrative Tribunals Act, 1985, and the Supreme Court. The Tribunal has forgotten that every Us has got its own end and cannot remain eternal for adjudication time and again. In countries whose Constitutional Scheme does not contain a binding precedent akin to Article 141, may be, the situation is different. But, our Constitutional scheme is clear on this aspect. A lis which arises has to be decided and cannot be kept open perpetually. It is sad that the engineering personnel, both of Irrigation Department and the R&B Department are fighting for seniority in the cadre of Deputy Executive Engineers since the last about 33 years and is still in fluid state inspite of the definite ruling by the Supreme Court in J. Chandrasekhar Ruddy and another V. State of A.P. and others (supra). In fact, in the case of Irrigation matter, the legal principles enunciated by the

Supreme Court were correctly applied and we had affirmed the said judgment. But, coming to this case, the Tribunal had rendered a fallacious judgment, even going to the extent of issuing directions directly contra to the decision of the Supreme Court in J. Chandrasekhar Reddy's case (supra) which we had already stated in the Irrigation matter in WP No.20118 of 1998 dated 18-12-1998, that the said judgment of the Supreme Court has to be taken as the last, on the subject relating to the seniority. It does not make difference merely because the said case decided by us related to Engineers in Irrigation Department, as already, we have pointed out that both are analogous and in fact, both the matters were disposed of by the Supreme Court on the same day holding the same views and issuing similar directions regarding the quota rule, violation thereof, condonation of break in quota rule upto 31-12-1982 and then make-up the deficiency in the matter of direct recruits in the vacancies existing as on 31-12-1982 and arising thereafter till 31-12-1987. But, what the Tribunal did is entirely different and in fact, the Tribunal's judgment is self-contradictory. The Tribunal held that the direct recruit cannot be given any notional date for promotion, but, promotee can be given a notional date for promotion from the date of his first entry into service basing upon Rule 33(c) of A.P. State and Subordinate Service Rules. The Tribunal also holds that under Rules 23(a) and 29(a) of the above General Rules, retrospective regularisation can be given from the date of first entry of the promotee even if the vacancy was temporary. It also holds that inter se seniority between direct recruits and the promotees, even the latter occupying excess quota and the quota meant for the direct recruits upto 31-12-1982, cannot be disturbed. But, still it holds that the promotees have to wait for their seniority till the vacancy in their stream of 62 1/2% arises without taking note of the fact that the promotee much senior to the direct recruit will be pushed down, which will certainly disturb the seniority reckoned for the period before 31-12-1982 and on the basis of the first entry into the service. What is more, while the Supreme Court in J. Chandrasekhar Reddy's case (supra) had clarified in so many clear words and had put an end to litigation, the Tribunal had ruled contra, opening Pandora's box by seeking to reopen the entire matter of violation of quota rule right from 1-4-1965 till 31-12-1987 and directed to identify the vacancies meant for promotees and direct recruits and then arranging them in their slots by drawing up a revised seniority list and this is not only a clear contravention of the order of the Supreme Court in J. Chandrasekhar Reddy's case, but will lead to uncertainty and chaos. It is astonishing that the Tribunal claims that its judgment becomes res judicata and has to be followed in ignorance of the provisions contained under Articles 227 and 141 of the Constitution of India. The Tribunal being an inferior Tribunal because of the ruling of Seven-Judge Bench of the Supreme Court in L. Chandra Kumar v. Union of India, AIR 1997 SC 1125, is bound by the dicta and the decisions rendered by this Court, if there is no judgment of the Supreme Court covering the said issue and if any issue has been resolved by the Supreme Court, the same is binding on all Courts and authorities in India in view of Article 141 of the Constitution of India. But, the Tribunal relying upon earlier judgment in Government of Andhra Pradesh and another Vs.

