

(2003) 12 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 4272, 6007 and 18288 of 2001 and 3138 and 8682 of 2002 and 22814 of 2003

S. Manohar Reddy

APPELLANT

Vs

G. Koteswara Rao and Others

RESPONDENT

Date of Decision : 24-12-2003

Acts Referred:

Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 31, 32, 4, 46, 47

Citation : (2004) 3 ALD 567 : (2004) 4 ALT 69

Hon'ble Judges : S. Ananda Reddy, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : T. Surya Karan Reddy, in WP Nos. 4272 of 2001, Government Pleader, for Services-II in WP Nos. 3138 and 8628 of 2002, M.V. Ranga Ram, in WP No. 22814 of 2003, M. Ratna Reddy, in WP. Nos. 18288 of 2001 and Vedula Venkataramana, in W.P. No. 6007 of 2001, for the Appellant; K. Ratna Reddy, in WP No. 4272 of 2001, C.V. Nagarjuna Reddy, for the Respondent No. 1 in WP No. 4272 of 2001, Government Pleader, for Services-I, for the Respondent Nos. 2 and 3 in WP. Nos. 4272 of 2001, 22814 of 2003, in WP Nos. 18288 and 6007 of 2001, C. Srinivas Babu, for the Respondent Nos. 4 and 5 in WP No. 4272 of 2001, M. Surender Rao, for the Respondent No. 6 in WP Nos. 4272 of 2001, in 8682 of 2002, P. Srinivasulu, for the Respondent Nos. 5 to 7 in WP. No. 3138 of 2002 and E.R. Manohar Rao, for the Respondent No. 2 in WP. No. 3138 of 2002, for the Respondent

Judgement

G. Bikashapathy, J.—Even, though Service jurisprudence has developed enormously in the recent past, yet, the intricacies continued to persist. The issues relating to fixation of appropriate seniority continued to be a confused subject as on date in spite of catena of decisions of the Apex Court.

2. This case is a classic example as to how the litigation is ignited and prolonged for more than two decades and yet, the seniority is still clouded with numerous riddles. It is not only the omissions and commissions on the part of the authorities but the orders of the Tribunal issued from time to time interdicting the finalisation of the seniority and granting directions which were not warranted

contributed to the delays.

3. This case relates to fixation of seniority in the cadre of Assistant Prohibition and Excise Superintendent and higher posts and preparation of promotion panels from the year 1981-82 onwards and till today the situation continued to be fluid.

4. It is relevant to state that the posts of Excise Inspectors, Superintendent, Lab Assistants, Chemical Examiners falling in the zonal cadre are the feeder posts for appointment by transfer to the post of Assistant Prohibition and Excise Superintendent (for brevity "AES"). The said post of A.E.S. is the first Gazetted post, at the relevant time and it is a multi zonal posts. The next higher posts of Prohibition and Excise Superintendent (for brevity "E.S") and thereafter the Assistant Prohibition Excise Commissioner, Deputy Commissioner of Prohibition and Excise and Commissioner of Prohibition and Excise are the State-wide posts. In respect of the posts of Excise Circle Inspector, they are filled up by direct recruitment as well as by promotion from the Sub-Inspector cadre. However, we are not concerned with the said recruitment. Similarly, in respect of the recruitment for the post of A.E.S., the channel of appointment is by direct recruitment and by promotion from feeder categories/appointment by transfer from other service. Under promotion quota, Excise Circle Inspectors including Assistant Excise Inspectors, Office Superintendents, Laboratory Assistants and Chemical Examiners are to be drawn. In a cycle of 10 vacancies of A.E.S arising in each multi zone, first 8 vacancies shall be filled by transfer from amended category of Excise Inspectors and 9th vacancy shall be by transfer from the category of office Superintendents and 10th vacancy shall be filled among with Laboratory Assistants in A.P. Excise Subordinate Service. The Rules are contained in G.O.Ms.No. 108, dated 25-1-1996. Rule 2 relates to the post of Assistant Excise Superintendent, which is in third category and the method of recruitment is as follows:

"1. Direct Recruitment.

2.(a) Transfer from the category of Circle Inspectors (including Assistant Excise Inspectors) from the Andhra Pradesh Excise Subordinate Service:

(b) Transfer from the category of (Office Superintendent from the Andhra Pradesh Ministerial Service and Special Category Stenographers) : and (Subs by G.O. Ms. No. 972, Rev. dated 22-9-1994)

(c) Transfer from the category of Laboratory Assistants (I Grade) (from the A.P. Excise Subordinate Service; substantive vacancies shall be filled by direct recruitment and transfer in the ratio of 1 : 3;

(d) Transfer from the category of Chemical examiners.

Provided that in a cycle of every ten vacancies of Assistant Prohibition and Excise Superintendents arising in each multi-zone, the first eight vacancies shall be reserved to be filled by transfer from among the category of Excise Inspectors of the Andhra Pradesh Excise Subordinate Service and the ninth vacancy shall be

reserved to be filled by transfer from the category of Office Superintendents in the Andhra Pradesh Ministerial Service in excise Department and the tenth vacancy shall be reserved to be filled from among the category of Laboratory Assistant in the Andhra Pradesh Excise Subordinate Service;

Provided further that in every cycle of 3 vacancies to be filled from the category of Office Superintendent in the Andhra Pradesh Ministerial Service, the first and third vacancies shall be reserved to be filled from the Office Superintendents in the Office of the Commissioner of Excise and the 2nd vacancy shall be reserved to be filled from the Office Superintendents in the Offices of the Assistant Commissioners of Excise (proviso are added by G.O. Ms. No. 58, Rev.(x) dated 16-1-1981)."

The appointing authority in respect of the posts up to A.E.S. is the Deputy Commissioner. Therefore, the seniority list up to respective zonal level has to be prepared by the respective Deputy Commissioners and approved by the Commissioner of Excise. However, in respect of the integrated multizonal seniority of Assistant Excise Superintendents has to be prepared by the Commissioner of Excise.

