

**(2014) 07 AP CK 0043**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 23932, 23931, 23152, 25398 and 30110 of 2010

N. Deva Mandadi

APPELLANT

Vs

State of A.P. <BR> V.V. Naga Malleswara Rao Vs The Govt.  
of A.P.

RESPONDENT

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**Date of Decision :** 30-07-2014

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 20, 21  
Constitution of India, 1950 — Article 14, 16, 21

**Citation :** (2015) 3 ALD 291 : (2015) 2 ALT 200

**Hon'ble Judges :** K.C. Banu, J;Anis, J

**Bench :** Division Bench

**Advocate :** P.V. Krishnaiah, Advocate for the Appellant

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**Judgement**

Anis, J.—Writ Petition Nos. 23932, 23931, 25398 & 23152 of 2010 are filed challenging the order, dated 08.09.2010, in O.A. No. 3143 of 2010 & batch on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal"). Writ Petition No. 30110 of 2010 is filed challenging the order, dated 26.10.2010, in O.A. No. 6301 of 2010 on the file of the Tribunal, dismissing as directly covered by the order, dated 08.09.2010, in O.A. No. 12968 of 2009 & batch (includes O.A. No. 3143 of 2010).

2. All the Writ Petitions are directed to be disposed of through this common order as the facts as well as the questions are identical.

3. The brief averments made in the writ petitions are as follows:

The Commissioner of Prohibition & Excise by letter dated 22.06.1993 has submitted a proposal to the Government for sanction of additional staff for strengthening the Excise Department to cope up with new task under the new Excise policy with effect from 01.10.1993 i.e. imposition of partial prohibition in the State and the Government has issued G.O.Ms. No. 927, Revenue (Excise-III) Department, dated 21.09.1993 and accepted the said proposal by sanctioning

3613 additional posts of Excise Constables in addition to the existing cadre strength and further directed the Director General to release 1200 Armed Reserve Constable posts with arms and ammunition, and also directed the Inspector General (Home Guards) to release 2000 Home Guard posts to serve the Excise Department and further directed the Additional Director General (Recruitment) to recruit 3000 Armed Reserve Constables and after that they would be deputed to the Excise Department. Subsequently, the Government has modified the aforesaid G.O.Ms. No. 927, dated 21.09.1993 to the effect that instead of recruiting 3000 Armed Reserve Constables to recruit 3000 APSP Constables as per the additional sanction of posts in temporary cadre of Excise Constables and G.O.Ms. No. 467, Revenue (Excise-III) Department, dated 23.05.1994 also indicated regarding recruitment of number of vacancies in the IX Battalion in the State. The Government clearly discloses that recruitment should be done only in A.P. Police Battalion and those people have to be recruited temporarily in the Excise Department to cope up with the new task and for that task, they should come back to their parent department, and therefore, the posts are also created in the A.P. Police Department, which posts are required for every year. Subsequently, the Commissioner of Prohibition & Excise by Proceedings dated 14.07.1994 has informed to the Government that despite creation of aforesaid 3613 new posts of Excise Constables besides permitting to convert 539 other posts in the department, there were large number of vacancies of Excise Constables in the department remained unfilled and he had sought permission to recruit 2366 posts of Excise Constables in the Excise Department. In pursuance of such request and information given by the Commissioner of Prohibition & Excise, the Government issued G.O.Ms. No. 1303, Revenue (Excise-I) Department, dated 31.08.1994, permitting the Commissioner, Prohibition & Excise to fill up 1751 posts of Excise Constables which are regular and permanent in the cadre. In pursuance of the aforesaid decision taken by the Government, the Commissioner of Prohibition & Excise has issued a notification for recruitment to the posts of Prohibition & Excise Constables in the State indicating number of posts in various districts in the State and also given schedule for selection process which would commence from 12.09.1994 and completed by 31.10.1994 i.e. issuing appointment orders. On 22.10.1994, the General Election Code came into force. Therefore, the Commissioner of Prohibition & Excise has telephonically informed all the selection authorities to the effect that the selection process should be completed for the posts of Excise Constables but not to issue any appointment orders which are supposed to be issued by 31.10.1994. However, the election code is not at all concerned for the said selection inasmuch as the recruitment process was commenced prior to commencement of Code and announcement of election schedule. Even otherwise, the authorities have got liberty to seek permission from the Chief Election Officer inasmuch as recruitment process started long back and there is a need of services of Excise Constables even during the election time when partial prohibition was in force. But, the authorities without exercising such options have decided not to issue appointment orders which are supposed to be issued by