A. Suryanarayanarao and others, held that the Presidential Order is invested with primacy in the Constitution itself and any action repugnant to it is illegal. There cannot be any quarrel for the above proposition. Article 371-D was inserted by Constitution Amendment as stated above and it was for resolving disputes, particularly, relating to service matters to remove the anomalies and regional imbalances and certainly clause 10 of the said provision has got precedence over all other legal provisions and even the other Constitutional provisions. To maintain equanimity and to solve the regional imbalances, the observance of Presidential Order is a must and cannot be overlooked. When direct recruitment has to take place, it has got to be filled-up with all expediency and more so, in view of the Presidential Order. If a vacancy meant for direct recruit and particularly, of a zonal post is filled-up with a promotee, there will be lot of heart-burning leading to regional imbalances and resulting in the negation of the Presidential Order, which has been promulgated under a Special Provision inserted by an Amending Act for maintaining the harmony and peace in the State of Andhra Pradesh. One cannot forget the fact that there were two agitations in the State and if one sees their genesis, it was only because of the regional imbalances in the matter of appointment of service personnel. When the Parliament had taken note of the same and enacted Constitutional Amendment Act specially incorporating provision for removing those imbalances, it was the bounden duty of the successive Governments to follow the same scrupulously and honestly, but we have to say that successive Government have failed. A welfare Government cannot do this. Service Commissions are constituted with an avowed object of eliminating arbitrariness in the matter of selections and there is no reason why the selection process cannot be initiated the moment vacancy arises and even before the occurring of vacancy. While we cannot find fault with the Tribunal's approach that Presidential Order has to be followed, we are unable to affirm the said view in the issue relating to seniority in the instant cases for the reason that the judgment of the Supreme Court rendered in this particular case relating to inter se seniority of direct recruits and promotees in the posts of Deputy Executive Engineers of both Roads and Buildings and Irrigation Departments for the period from 18-10-1975 to 31-12-1982 and the break in quota rule and consequent non-observance of Presidential Order are deemed to have been condoned by the Supreme Court for the reason that the Supreme Court was fully aware of the Presidential Order and such break in quota rule. Insofar as deficiency in observing the quota rule for the period from 1-4-1965 to 18-10-1975 is concerned, the matter cannot be reopened by any stretch of imagination for the reason that the said period is not covered by any Presidential Order and the promotees who had already occupied not only their vacancies, but also the vacancies meant for direct recruits cannot be subjected to any revision of their seniority and the seniority as fixed by the Government in the Governmental orders referred to above has to be treated final. This is so even with regard to inter se between the direct recruits and the promotees for the period upto 31-12-1982 regardless of the fact that there was a violation of quota rule and that promotees were occupying the excess posts and even the posts

meant for direct recruits, in view of the Supreme Court's final verdict in J. Chandrasekhar Reddy 's case (supra).