5. While so, the Excise Commissioner issued proceedings dated 2-4-1983 promoting certain Officers of Multi Zone-II which consists of Zone in and IV. The dispute was raised by the seniors to the persons promoted in the aforesaid proceedings by filing RP No. 939 of 1983. The contention of the petitioner was that even without preparing combined seniority list in Multi Zone-n, promotions were ordered. But, as per the rule, promotion to the post of A.E.S , is on the basis of merit and ability and this was not correctly followed. Lastly, it was the contention that the DPC had adopted peculiar procedure for assessing the merit by awarding marks for various confidential reports without taking into consideration other relevant factors namely revenue collections, detection of cases of infringement of Excise Laws, difficult stations handled etc. The Tribunal found fault with the procedure adopted by the DPC and consequential assessment and accordingly set aside the promotion orders with certain directions which are extracted infra.

6. Based on the directions of the Tribunal in the aforesaid R.P. and also taking into consideration the appeals filed by the affected Inspectors and also the others for their non-inclusion as also by some of the Officers who were selected as Assistant Excise Superintendents, but not given higher ranking, the Government issued Memo dated 7-2-1987 preparing the provisional seniority of A.E.S. for inclusion in the A.E.S. panel for the year 1982-83. This panel related to Multi Zone-III. However, similar panels were also prepared for multi zone-I and II also for which objections were called. The Government after considering the objections of various Officers, issued G.O. Ms. No. 603 Revenue Department, dated 26-8-1988 approving the ad hoc panel of Excise Superintendents for the year 1986-87. But, however, it was brought to the notice of the Government that certain eligible Inspectors were not considered either by the DPC or by the

Government due to delay in regularisation of the service. Therefore, their cases were suo moto considered. The Government was of the opinion that it was not desirable to delete the names of certain Officers at this juncture. Accordingly, the Government directed inclusion of the names of: K. Adinarayana Reddy and Salim Baig in the A.E.S. panel for the year 1982-83. In the meanwhile, a batch of O.As. relating to the controversial seniority in the cadre of Assistant Excise Superintendent and other higher posts in the Andhra Pradesh State Excise Department camp up for consideration before the Tribunal in R.P. No. 2315 of 1989 and Batch. By an order dated 20-1-1993 the Tribunal disposed of the batch with the directions keeping in view the provisions contained in the Presidential Order. Consequent on the said Order of the Tribunal, the Commissioner of Excise by proceedings dated 26.4.1994 prepared a fresh provisional seniority list of Assistant Excise Superintendent, Multi Zone-II and the said provisional seniority list was prepared on the following principles:

"1. The seniority lists in the feeder cadres have been prepared and finalised by the Deputy Commissioners for the categories of Inspectors, Office Superintendents and Lab. Assts. Basing upon these seniority lists for Zones III and IV combined seniority lists in these categories for Multi-Zone II have been prepared.

2. Notional panels beginning from the year 1976-77 have been prepared against the substantive vacancies in the relevant years.

3. The placings in this panels have been given as per the rules in force for the relevant panel years for promotion to the post of Asst. Excise Superintendent.

4. While preparing the panels, a roster for filling up the posts from various feeder categories has been followed and in the case of non-availability of a suitable candidates from the relevant feeder category the vacancy has been filled up by persons from another feeder category.

5. The seniority of the Direct recruit Asst. Excise Superintendents have been fixed in terms of the Judgment of Hon"ble A.P.A.T. in R.P.No. 21/87."

7. The objections were called for and thereafter Commissioner finalised the Multi-Zonal Seniority list of A.E.S. after duly disposing of the objections. However, certain appeals were filed challenging the final Multi-Zonal Seniority list of A.E.S. issued by the Commissioner of Excise. While considering those appeals, the Government in G.O. Ms. No. 977, dated 21.11.1997 found that the seniority list of A.E.S. in Multi-Zone was not in accordance with the Orders passed by the Tribunal in R.P.No. 939 of 1983, 21 of 1987 and Batch and 2315 of 1989 and Batch and therefore, reviewed the list by recording the following reasons:

"1. That the Commissioner of Prohibition and Excise followed the merit ranking assigned to the candidates by the D.P.C. in ad hoc panels of Assistant Excise Superintendents for 1982-83 which is the root cause of all litigation, ignoring the ranking given by the Government in review in respect of promotees

notwithstanding the fact that the Hon"ble A.P. Administrative Tribunal subsequently disapproved the "method followed for assessment of merit both by the D.P.C. and the Government for the ad hoc panel 1982-83 (R.P.No. 939/83 and 2315/89 and Batch)

2. That the direct recruits selected against substantive vacancies notified in May, 1981 and actually positioned in October, 1983 following intimation of selections in February, 1983 itself, have been placed below certain promotees included in the 1982-83 ad hoc panel against non- substantive vacancies ignoring the principle enunciated by the Hon"ble Tribunal in R.P. No. 21/87 and batch.

3. that the Laboratory Assistants/Office Superintendents have not been reflected against the substantive vacancies that should go to them in each panel year as per the cyclic Order prescribed in the Rule 2 of A.P. Excise Service Rules.

4. that there are unexplained variations in the ranking of the candidates in the provisional seniority lists vis-a-vis the corresponding final Multi-Zonal Seniority Lists of Assistant Excise Superintendents prepared by the Commissioner of Prohibition and Excise: and also in regard to placement of Direct Recruit Excise Inspectors as per the merit ranking assigned by A.P. Public Service Commission."

Accordingly, after exercising the power under Rule 26 of A.P. State and Subordinate Service Rules, 1996, the following decisions were taken:

1. The Multi-Zonal Seniority lists of Assistant Excise Superintendents finalised by the Commissioner of Prohibition and Excise be revised strictly in accordance with feeder category seniority of the individual concerned and their eligibility for the simple reason that the Hon"ble A.P. Administrative Tribunal, by its Order dated 12.12.1985 in R.P.No. 939/83 categorically disapproved the norms followed for assessment of relative merit of the candidates concerned as reflected in the P.Fs. and that it would not be either practicable or desirable to try to determine, at this distance of time, the relative merit of the candidates concerned for the panel years commencing from 1982-83 on the basis of the norms suggested by Hon"ble A.P. Administrative Tribunal viz., Revenue Collections, Cases Detected, Difficult Stations handled etc., and that therefore, the only course of action left open is to follow the principle of seniority-cum-fitness and eligibility of the candidates coming up for consideration for the panel years commencing from 1982-83 in order to minimise grievances and maximise justice, in the light of the aforesaid Order of A.P. Administrative Tribunal which has become final.