31.10.1994. Though the entire process was completed, the authorities have not issued appointment orders by 31.10.1994.

The election notification was issued on 01.11.1994 and election code was in force till 15.01.1995 when the entire election process was completed after formation of new Government by the then Chief Minister of the State. Therefore, the Government ought not to have taken any policy decision either cancelling the recruitment process or taking fresh recruitment or any kind of major decisions inasmuch as the election code which came into effect from 23.10.1994 was in force upto 15.01.1995. Admittedly, the appointments were withheld only because of announcement of general elections for the State Assembly and existence of election code during that period. But, the Government has no power to take any decision either cancelling the recruitment or any decision except executing day-to-day administration.

After enactment of Right to Information Act by the Government of India, the petitioners came to know certain facts pertaining to recruitment of Excise Constables and cancellation of Excise Constable selection, which clearly discloses how the officers have not only denied their appointments but also deprived their fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution of India. It is a classic example of how small error or mistake committed by the authorities who are having more powers and how the persons who are entitled to certain rights are deprived.

The Joint Secretary to the Government had sent a D.O. Letter on 13.12.1994 to the then Commissioner of Excise to review all major decisions taken from 01.10.1994 like recruitment in large scale, etc. When the election code was in force, the Government ought not to have issued such a memo taking major decision. The contents of the above letter clearly discloses that to freeze the recruitment, there should be two conditions, viz., 1) if the decision regarding major recruitment has taken from 01.10.1994, and 2) that such recruitment is not yet conducted by the date of issuing letter i.e. 13.12.1994. The decision to fill up 1751 posts of Excise Constables was taken by the Government by issuing G.O.Ms. No. 1303, dated 31.08.1994 i.e. prior to 31.10.1994. Similarly, the process of recruitment was started from 12.09.1994 and completed by 31.10.1994. Even as per the above letter, the Commissioner of Prohibition & Excise ought not to have frozen much less cancel or countermand the selection. Basing on the said letter, the Commissioner of Prohibition & Excise has sent a letter to the Secretary to Government on 15.12.1994 stating that the process of recruitment in large scale in respect of 1667 Excise Constables was started on 31.08.1994 with issuance of G.O.Ms. No. 1303, dated 31.08.1994 and the process has been completed with conducting interviews by 31.08.1994, but the results of the interview have not been declared and the appointment orders have not been issued. As per the schedule, the candidates are subjected to physical efficiency test and written test. According to such schedule, the process of selection has been completed after conducting interviews by 31.10.1994.

However, results of interviews have not been declared and appointment orders have not been issued.

The Commissioner of Prohibition & Excise ought not to have informed regarding recruitment of 1751 posts of Excise Constables inasmuch as the Government has never asked this information and the Commissioner ought to have submitted information which consists of two conditions imposed by the Government i.e. taking decision to take major recruitment after 01.10.1994 and if not completed by 13.12.1994. But, unfortunately and unnecessarily, the Commissioner has sent that report and further, the Government without any application of mind committed a grave error, as such the petitioners were deprived of their appointment for the last 14 years without any fault on their part. After receiving the letter, the Government has issued a Memo No. 67587/Ex-1/94-3, dated 21.12.1994 informing the Commissioner of Prohibition & Excise that due to introduction of total prohibition, orders issued in G.O.Ms. No. 927, dated 21.09.1993 are kept in abeyance and the Commissioner of Prohibition & Excise is requested to countermand the process of recruitment of 1751 posts of Excise Constables referred to in G.O.Ms. No. 1303, dated 31.08.1994. But, the Government has directed to countermand the selection of 1751 posts of Excise Constables without keeping abeyance of G.O.Ms. No. 1303, dated 31.08.1994. The Memo issued by the Government is nothing but illogical, irrational and perverse and such Memo was not brought to the notice of any Court for the last 14 years and the petitioners came to know about the said Memo very recently. The Commissioner of Prohibition & Excise without examining the contents of the said Memo has mechanically issued Circular, dated 22.12.1994 instructing all the recruitment agencies to countermand and cancel the process initiated for recruitment of 1751 Excise Constables referred in G.O.Ms. No. 1303, dated 31.08.1994.