18. As already stated above, the lis which had started with D. Rama Rao's case (supra) in the Apex Court has concluded with J. Chandrasekhar Reddy's case (supra) and the final interpretation laid by the Supreme Court in J. Chandrasekhar Reddy's case (supra) is the criteria for deciding the inter se seniority of direct recruits and promotees/transferees. The purport of the judgments in D. Rama Rao's case (supra) and K. Siva Reddy's case (supra) relating to the Deputy Executive Engineers of Roads and Buildings Department and K.R. Prasad's case (supra) relating to the Deputy Executive Engineers of Irrigation Department is to the effect that even if the promotees had occupied the vacancies in excess of their quota, such of those promotees whose services were regularised as Deputy Executive Engineers for the period upto 31-12-1982, cannot be disturbed and their seniority has to be reckoned basing on their length of service in the said posts of Deputy Executive Engineers. Of course, in C. Radhakrishna Reddy and others v. State of A.P. and others, 1990 (1) SLR 136, there are some observations by the Supreme Court indicating some deviation from the diem laid down in Siva Reddy's case (supra). But, in the case of D. Hanmantha Rao (supra), a different note was struck by the Supreme Court which is quite in consonance with Siva Reddy's case (supra) and this was rightly pointed out by the later Supreme Court judgment in Chandrasekhar Reddy's case (supra). The direct recruits had been harbouring under the false notion that every vacancy is a substantive vacancy. As already stated above, substantive vacancy has got relevance only in so far as direct recruitment is concerned and all vacancies need not be substantive vacancies, as occurrence of vacancies has no relevance to the seniority of person which is governed by appointment. The rule is that 37 1/2% of the substantive vacancies in the permanent cadre shall be filled by direct recruitment and the action of the Government in not resorting to direct recruitment conforming to the quota of 37 1/2% was already condoned by the Supreme Court in the judgment rendered in D. Rama Rao's case (supra), K. Siva Reddy's case (supra), K.R. Prasad's case (supra) as also D. Hanmantha Rao's case (supra) and further reiterated by J. Chandrasekhar Reddy's case (supra). In fact, J. Chandrasekhar Reddy's case (supra) has specifically overruled the judgment in C. Radhakrishna Reddy's case (supra) in which some observations were made against the promotees relating to their seniority. The said judgment also makes it clear that every post (vacancy) is not a substantive vacancy and that said substantive vacancies which remained unfilled as on 31-12-1982 shall be reckoned adding the vacancies further arising in between the period i.e., 31-12-1982 and 31-12-1987 for the purpose of applying the quota rule strictly. As such, there cannot be any deviation of quota rule for the above posts. The direct recruits of pre-31-12-1982 period are no way concerned with such vacancies and their seniority in the cadre of Deputy Executive Engineers shall be counted only from the date of their entry into service pursuant to their direct recruitment from the respective dates before 31-12-1982 and they

cannot claim seniority anterior to the said dates of their respective entry into the service in the cadre of Deputy Executive Engineers.

19. In view of the foregoing discussion, we hold as follows :

(1) That the promotion of the personnel borne on Andhra Pradesh Roads and Buildings Engineering Service to the posts of Deputy Executive Engineers even in excess of the quota of 62 1/2% for the period from 1-4-1965 to 31-12-1982 cannot be disturbed and the direct recruits appointed during the said period i.e., 1-4-1965 to 31-12-1982 will get seniority only from the respective dates of their appointments and the said issue of seniority for the above period inter se direct recruits and promotees shall not be re-opened.

(2) The finding of the Tribunal that the 1 deficiency in direct recruitment conforming to 37"/3% in A.P. R&B Engineering Service is liable to be reopened for the period from 1-4-1965 to 31-12-1982 is set aside.

(3) The finding of the Tribunal that the personnel promoted to the posts of Deputy Executive Engineers of A.P. R&B Engineering Service are not entitled to count their seniority from their first entry into service in the said cadre, but have to wait for their turn in the vacancies meant for their quota of 62 1/2% right from 1-4-1965 to 31-12-1987, is set aside.

(4) That the Deputy Executive Engineers in R&B Department of State of Andhra Pradesh regardless of their source of recruitment, be it direct or promotion/transfer and regardless of their quota, are entitled to retain promotions effected and their relevant inter se seniority basing on their first entry into service for the period from 1-4-1965 to 31-12-1982.

(5) The Engineer-in-Chief of the Roads and Buildings Department and the Government shall identify the unfilled vacancies as on 31-12-1982 in the category of Deputy Executive Engineers of A.P. Roads and Buildings Engineering Service.

(6) Such unfilled vacancies mentioned in paragraph 19(5) supra shall be added to the vacancies which arose upto the period 31-12-1987 and the deficiency in the direct recruitment can be made-up only out of such vacancies as mentioned in paragraph 19(5) & (6).

(7) The Government orders issued in G.O.Ms.No.314, 38 and 147, shall be scrutinised again and if they are found to be in consonance with our directives above, they shall be treated as final, or else, necessary modifications be made to be in tune with the above directives. This exercise shall be made within a period of three months from the date of the receipt of a copy of this order.

(8) All other directives issued by the Tribunal which run contra to the directives issued by this Court mentioned above from 19 (1) to (6) stand set aside.

20. The writ petitions are disposed of accordingly. Each party shall bear his own costs.