2. In its Order dated 10.7.1987 in R.P. No. 21/ 87 and batch, the Hon"ble A.P. Administrative Tribunal has observed that where the rota quota Rule has failed, the salutary principles is to fix the seniority according to the dates of appointment, but that a distinction has to be made between the appointments made to substantive vacancies and appointments made to non-substantive vacancies and that those appointed to substantive vacancies should be regarded as seniors to those appointed to nonsubstantive vacancies; and that the persons appointed by transfer to substantive Direct Recruitment vacancies, after the

process of Direct Recruitment is initiated, pending completion of that process, would, however, have to yield place to the direct recruits when they join duty. The Hon''ble Tribunal has therefore, directed to review and revise the seniority lists in order to give correct placement to the Direct Recruits and the promotees. Keeping in view, the aforesaid principles laid down by Hon''ble A.P. Administrative Tribunal, it has been decided to revise the placements of direct recruit Assistant Excise Superintendents in each Multi-Zone so as to place them above the promotees promoted against non-substantive vacancies and thus give effect to the said Orders of A.P. Administrative Tribunal which have become final."

8. The Government further decided as follows:

"7. It has also been decided to revise the Multi-Zonal Seniority Lists of Assistant Excise Superintendents finalised by the Commissioner of Prohibition and Excise (1) insofar as they relate to placements assigned to the Lab Assistants/Office Superintendents so as to give correct placement to them as per the cyclic points prescribed and (2) to rectify the unexplained discrepancies in the placements of candidates in the final Seniority Lists as compared to the corresponding provisional lists and also in regard to placement of Directions Recruit Excise Inspectors as per the merit ranking assigned by the A.P. Public Service Commission.

8. Government have also taken into consideration in this regard the direction of Hon''ble A.P. Administrative Tribunal in O.A. No. 5298 of 1997, 5764 of 1997 and 5975 of 1997 filed by Sri S. V. Prasad Rao, Sri M.K. Devendra Prasad and Sri, G. Kesava Rao, Prohibition and Excise Superintendents to the effect that the claims of the applicants be taken into consideration if Government did not finalise the seniority of Assistant Excise Superintendents by 21.8.1997. The seniority of Assistant Excise Superintendents has already been finalised by Commissioner of Prohibition and Excise (competent authority) in 1995 itself and Government have only reviewed the seniority of Assistant Excise Superintendents under Rule 26 of A.P. State and Subordinate Service Rules, 1996. Government have therefore, separately directed the Commissioner of Prohibition and Excise to implement the direction of A.P. Administrative Tribunal in the above O.As. insofar as it relates to the feeder category seniority so that Government may take further, necessary action in regard to their placements in the revised seniority lists of Assistant Excise Superintendents.

9. Accordingly, the Multi-Zonal Seniority List of Assistant Excise Superintendents, finalised by Commissioner of Prohibition and Excise to the extent of substantive vacancies for the panel year up to 1990-91 have been revised and the Integrated Seniority List of Assistant Excise Superintendents has been prepared as per the above decisions and the revised Multi-Zonal Seniority List of Multi-Zone-I, Multi-Zone-II and Multi-Zone-III are annexed to this Order as Annexures-I, II and III respectively and the integrated Seniority List of Assistant Excise Superintendents is annexed to this Order as Annexure-IV.

10. Insofar as the Integrated Seniority List of Assistant Excise Superintendents (Annexure-IV) is concerned, in cases, where the Assistant Excise Superintendents of different Multi-Zones happen to get same dates of regularisation, the dates of birth/ age of the individuals concerned have been taken as basis for assigning their placements.

11. The final integrated Seniority List of Assistant Excise Superintendents as at Annexure-IV to this Order shall be the basis for preparation and finalisation of regular panels of Excise Superintendents and above to the extent of substantive vacancies of each panel year as per the direction of the Hon"ble A.P. Administrative Tribunal passed in its Order third read above.

12. Since the time limit prescribed by the Hon"ble A.P. Administrative Tribunal in its Order 3rd read above for completion of the above exercise is already over, and also in view of certain contempt petitions in this regard already taken on file by Hon"ble Tribunal, it has been decided to give immediate effect to these Orders by publishing them (together with the annexures) in an extraordinary issue of A. P. Gazette."

The said G.O. came to be challenged in a Batch of O.As. before the Tribunal.

9. Various Officers filed O.As. seeking different reliefs. But, however, they centred round the validity of the decisions taken by the Government in G.O.Ms.No. 977, dated 21.11.1997. Therefore, the Tribunal in order to resolve all the issues in the batch of O.As. framed five points for consideration and the Tribunal recorded its findings. The points framed are extracted below:

"Point No. 1: Whether the Zonal Seniority Lists of the Excise Inspectors, Office Superintendents and Lab Assistants, which are of feeder categories to the post of Assistant Excise Superintendent as considered by the Commissioner of Excise while issuing provisional Seniority Lists of Assistant Excise Superintendents for each of three multi-zones are final?"

Finding of Tribunal on Point No. 1:

"The Commissioner of Prohibition and Excise, while communicating the provisional Seniority List of Assistant Excise Superintendents for each of the multi-zones in Cr.No. 26996/Excise/91/L1, dated 15.4.1994, 26.4.1994 and 23.4.1994, stated that in accordance with the judgment of the A.P.A.T, in R.P. No. 2315 of 1989 and Batch, dated: 28.1.1993 and other Government instructions and relying upon the Seniority Lists prepared by the Deputy Commissioners for the categories of Inspectors of Excise, Office Superintendents and the Lab Assistants and integrating the Seniority Lists of the Excise Inspectors in the relevant zones, the provisional Seniority List of A.E.S. was issued. Thus, it is clear that the Seniority Lists of the feeder categories were finalised. But, however, certain appeals filed by the Excise Inspectors are still pending with the Government. Therefore, the Government have to necessarily dispose of these appeals to enable the Seniority Lists of the Assistant Excise Superintendents to

be finalised. If there are any variations to be incorporated as per the Orders in the appeals filed by the Excise Inspectors etc., and disposed of by the Government, the Commissioner of Prohibition and Excise shall incorporate the same in their respective places in the Seniority Lists. The Commissioner has to assign ranking and the seniority to the Lab Assistants and the Office Superintendents against the cyclic points earmarked for them. While allotting their cyclic points, the dates on which they were appointed in the posts are to be taken into consideration for the purpose of seniority. The same principle has to be followed while determining the seniority of the Chemical examiners in the cadre of Assistant Excise Superintendents. Point No. 1 is answered accordingly."