The petitioners after obtaining the information under Right to Information Act about the Memo, challenged the said Memo before the Tribunal and some of the candidates approached this Court seeking a direction to appoint them as Excise Constables, but they could not succeed on the ground that the Government informed the Court that because of introduction of total prohibition in the State, they do not want to fill up all the vacancies, but now the fact remains that 1751 vacancies of Excise Constables, which were sought to be filled up in pursuance of the permission given by the Government in issuing G.O.Ms. No. 1303, were neither cancelled nor reduced and further the vacancies of 3000 APSP Constables which were temporarily created in G.O.Ms. No. 927, dated 21.09.1993 were kept in abeyance by Memo, dated 21.12.1994, but on the contrary the recruitment of 3000 posts was completed and the selected candidates were appointed in APSP battalions and came to Excise Department on deputation.

The Tribunal, while disposing of O.A. No. 215 of 1995 and batch by order dated 16.03.1998, observed that the Excise Constables, who underwent selection process by properly constituted selection committee against which no mala fides

are attributed by anyone, shall be given preference over fresh candidates and directed the State Government to consider the request of the Excise Constables in preference to raw recruits for any future, fresh selection if they are eligible for such posts. The said order was neither challenged nor set aside by any Court.

The High Court by order, dated 24.09.2009, in W.P. No. 29109/2008, directed the Chief Secretary to Government to order an enquiry into the circumstances in which the selection of 1751 Excise Constables was cancelled instead of cancelling the selection of 3000 APSP Constables. Accordingly, the Chief Secretary issued G.O. Rt. No. 5500, General Administration (Spl. A) Department, dated 13.11.2009 by appointing the 1st respondent as the Enquiry Officer.

The petitioners came to know how the Government committed injustice only to do favour to APSP Constables. The petitioners not only passed the written test and physical test but also qualified in the interview in the year 1994, but only the process of issuing the appointment orders was withheld because of election code, otherwise the authorities would have issued the appointment orders to the petitioners by 31.10.1994.

The petitioners were agitating for the last 14 years to consider their case for appointment as Excise Constables by giving exemption to age and physical test. Despite orders being passed by the High Court, the authorities have not given any relaxation and issued G.O.Ms. No. 1217, Revenue (Excise. I) Department, dated 30.11.2009 directing that all the 1994 selected Excise Constables also should qualify in the physical test and take steps to make fresh recruitment instead of appointing the selected Excise Constables in pursuance of earlier selection process initiated in pursuance of G.O.Ms. No. 1303, dated 31.08.1994.

Further, the orders in G.O.Ms. No. 1217, dated 30.11.2009 are not communicated to the petitioners and similarly, the Memo dated 21.12.1994 was not brought to the notice of any Court of law. After having knowledge of the said proceedings, the petitioners compelled to challenge the same.