"Point No. 2: Whether Multi Zonal Seniority Lists of Assistant Excise Superintendents issued by the Commissioner in the year 1995 are final?"

Finding of Tribunal on Point No. 2: "The Tribunal found that certain appeals were filed by the Assistant Excise Superintendents aggrieved by the Seniority Lists of the A.E.S. prepared by the Commissioner in all the three zones. Therefore, directed the Government to dispose of such appeals."

"Point No. 3: Whether the vacancies that arose due to reduction of superannuation age from 58 to 55 in the month of February, 1983 be considered as substantive vacancies?"

Finding of Tribunal on Point No. 3: "The Tribunal held that such of those vacancies which arose on account of the superannuation of age 55 to 58 treated as non-substantive vacancies and accordingly, directed the respondents to work out the substantive vacancies for the panel years including 1982-83 and further observed that all promotee Assistant Excise Superintendents who were promoted in the year 1982-1983 beyond their quota should give way to the direct recruits."

"Point No. 4: Whether the principle of merit-cum-seniority applicable for the selection post of A.E.S. be ignored while preparing the Seniority List of Assistant Excise Superintendents for the panel year 1982-83 on the ground that adequate material is not available for proper assessment of merit as per the stipulations mentioned in judgment rendered in R.P. No. 939/83?"

Finding of Tribunal on Point No. 4: "In our considered view, in the face of the statutory rule relating to the principle of merit-cum-seniority to be applied to a selection post, Government cannot apply the principle of seniority-cum-merit, in the absence of any exemption ordered from the statutory Rule 5 of the A.P. State and Subordinate Service Rules, 1991. However, if the Government feel that it is impossible to follow the norms prescribed by the A.P.A.T. for assessing the relative merit of the candidates, the only course left to them, is to make an enabling provision to deviate from the statutory Rule 5 or invoke Rule 32(b) of the General Rules. While invoking such rule also, the Government have to explain away how and in what way, it is becoming difficult or impracticable to assess the merit-cum-seniority. Thus, the violation of the statutory rules directly affects the

validity of the impugned G.O."

Point No. 5: Whether the merit ranking given by the APPSC should be followed even when the candidates were allotted to different Zones/Multi-zones either in the cadre of Excise Inspectors/Assistant Excise Superintendents?"

Finding of Tribunal on Point No. 5: "The ranking given by the A.P.P.S.C. to the direct recruits, as per the roster points, at the time of direct recruitment, allotting them to the concerned appointing authority, should be strictly adhered to in all cadres of direct recruitment. This cannot be altered by the appointing authority by following any other method like consideration of marks obtaining the selections etc. Rule 33(b) of the A.P. State and Subordinate Service Rules and the proviso thereunder clearly stipulate the above rule position, that the Order of merit or Order of preference prepared by the A.P.P.S.C. shall not be disturbed inter-se with reference to the candidate's position in such list of panel while determining the seniority..." Thus, when the candidates are allotted by the recruiting agency, i.e. the A.P.P.S.C. herein, to different Zones, the inter se seniority of the candidates allotted to the respective Zones shall not be disturbed by the respective appointing authorities. However, while drawing up an integrated Seniority List of the candidates included in several zones, the concerned authority has to take into consideration the date on which the candidates have satisfactorily completed their probation and become regular in service. While effecting promotions, only such integrated Seniority List has to be taken into consideration, which always may not necessarily be the inter se seniority as allotted by the Public Service Commission. This is for the reason that at times, it may so happen that the dates of completion of probation would be extended, for reasons like going on extraordinary leave, non-passing of departmental tests, pendency of disciplinary proceedings etc."

"Point No. 6: Is G.O. Ms. No. 977, Revenue (Excise-I) Department, dated 21.11.1997 valid and suitable?"

Finding of Tribunal on Point No. 6: "We, thus hold that the impugned G.O. Ms. No. 977, Revenue (Excise-I) Department, dated 17.11.1997 is void and unsustainable, as it is in violation of the principles of natural justice, apart from violation of the statutory rules."

Recording its finding, the Tribunal issued the following directions:

"(a) Government shall dispose of the representations/appeals filed by the Excise Inspectors and communicate the same to the Commissioner as expeditiously as possible, at any rate, not exceeding a period of 3 weeks from the date of receipt of a copy of this Order.

(b) Appeals, if any, against the multi-zonal final Seniority Lists of Assistant Excise Superintendents still pending with the Government, shall be disposed of, as expeditiously as possible, at any rate, not exceeding a period of 3 weeks from the date of receipt of a copy of this Order.

(c) The Commissioner of Prohibition and Excise should accordingly revise, as per the Orders of the Government and the observations and findings of this Tribunal, the provisional Seniority Lists of Assistant Excise Superintendents, Multi-zone-wise, and prepare fresh provisional Seniority Lists of Assistant Excise Superintendents for each of the three Multi-Zones I, II and HI, for the period from 1975-76 to 1990-91, duly calling for objections and after receipt to such objections, within a reasonable time, dispose of the same and issue the final Seniority Lists of Assistant Excise Superintendents of Multi-Zones I, II and III. The Commissioner, shall thereafter prepare the provisional integrated State-wide Seniority List of Assistant Excise Superintendents and communicate the same to all the concerned, calling for objections within a reasonable period, not exceeding one month, dispose off the objections, if any, filed, within a month after the last date of receipt of objections and issue a final integrated Seniority List, duly stating the reason for either upholding or rejecting such objections. While issuing such final integrated Statewide Seniority List of Assistant Excise Superintendents, the Commissioner should specifically state that appeal shall lie to the Government, by any aggrieved party. As and when such appeals are preferred by the affected parties, Government shall dispose of such appeals as expeditiously as possible.

(d) Government should fix a time frame to the Commissioner to complete the above exercise, as expeditiously as possible, at any rate, not exceeding a period of 4 months from the date of receipt of a copy of this Order.

(e) The principles laid down in G.O. Ms. No. 607, G.A. (Services-A) Department, dated 6th November, 1992, along with the subsequent Memo on the subject, issued by the Government in General Administration (Services-A) Department, dated 31.7.1997, should be strictly followed.

(f) Based on such finalised State-wide Seniority List of Assistant Excise Superintendents, panels of Assistant Excise Superintendents must be drawn for each year, and should be prepared with reference to the number of vacancies, and as per the eligibility of the candidates with reference to the qualifying date of 1st September of the year. Such panels should invariably be prepared for every year, for the years ranging from 1975-76 to 1990-91.

(g) All further promotions for the higher cadres should be based upon such Seniority List only.

(h) Further promotions shall take place only after such year-wise panels are drawn, in order to avoid any further litigation.

(i) As a result of setting aside of the impugned G.O. the Memo No. I5714/ Ex.I(1)/ 98-I, dated 24.8.1998 also ceases to be in force."

Challenging the findings on points No. 2 to 4, Writ Petition No. 6007 of 2001 and W.P. Nos. 4272 of 2001 and 22814 of 2003 have been filed to quash the judgment of the Tribunal in O.A. No. 7244 of 1997 and O.A. No. 66 of 2000. The

Government also filed W.P. No. 18288 of 2001 challenging the findings of the Tribunal in Para 61 on point No. 4. The Government filed yet another W.P. No. 8682 of 2002 challenging the findings of the Tribunal in para 58(ii) on points No. 2 to 5.

10. Before considering various contentions of the learned Additional Advocate-General and also other writ petitioners, it is necessary to refer to various events that took place for the last several years in the fixation of final Seniority List of feeder categories and in the category of A.E.S. in multi-zones.

11. As already observed by us, the Seniority List prepared by the competent authority from time to time was being modified or upset by the higher authorities on one ground or the other. It is also to be noted that even as per the directions given by the Tribunal from time to time, the situation has been changed affecting the seniority in all the zones and multi-zones. Even though, Seniority List in some zones and multi-zones became final as there was no challenge, but the same was also directed to be reviewed by the Government on the basis of the directions granted by the Tribunal in some other O.As. not connected with the zones and multi zones where the Seniority List was finalised in order to have uniform principle in preparation of Seniority List basing on the directions issued by the Tribunal from time to time. Thus, right from 1982-83 neither the Seniority List prepared nor the panels prepared right from 1982-83 have become final and as on date still the promotions are considered to be only ad hoc, even though the Officers have been promoted to their ranks above A.E.S. This is the situation as on date.

12. The first case, which was instituted in the Tribunal was by one K. Diwakar and others (R.P. No. 939/83) wherein challenge was made to the promotions of the respondents therein as A.E.S. The petitioners and the respondents were Excise Inspectors. By proceedings dated 2.4.1983 respondents were promoted as Assistant Excise Superintendents and it was sought to be contended that the respondents were juniors to the petitioners in multi-zone-n and that the combined Seniority List of persons in multi-zone-n was not preponed and without finalising the Seniority List in Zone-III and IV, promotion Orders were issued. It was the contention that the principle of merit has not been properly followed. The other contention was that the D.P.C. has adopted the procedure of assessing the performance on the basis of the Annual Confidential Reports, without taking into consideration the other relevant factors namely work done, station handled and the cases detected etc. In that case, both the petitioners and the respondents belonged to Zone-IV as Excise Inspectors. The Tribunal after considering the matter ultimately found that assigning marks by the D.P.C. on the basis of the Confidential. Reports was not a fair assessment and that over all performance ought to be taken while assessing the merit and ability. That the performance of the Officer has to be correlated to the volume of the work handled, station served, collections work done by them, cases detected etc. In the absence of such performance assessment, it cannot be said that the

promotion panel was valid. The Tribunal went into the process adopted by the DPC for assessing the performance and found that allotting the marks was not appropriate. Accordingly, while setting aside the promotion orders on 12.12.1985, the Tribunal issued the following directions:

"Government-respondents are directed to reconsider the case of the petitioner vis-a-vis respondents after preparing a combined seniority list of Zones-III and IV and strictly following Rule 34-(b) which says that if merit and ability are approximately equal, the seniority of the candidates is to be given weightage taking into account of performance of the candidate, revenue collected, detection of cases of infringement of Excise Laws, difficult stations handled etc., since the Form produced before the Court, by the learned Counsel for the petitioners, did not contain any column for assessment of these factors. The impugned Order will be subject to the result of the review directed above. No costs."

This direction was considered to be a starting point for all the future disputes. It is also not in dispute that the Government have issued various instructions with regard to the procedure to be adopted by the D.P.C. while constituting the D.P.C. in G.O. Ms. No. 187, dated 24.4.1985. As per the procedure contained, the D.P.C. consisting of Principal Secretary and three Secretaries of other Departments" and also Head of Department will constitute the D.P.C. and they will have to grade the Officers as outstanding, good, satisfactory and unfit and this grading is done after arriving consensus among the members. It is also not in dispute that the promotion from the post of Excise Inspector to the post of Assistant Excise Superintendent is the first Gazetted promotion and principle of merit-cum-seniority has to be followed and by virtue of G.O. Ms. No. 44, dated 24.9.1985, the following amendment was brought to the A.P. State and Subordinate Rules in Rule 4. Amendment in Part-II of the said Rules in Rule 4, the following is substituted:

"(i) All first appointment to a State Service and all promotions/appointment by transfer in that service shall be made on the grounds of merit and ability seniority being considered only where merit and ability are approximately equal by the appointing authority as specified in Sub-rule (c) a list of approved candidates. Such list shall be prepared in the Order of preference by the appointing authority or any other authority empowered in this behalf, in the following gradation:

1. Outstanding
2. Good and
3. Satisfactory.

persons who are found as "unfit" shall not be included in the panel. Persons who are selected under grades 1 to 3 above shall be included in the panel and arranged, keeping off the Officers classified as "outstanding", at the top then Officers who have been graded as "good" next below them and thereafter

Officers who have been graded as "satisfactory" in the Order of their seniority. Appointments to the service or promotions there to shall be made in the above Order of preference."

In this regard, it is to be noted that the Tribunal while dealing with this aspect of merit and ability, the Tribunal did not refer to the directions issued by the Government in G.O. Ms. No. 187, dated 25.4.1985 and also further guidelines in G.O. Ms. No. 44, dated 24.9.1985. The D.P.C. consisting of highly placed Officers has to grade the Officers on consensus basis. Therefore, it is for the D.P.C. to work out the process of assessment in the absence of any procedure for allotment of marks for each type of performance of work. When D.P.C. is entrusted with such assignment, in the absence of any statutory provisions in that regard, it will not be appropriate for the Tribunal to find fault with the preparation of the panel to confirm to the rule of merit-cum-ability. But, in any event, the rule of merit-cum-ability has been given a complete go bye in the present G.O. Ms. No. 977, which is again challenged before this Court.