The very cancellation of Excise Constables vide Memo dated 21.12.1994 instead of cancelling the selection of 3000 APSP Constables, is illegal and arbitrary. The Government made undue favour to APSP Constables, who are appointed in the existing vacancies and now they have occupied the vacancies reserved for Excise Constables under the direct recruitment quota by way of deputation contrary to the Presidential Order. Therefore, the petitioners prayed the Court to direct the respondents to appoint the petitioners as Excise Constables in the existing vacancies before resorting to fresh recruitments in the department and to set aside the impugned orders passed by the Tribunal and to appoint them in pursuance of the notification issued in Proceedings Cr. No. 28888/93/CE/H3, dated 12.09.1994 by the 2nd respondent w.e.f. 31.10.1994 with all consequential benefits such as pay fixation, increments, seniority and arrears of pay before resorting fresh recruitment in pursuance of G.O.Ms. No. 1217, dated 30.11.2009.

4. The learned counsel for the petitioners argued that the Memo dated 21.12.1994 issued by the Government and consequential proceedings dated 22.12.1994 issued by the Commissioner of Excise, were not challenged in any Court; that the petitioners after obtaining the information under Right to Information Act, realised that the Government in a casual manner cancelled selection of 1751 Excise Constables after completing the entire process i.e. after completion of written test, physical efficiency test and interview; that the authorities without issuing appointment orders to the petitioners and others who were selected as Excise Constables by 31.10.1994, the Commissioner of Excise has telephonically instructed all the District Collectors and Excise Superintendents on 24.10.1994 to not to issue appointment orders in view of issuance of election schedule for the General Elections; that if the appointment orders were issued by 31.10.1994, they should have been appointed as Excise Constables and now they would have got further promotion as Excise Head Constables and Excise Sub-Inspectors; that after completion of General Election, the Joint Secretary, Revenue Department, by Memo dated 13.12.1994 requested the Commissioner of Excise to review all the major decisions taken from 01.10.1994 like recruitment in large scale and directed that they may be frozen at current stage pending review of the Government; that the decision regarding filling up of 1751 regular posts of Excise Constables was taken by the Government on 31.08.1994 under G.O.Ms. No. 1303, dated 31.08.1994 and selection process was completed after issuing notification; that the entire selection process including the physical efficiency test, written test and oral interview are completed by 03.10.1994 i.e. must prior to 13.12.1994, therefore the condition imposed in Memo dated 13.12.1994 will not be applicable for the recruitment of 1751 posts of Excise Constables; that as per the Memo dated 21.12.1994, the Government has not taken any decision either to keep in abeyance of G.O.Ms. No. 1303, dated 31.08.1994, wherein the Government has accorded permission to fill up 1751 Excise Constable posts which are regular posts included the cadre of Excise Constables, or the cancellation of the selection of 1751 Excise Constables; that the Memo dated 21.12.1994 clearly discloses and demonstrates that in view of introduction of total prohibition in the State, the Government kept the G.O.Ms. No. 927, dated 21.09.1993 in abeyance; that the information submitted by the Commissioner of Excise by his proceedings dated 15.12.1994 in response to Memo dated 13.12.1994 issued by the Joint Commissioner of Revenue Department also does not disclose any intention of cancel or countermand the selection of 1751 Excise Constable posts; that the authorities without application of mind, cancelled the selection of 1751 Excise Constable posts.

The learned counsel further argued that the Tribunal committed grave error in dismissing the petitions filed by the petitioner without considering the real facts on ground and submissions made by them; that the decision to recruit 1751 posts of Excise Constables vide G.O.Ms. No. 1303 was taken on 31.08.1994 and the process of selection was commenced even prior to 01.10.1994; that the

Tribunal instead of setting aside the Memo dated 21.12.1994, dismissed the petitions filed by the petitioners erroneously; that admittedly, no appointment orders were issued to the applicants who were selected as Excise Constables by the date of letter addressed by the Government i.e. 13.12.1994, so the decision taken by the Government is erroneous and the Government ought to have issued appointment orders to the petitioners; that the Tribunal committed grave error in not considering the contentions raised on behalf of the petitioners in view of keeping G.O. Ms. No. 927, dated 21.09.1993 in abeyance and consequential action should be cancellation of recruitment of 3000 APSP Constables but not 1751 Excise Constables.