13. On the basis of the marks allocated for each grading in the A.C.R. for the preceding five of the preparation of panel cannot be said to be an in-transparent method of assessment of merit and more so when the gradings are to be done on consensus basis.

14. The Rule is very specific on the issue. As already observed by us the D.P.C. is quite competent body to assess the merit of the candidates. In the absence of any statutory rules of assessment and in the absence of any allegation of mala fides on the part of D.P.C. the Tribunal/this Court would not interfere with the merit assigned to the Officer. There is no requirement in the rules to take into consideration the places of postings, collections made, cases booked etc., for assessing the merit. It is also on record that the A.C.Rs. of the Officers were taken into consideration and while arriving at a consensus what weighed with the Committee members for assessing the merit cannot be gone into by the Tribunal. It is trite to say that proper primacy has to be accorded to D.P.Cs. Under those circumstances, the Orders of the Tribunal in R.P. No. 939 of 1983 setting aside the promotion of the respondents therein on the ground that aforesaid aspects of collection of fees, cases booked, stations served etc., cannot be said to be correct approach. Moreover, except the employees in Multi-Zone-III, no challenge was made in other zones or multi-zones. We also observe the panels were prepared from 1982-83 onwards keeping in view the relevant rule position existing on the date of panels. Thus, the panels prepared for respective multi-zones by the competent D.P.C. right from 1982-83 are legal and valid.

15. Even under the then existing Rules 47 and 48, there is no blanket power vested with the Government to relax the rule. But, however, the Governor is vested with the power to deal with any class or category of persons being appointed to any civil post or any person serving or has served in civil capacity under Government of Andhra Pradesh in such a manner as may appear to him just and equitable. However, this power is subject to the proviso to the effect

that whenever such power is exercised, that where any such rule is applicable to any person or class of persons, their cases shall not deal with in any manner less favourable to the person or class of persons than that provided by that rule. Therefore, when the rule of merit-cum-seniority has been provided under old Rule 4, if Rule 47 has to be invoked that cannot be exercised in any manner less favourable to the persons or class of persons than that provided by that rule. The purport of the rule appears to be that when person or class of persons are entitled to be promoted on the basis of the merit-cum-ability, the same cannot be dealt with so as to bring out the seniority-cum-merit, which would be definitely unfavourable to the candidates, who possessed merit. Therefore, even under Rule 47, which was in vogue at the relevant time, no such relaxation could be granted by the Government. We have also do not see any power vested with the Government so as to annul the foundational structure of merit and ability rule and make it seniority-cum-fitness. Such a power cannot be said to exist with the Government. By that process, the merit is. given a go bye and non-merit is recognised for promotion for which the merit was only the criteria. Such a provision cannot be disturbed by the Government even by invoking Rule 47. Under (hose circumstances, we are of the considered view that the very observation of the Tribunal which was acted upon by the Government is wholly misplaced, inapt and unwarranted. It is also brought to our notice that the Commissioner of Prohibition and Excise was finding difficulty to assess the merit-cum-ability of the Officers right from 1982-83 to 1990-1991 in view of the long lapse of time. But, in our view the so-called difficulty said to have been experienced by the Commissioner appears to be only a myth and not a reality. As we have already observed that the preparation of the panel based on the assessment of the merit by the D.P.C. cannot be found fault with and admittedly D.P.C. prepared the panel right from 1982-83 basing on the assessment of the Annual Confidential Reports. In the absence of any other better mode of assessment of merit relying on A.C.Rs. cannot be said to be unreasonable process and in fact the Tribunal in O.A. No. 939 of 1985 did not suggest that the authority should give a go bye to the merit-cum-ability rule and adopt seniority-cum-fitness rule. On the basis of the observations made by the Tribunal, the Government dealt with the matter relating to fixation of Seniority List dealt with the panel of Assistant Excise Superintendents for the year 1982-83 of Multi-Zone-I in Memo No. 2900/ XI/86, dated 7.2.1997 wherein the Government observed in Para 5 as follows:

"Government therefore, considered all the candidates who are eligible and qualified for inclusion in the panel of Assistant Excise Superintendents for the year 1982-83 with reference to the confidential reports for all the three years preceding the panel year to have uniformity of evaluation of C.R. of direct recruits and promotees eligible for consideration for promotion and selection is made purely on merit basis and where merit is equal the seniority of the person is given as per the date of regularisation/date of joining of the lower post from which the individual is considered for promotion. In the case of Scheduled Castes

and Scheduled Tribes their cases have been considered on the basis of the seniority subject to fitness.

The Government have considered the appeal petition of the individuals for non-inclusion and provisionally decided to allow all the appeals. The cases of these individuals who are now provisionally considered to be promoted as Assistant Excise Superintendent and the appeals of the individuals for higher ranking have all been considered having regard to the assessment of the overall performance as reflected in the confidential reports of the individuals and the Government have decided to assign ranking of seniority of all the Inspectors of Excise who have already been considered for inclusion in the panel of Assistant Excise Superintendents for 1982-83 and who are now provisionally considered for inclusion in the said panel, as shown in the annexure."

Therefore, the principle of assessment of merit on the basis of the confidential reports was also accepted by the Government. Under those circumstances, the question of experiencing difficulty in assessing the performance of the candidates with reference to the stations, collections and cases instituted pales into insignificance. We also find that by virtue of the Orders issued by the Tribunal from time to time unsettling the seniority settled long back in respect of certain zones, created lot of confusion. Virtually, it has made a snake and ladder game for the last nearly two decades. Further, in view of our finding that it is not necessary to follow the observations made by the Tribunal with regard to the assessment of the merit by taking into consideration the difficult stations, collections, cases instituted as made in O.A. No. 939 of 1985, the preparation of panel from 1982-83 and thereafter cannot be said to cause any injustice or inconvenience to any employee. By this process, the sanctity of rule merit and ability as contemplated in old Rule 4 (new Rule 5) is maintained and in fact the validity of such rule was never challenged by any Officer in the cadre of Inspectors. Only challenge made in 1985 in O.A. No. 939 of 1985 was the method of assessing merit and not the principle contained in Rule 4 of the General Rules. Even though the Tribunal has disapproved G.O. Ms. No. 977, but, yet, by observing that the Government can invoke Rule 32(b), it tried to legalise impermissible and illegal action. This would amount to unqualified and unfit Officers being pushed in from back door and pumped up into higher echelons eroding efficiency and honesty. Thus, we find that the relaxation as observed by the Tribunal in Rule 32(b) is illegal and arbitrary.