It is further argued that earlier some of the selected candidates approached the Courts including Hon"ble Supreme Court and the Government has filed two Special Leave Petitions against the order of this Court, wherein this Court directed to consider the case of the petitioners in the event of taking a decision by the Government to fill up the existing posts; that the contention of the respondents that the petitions are barred by limitation is not tenable and the said plea was not raised before the Tribunal nor before this Court by filing any counter, therefore the petitions filed by the petitioners are maintainable and in time.

It is finally argued that the petitioners who were participated in the physical test as early as in the year 1994, asking them again to participate in the same physical test after lapse of 20 years is nothing but arbitrary and the petitioners are un-employees and their fundamental rights are affected; that the cancellation of selection process is arbitrary and non-application of mind by the Government and prayed the Court to set aside the impugned orders passed by the Tribunal. The learned counsel relied on a case-law reported in East Coast Railway and another vs. Mahadev Appa Rao and others with East Coast Railway and Another Vs. Mahadev Appa Rao and Others, .

5. The learned Advocate General argued that the State Government while proposing to fill up additional force to maintain law and order in the State Excise Department, created 1751 posts of Excise Constables and issued notification dated 31.08.1994 on regular basis and interviews were held during 19.10.1994 to 23.10.1994; that subsequently, absolute prohibition was imposed by the Government on 13.12.1994 and the State Government has issued Memo No. 67587/Excise-1/94-3, dated 21.12.1994 deciding to cancel the process of recruitment of Excise Constables, then some of the applicants filed O.A. No. 215 of 1995 and batch questioning the said decision; that the Tribunal directed the State Government to consider the request of the selected Excise Constables in preference to raw recruits for any future selections, if they are otherwise eligible for such posts; that some of the applicants also filed W.P. No. 12633 of 1999 and batch and this Court passed the order modifying the orders passed by the Tribunal and again the matter was carried by the State Government before the Hon"ble Supreme Court in Civil Appeal Nos. 915 and 604 of 2000 and the

Hon"ble Supreme Court while modifying the orders of this Court, granted age relaxation to the persons who appeared in the recruitment subject to fulfilling the other eligibility conditions; that the recruitment of 1751 posts of Excise Constables was set at rest in the year 2003 since the Hon"ble Apex Court put its seal on the validity of the Memo issued by the State Government cancelling the recruitment.

It is further argued that when the Government issued fresh Notification vide G.O.Ms. No. 1217, dated 30.11.2009, the petitioners have invoked the provisions of Right to Information Act and secured certain information and challenged the fresh recruitment and also the earlier Memo which was upheld by the Hon"ble Apex Court on the ground that the State Government had committed an error while cancelling the recruitment; that the Tribunal rightly dismissed the Original Applications on the ground that the issue cannot be reopened or re-agitated at the belated stage especially since the decision was already upheld by the Hon"ble Apex Court; that obtaining the information under Right to Information Act would not give any cause of action to re-agitate the entire issue afresh; that the present writ petitions are hopelessly barred by limitation and in violation of Section 20 of the Administrative Tribunals Act, 1985; that some of the candidates filed W.P. No. 8573 of 2008 and this Court by its order dated 26.03.2009 directed the State Government to consider giving exemption to the petitioners from subjecting themselves to physical efficiency tests of One Star and Three Star in addition to the age relaxation in view of the long lapse of time, and against the said order which runs contrary to the Judgment of the Hon"ble Apex Court, the State Government filed C.C. No. 4719 to 4723 of 2010 and the Hon"ble Apex Court vide its order dated 26.04.2010, pleased to stay the judgment of this Court passed in W.P. No. 8573 of 2008 and batch.

The learned Advocate General finally argued that the petitions filed by the petitioners are wholly perverse and hopelessly barred by limitation and prayed the Court to set aside the impugned orders and dismiss the petitions.

6. Upon hearing both the learned counsel, the points that arise for consideration are:

1. Whether the petitioners can challenge the validity of the Memo, dated 21.12.1994 when the legality of the said Memo was upheld by the Hon"ble Apex Court and it was attained the finality in the earlier\* ground of litigation?