16. The next issue that calls for consideration is whether the finding of the Tribunal on the validity of the G.O. Ms. No. 977, dated: 21.11.1997 was sustainable. The Tribunal has set aside the said G.O. on two grounds viz., (1) the affected parties were not heard, resulting in violation of principles of natural justice and that preparation of panels of Assistant Excise Superintendents 1982-83 to 1990-91 from the feeder categories stipulated under the Rules on the basis of the seniority-cum-merit was contrary to the statutory Rules. Having declared G.O. Ms. No. 977 as invalid, the Tribunal suggested the way out to the

Government to wriggle out of the situation. It is submitted that the observation was wholly unwarranted and that there was no such power to the Government under Rule 5(old Rule 4) of A.P. State and Subordinate Rules. It was a fatal observation and that it is brought to the notice of this Court that Government had solely acted on that said observation and issued G.O. Ms. No. 611, dated 14.9.2001 which is again subject-matter of challenge in separate batch of cases presently pending before the Tribunal.

17. The Tribunal observed in Para 61 thus:

"On Point No. 4, we hold that the principle of merit-cum-seniority, applicable for the selection post of Assistant Excise Superintendents, shall not be ignored while preparing the seniority list of Assistant Excise Superintendents for the panel year 1982-83, on the ground that adequate material is not forthcoming for proper assessment of merit, as per the stipulation mentioned in the judgment rendered in R.P. No. 939 of 1983. On the same point, however, we observe that if, for any reason, the Government, in the peculiar situations present, as in this batch of cases, feel that it is becoming practically impossible to fix the Seniority List of the Assistant Excise Superintendents for the panel year 1982-83, as per merit and grading, they are at liberty to invoke General Rule 32(b)."

18. Let us see whether the observation made by the Tribunal are appropriate to the situation on hand and whether such observations are in conformity with the statutory rules. It is also to be considered whether such observations are binding on the appointing authority/Government. For proper appreciation of matter, Rule 32 is extracted below:

"32. Relaxation of rules by the Head of the Department :--(a) Notwithstanding anything contained in these rules or in the special rules and without prejudice to the power of the Governor under Rule 31, the Head of the Department shall also have the power to relax any rule or rules in these rules or in the special rules in favour of any person or class of persons or category of persons for being appointed to or of any person or class of persons who have served or are serving in any civil post or posts carrying a scale of pay less than that of Junior Assistant in his department insofar as such cases relate to transfer, promotion or the service conditions governed by these rules or special rules in such manner as may appear to him to be just and equitable in the public interest or where he considers the application of such rule or rules would cause undue hardship to the person or persons concerned:

Provided that nothing in his sub-rule shall apply in regard to the appointment by transfer of a person who is not qualified for such appointment to the post of junior assistant or equivalent post in A.P. Ministerial or any other Subordinate Service.

Explanation :--This rule shall be applicable to posts which carry a scale of pay or pay less than that of Junior Assistance and not to posts of Junior Assistants or any other post carrying an equivalent scale of pay.

(b) Notwithstanding anything contained in Rule 31 or Sub-rule (a), the State Government, may, of their own motion or otherwise, review the orders of relaxation issued in Rule 31, or Sub-rule (a) or cancel any such relaxation orders, within a period of six (6) months from the date of issue of such relaxation orders, if it is found that the said orders were passed under any mistake, whether of fact or of law, or in ignorance of any material or for any other sufficient cause to be recorded in writing:

Provided that no order consequent on such review, or an order to cancel the relaxation orders, under this sub-rule, shall be issued unless the person affected thereby is given an opportunity of making his representation against the proposed review or, cancellation."

19. Rule 31 also becomes necessary in this process, which reads thus:

"31. Relaxation of rules by the Governor :--Notwithstanding anything contained in these rules or in the special rules the Governor shall have the power to relax any rules contained in these rules or special rules, in favour of any person or class of persons, in relation to their application to any member of service or to any person to be appointed to the service, class or category or a person or a class of persons, who have served in any civil capacity in the Government of Andhra Pradesh in such manner as may appear to be just and equitable to him, where such relaxation is considered necessary in the public interest or where the application of such rule or rules is likely to cause undue hardship to the person or class of persons concerned."

20. Rule 32(a) is inapplicable to the case as it applies to the posts carrying pay scale of less than Junior Assistant. Sub-Rule (b) confers power on the Government to review the Orders of relaxation already issued by Government under Rule 31 or under Sub-rule (a) of Rule 32 of the Head of the Department either suo motu or otherwise or cancel the said Orders within 6 months of the date of issue of such relaxation Orders on the grounds mentioned therein. Therefore, it is clear that the Head of the Department has no power to relax the Rules in respect of Assistant Excise Superintendents panel year 1982-83 to 1990-91. Hence, the very observation of the Tribunal which is purported to be a way out is most inappropriate and impermissible. Equally, the Government has no power to relax the rules either general or special under Rule 32(b). It can only review the relaxation already granted in Rule 31 and that too within 6 months. Even the power of relaxation is unavailable to Government. Thus, we find the observations runs contrary to the Rules. Such stray observations though not binding on the Government, yet, with an intention to respect and regard those observations, acts upon the same and falls in the trap. And what has actually happened in this case. Taking clue from the observations, the Government appears to have issued G.O. Ms. No. 611, which is again surrounded by batch of O.As. pending in the Tribunal.

21. Rule 31 gives the power to Governor to relax the General and Special Rules

and that too in case of any person or class of persons in relation to their application to any member of service. Further, this relaxation is subject to condition that such relaxation necessary in public interest or where the application of such rule is likely to cause to persons or class of persons undue hardship. We have also occasion to peruse G.O. Ms. No. 611. We find no reference to Rule 31. Further, the said rule contemplates the Governor to issue relaxation in specified cases. But, in the said G.O. the Rule 5 which is specifically protects and preserves the merit of candidate is made as normal seniority rule. Rule 5 reads thus:

"5. Selection posts :--(a) All first appointments to a State service and all promotions/appointments by transfer in that service shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal, by the appointing authority as specified in Sub-rule (a) of Rule 7 from the panel of candidates. Such panel shall be prepared as laid down in Rule 6 by the appointing authority or any other authority empowered in this behalf.