2. Whether the petition filed before the Tribunal is barred by limitation under Section 20 of the Administrative Tribunals Act, 1985?

7. Point No. 1:

A perusal of the pleadings of both sides, the petitioners are the un-employees who participated in the selection process for the posts of Prohibition & Excise Constables in the year 1994. There is no dispute that the Commissioner of Prohibition & Excise through his letter dated 22.06.1993 submitted proposals to

the Government for sanction of additional staff for strengthening the Excise Department in pursuance of the new Excise policy dated 01.10.1993 and the Government issued G.O.Ms. No. 927, dated 21.09.1993 accepting the said proposals and sanctioned 3613 additional posts of Excise Constables in addition to the existing cadre strength. Subsequently, the Commissioner of Prohibition & Excise vide proceedings dated 14.07.1994 informed the Government that despite creation of 3613 new posts of Excise Constables, there are number of vacancies of Excise Constables in the department and requested the Government to permit him to fill up 2366 posts of Excise Constables. In pursuance of the request of the Commissioner, the Government issued G.O.Ms. No. 1303, dated 31.08.1994, permitting the Commissioner to fill up 1751 posts of Excise Constables, which are regular and permanent in the cadre.

8. It is also an admitted fact that in pursuance of the G.O.Ms. No. 1303, dated 31.08.1994, the Commissioner of Prohibition & Excise issued a Notification to the posts of Prohibition & Excise Constables in the State by giving schedule for the selection process which would commence from 12.09.1994 and would be completed by 31.10.1994 by issuing the appointment orders. Accordingly, the selection process was completed, but the authorities did not issue appointment orders by 31.10.1994 as per the schedule. Meanwhile, General Election Code came into force on 22.10.1994 and the Commissioner of Prohibition & Excise informed the selection authorities not to issue any appointment orders to the petitioners. After election and after formation of the new Government, a decision was taken to review all major decisions taken as on 01.10.1994 like recruitment in large scale, etc. Accordingly, the Government directed the Commissioner, Prohibition & Excise to identify all such decisions taken by them from 01.10.1994 to 13.12.1994 and in terms of the said decision, the recruitment of Prohibition & Excise Constables may be frozen at the current stage pending review by the Government vide Memo dated 13.12.1994. In pursuance of the directions of the Government, the Joint Commissioner of Prohibition & Excise addressed a letter dated 15.12.1994 to the Secretary to the Government stating that the process of recruitment in large scale in respect of 1667 Excise Constables was completed by conducting interviews by 31.10.1994 and appointment orders have not been issued so far and accordingly, a note was submitted to the Secretary to the Government in this regard. Then, the Government issued Memo No. 67587-Excise-1/94-3, dated 21.12.1994, wherein orders issued in the G.O. 927, dated 21.09.1994 are kept in abeyance and consequently, the Commissioner of Excise is requested to countermand and cancel the process initiated for the recruitment of 1751 posts of Excise Constables referred in G.O.Ms. No. 1303, dated 31.08.1994.

9. It is also an admitted fact that previously some of the candidates, who participated in the selection for the recruitment of 1751 posts of Excise Constables, approached the Tribunal and also High Court. The Tribunal in O.A. No. 215 of 1995 and batch directed the State Government to consider the request of the selected Excise Constables in preference to the raw recruits for

any future selections if they are otherwise eligible for such posts. Aggrieved by the said order, the applicants therein filed Writ Petitions before this Court and in W.P. No. 12633 of 1999, this Court at the admission stage directed that if the Government comes to a conclusion that it is necessary to fill up the posts of Excise Constables, then the case of the petitioners be considered for appointment as Excise Constables in the existing vacancies. Against the said orders, Government filed Civil Appeal Nos. 915 and 604 of 2000 before the Hon''ble Supreme Court. The Hon''ble Supreme Court by its order dated 23.04.2003 gave the following directions:

"Under the circumstances, we find it difficult to sustain the impugned judgment and order. However having regard to the peculiar facts and circumstances of the case and that the respondents had the benefit of the order of the High Court, we think it is just and appropriate that as and when any fresh selection takes place to the post of Excise Constables, the respondents may apply for regular recruitment. In that event, age-bar will not be put against them, but, they shall satisfy-other eligibility conditions and requirements, including qualification."

10. The learned counsel for the writ petitioners argued that the Commissioner of Excise informed the Government vide his letter dated 15.12.1994 that the process of recruitment in respect of 1667 posts of Excise Constables was started on 31.08.1994 and the process has been completed by conducting interviews on 31.10.1994, but the results of the interview have not been declared and appointment orders have not been issued, therefore the Memo, dated 21.12.1994, countermanding and cancelling the process initiated for the recruitment of 1751 posts of Excise Constables is illegal and relied on a decision reported in East Coast Railway and another vs. Mahadev Appa Rao and others with K. Surekha vs. Mahadev Appa Rao and others (1st supra), wherein the Hon''ble Supreme Court held thus:

"It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter."

11. The learned counsel for the respondents vehemently argued that the point argued by the learned counsel for the writ petitioners was already considered by the Hon''ble Supreme Court and the matter is seized by the Hon''ble Supreme Court, and as per the directions of the Hon''ble Supreme Court, whenever selection is made to the posts of Excise Constables, the cases of the applicants herein will also be considered provided they satisfy all the requisite conditions and age bar will not be put against them and prayed the Court to dismiss the

writ petition.

12. It is also an admitted fact that in Writ Petition No. 29109 of 2008 filed by one C. Narayana and two others, this Court by its order dated 24.09.2009 directed the Government to conduct an enquiry to ascertain whether the decision of the Government communicated through Memo No. 67587/X-1/94-3, dated 21.12.1994, which was impugned in the present writ petitions, to cancel the selection process of 1751 posts of Prohibition & Excise Constables, was motivated by any mala fide intention of the then government officials. Accordingly, Government ordered an enquiry and the enquiry reveals that the decision of the Government to cancel the selection process of 1751 posts of Prohibition & Excise Constables is not motivated by any mala fide intention of the then government officials. Therefore, the case-law cited by the learned counsel for the petitioners, has no application to the present facts of the case.

13. The main contention of the writ petitioners is that previously number of Original Applications and Writ Petitions were filed and Memo dated 21.12.1994 was not challenged therein and for the first time, the said Memo and consequential orders are being challenged in the present writ petitions. The Memo dated 21.12.1994 also reveals thus:

"The attention of the Commissioner of Excise is invited to the references cited and he is informed that after careful examination of the matter and in the context of immediate introduction of total prohibition, the orders issued in the G.O. first cited are kept in abeyance. Consequently, the Commissioner of Excise is requested to countermand and cancel the process initiated for the recruitment of 1751 posts of Excise Constables referred to in the G.O. second.

The action taken in the matter may be reported to Government urgently."

Therefore, prayed the Court to issue directions to appoint the applicants to the posts of Prohibition & Excise Constables basing on their merit without subjecting them to any physical efficiency test as they have already participated in the said test earlier.

14. A perusal of the Memo dated 21.12.1994 issued by the Principal Secretary to Government to the Commissioner of Excise, Hyderabad, it is clearly mentioned due to immediate introduction of total prohibition, the orders issued in G.O. first cited i.e. G.O.Ms. No. 927, dated 21.09.1993 was kept in abeyance and also requested the Commissioner of Excise to countermand and cancel the process initiated for the recruitment of 1751 posts of Excise Constables referred to in the G.O. second cited i.e. G.O.Ms. No. 1303, dated 31.08.1994. Though the first part of the letter shows that due to immediate introduction of total prohibition, the orders issued in the G.O. first cited are kept in abeyance, the later part shows the intention of the Government to countermand the recruitment of 1751 posts of Excise Constables vide G.O. second cited. Thus, it is clear that the contention of the learned counsel for the petitioners that the Memo dated 21.12.1994 have not been considered and have not been challenged, cannot be accepted as the

Tribunal clearly held that even in the counter it is stated that in view of the change in the policy of the Government to introduce total prohibition, it was thought that the additional force of 1751 Excise Constables is not necessary and therefore, the Government countermand or cancel the said recruitment.

15. The learned counsel for the petitioners argued that the petitioners already underwent the physical fitness test and they have reached to an advanced age and that after 16 years of their selection, they cannot be asked to undergo physical fitness test once again since most of the petitioners may not be in a position to fulfill the said condition i.e. to undergo the physical fitness test, therefore the petitioners have to be appointed as Excise Constables without insisting for being qualified in the physical fitness test. On the other hand, the learned Additional Advocate General argued that in the hierarchy of Excise officials, the Excise Constables come at the bottom of the pyramid and the said cadre constitutes the basic grass root level regulation/enforcement machinery and they participate in raids at suspected sites of illicit distillation of liquor, ganja cultivation, premises storing intoxicated substances without licence, etc. and are also posted for duty at the inter-state and other check posts and participate in hot pursuit and apprehension of offenders flouting Excise laws.

16. Admittedly, the duty of Excise Constables requires more than average level of physical fitness and if the petitioners are appointed, who are in the average age group of 40 to 45 at the time of filing Original Application in the year 2010, it will be a handicap on the basis grass-root level enforcement machinery, which results in adverse impact on crime prevention and detection and general law and order and thereby it is not conducive to the Department. Admittedly, the Hon'ble Supreme Court in Civil Appeal Nos. 915 and 604 of 2000 clearly held that if any fresh selection takes place, the petitioners may apply for regular recruitment and in that event, age-bar will not be put against them, but they shall satisfy other eligibility conditions and requirements including qualification. Therefore, the matter is already seized by the Hon'ble Supreme Court and the petitioners now cannot agitate the same issue by filing the present writ petitions. Therefore, this point is answered in favour of the respondents and against the petitioners.

17. Point No. 2:

The learned Additional Advocate General argued that the Writ Petitions filed by the petitioners are hopelessly barred by limitation under Section 21 of the Administrative Tribunals Act, 1985, therefore the Writ Petitions are liable to be dismissed. It is not the case of the writ petitioners that they do not know about the G.O.Ms. No. 1303, dated 31.08.1994 and cancel of the selection process. The only point argued by the learned counsel for the petitioners is that they came to know about the Memo dated 21.12.1994 after obtaining the same under the Right to Information Act and filed the Original Applications before the Tribunal, therefore their case is not hit by limitation under Section 21 of the Act.

18. Admittedly, the petitioners are having knowledge of G.O.Ms. No. 1303, dated

31.08.1994, G.O.Ms. No. 927, dated 21.09.1993 and the Memo dated 21.12.1994 and also various orders passed by the Tribunal, High Court and Hon"ble Supreme Court. It is pertinent to mention that when the Government filed Civil Appeal Nos. 915 and 604 of 2000 before the Hon"ble Supreme Court, it was brought by the Government about the Memo dated 21.12.1994 to the notice of the Hon"ble Supreme Court and stated that in the light of the decision of introducing total prohibition in the State of Andhra Pradesh, the process of recruitment of 1715 Excise Constables was cancelled by Memo dated 21.12.1994. Therefore, the contention of the petitioners that they came to know about the Memo recently and filed the Original Applications and Writ Petitions in the year 2010, has to be negated and thereby the Original Applications and Writ Petitions filed in the year 2010 are not within the time prescribed under Section 21 of the Act. Therefore, this point is also answered in favour of the respondents.

19. In that view of the matter, all the writ petitions are devoid of merit and they are accordingly dismissed. No order as to costs.

20. Miscellaneous Petitions, if any, pending in all the Writ Petitions shall stand closed.