(b) Non-selection posts:-No non-Gazetted post should be treated as selection post. Promotion and appointment by transfer to higher posts other than those mentioned in Sub-rule (a) shall be made in accordance with seniority-cum-fitness, unless.

(i) such promotion or appointment by transfer of a member has been withheld as a penalty; or

(ii) a member is given special promotion for conspicuous merit and ability."

22. The intention of Rule is very specific that in respect of selection posts covered by Rule 5 of 1996 Rules (Rule 4 of 1962 Rules) either by direct recruitment or by promotion is on the basis of merit. In respect of promotion of in-service candidates, it is by merit-cum-seniority and when merit is equal seniority shall take the precedence. Therefore, the basic structure of Rule 5 is the merit-cum-seniority. Can it be said seniority-cum-merit and can such a power exist either in Rule 31 or 32 is yet another question. The Rule which recognises the merit cannot be diluted to the extent of completely derecognising the merit. Such a power cannot be exercised by taking shelter under the power of relaxation. Moreover, we need not go to such extent in this case. Prior to 1996 Rules, under the then existing Rules of 1962, Rules 47 and 48 were ruling the field, which reads thus:

"Rule 47. Relaxation of rules by the Governor :--No rule made under the proviso to Article 309 of the Constitution of India or continued under Article 313 of Constitution shall be construed to limit or abridge the power of the Governor to deal with the case of any class or category of persons for being appointed to any civil post, or of any person who is serving or has served in a civil capacity under the Government of Andhra Pradesh in such manner as may appear to him to be just and equitable:

Provided that, where any such rule is applicable to the case of any person or a class of persons, the cases shall not be dealt with in any manner less favourable to the person or class of persons than that provided by that rule.

Rule 48. Relaxation of Rules by Head of Department :--Notwithstanding anything contained-in these rules and without prejudice to the power of the Governor under Rule 47, the Head of a Department shall also have power to deal with the case of any class or category of persons for being appointed to, or of any person who is serving or has served or of a, class of persons who are serving or have served in a civil post or posts carrying a scale of pay less than that of a Lower Division Clerk in his department, insofar as such case relates to transfer, promotion or the service conditions governed by these rules or the special service rules, in such manner as may appear to him to be just and equitable:

Provided that, where any such rules is applicable to the case of any person or a class of persons, the case shall not be dealt with in any manner less favourable to the person or class of persons than that provided by that rule;

Provided further that nothing in this rule shall apply in regard to the appointment by transfer of a person who is not qualified for such appointment to the post of a Junior Assistant in the Ministerial Service.

Explanation :--For the purposes of this rule, a civil post carrying a scale of pay less than that of a Junior Assistant, includes a civil post which, immediately before the commencement of Andhra Pradesh Revised Scales of Pay Rules, 1969, carried a scale of pay less than that of a Junior Assistant."

23. Coming to the issue relating to the substantive vacancies and non-substantive vacancies alleged to have occurred on account of the reduction of the age from 58 years to 55 years in the year 1983, the Tribunal recorded a categorical finding that the vacancies which arose on account of the reduction of age cannot be treated as substantive vacancies. In our consider view, this finding is also not sustainable in law. The rules on this aspect are specific as to what are the substantive vacancies and nonsubstantive vacancies, and it is for the authorities to assess the number of substantive vacancies available in a particular year. It is the contention of Mr. Vedula Venkataramana, the vacancies which arose on account of the reduction of the age were never filled by the persons, who were retired and they remained unfilled. Even the persons, who Were continuing in the post of Assistant Excise Superintendents was granted cash benefits. Thus the posts were never occupied by the persons who were retired by virtue of the reduction of the age and therefore, they could be treated as substantive vacancies right from 1983. He also submits that the assessment made with regard to the substantive vacancies for the panel year 1982-83 did not include the vacancies, which arose on account of the reduction and thus he submits that the very finding of the Tribunal is wholly unsustainable. We do not go so far to consider this issue. The availability of substantive vacancies in a particular year for preparing the panel is based on factual information and

substantive vacancies has to be assessed with reference to the relevant statutory rule which is holding the field at the relevant time. Therefore, giving directions to treat certain vacancies as substantive vacancies and certain vacancies as non-substantive vacancies is wholly uncalled for. The Tribunal or this Court are exercising the judicial review over the decisions taken by the administrative authorities. In such an event, in a matter relating to pure question of fact as to how many substantive vacancies existed becomes immaterial, but if the procedure adopted for assessing the substantive vacancies is in accordance with rules that is the end of the exercise of the judicial review. Thus, we are of the considered view that the finding of the Tribunal that the vacancies which arose on account of the reduction of age cannot be treated as substantive posts and it is set aside and it is left open to the Government to decide the matter in accordance with rules.

24. As far as the contention of the learned Additional Advocate-General with regard to the finding recorded by the Tribunal in Para 58(1) is concerned, he submits that the observations made by the Tribunal are also not sustainable. He further submits that the fixation of the seniority inter se promotees and direct recruits is governed by Rule 33 and the Tribunal observed as follows:

"The ranking given by the A.P.P.S.C. to the direct recruits, as per the roster points, at the time of direct recruitment, allotting them to the concerned appointing authority, should be strictly adhered to, in all cadres of direct recruitment. This cannot be altered by the appointing authority by following any other method like consideration of marks obtained in the selections etc. Rule 33(b) of the A.P. State and Subordinate Service Rules and the proviso thereunder clearly stipulate the above rule position, that "the Order of merit or Order of preference prepared by the A.P.P.S.C. shall not be disturbed inter-se with reference to the candidate's position in such list or panel while determining the seniority..." Thus, when the candidates are allotted by the recruiting agency, i.e.. the A.P.P.S.C. herein, to different Zones, the inter se seniority of the candidates allotted to the respective Zones shall not be disturbed by the respective appointing authorities. However, while drawing up an integrated seniority list of the candidates included in several zones, the concerned authority has to take into consideration the date on which the candidates have satisfactorily completed their probation and become regular in service. While effecting promotions, only such integrated seniority list has to be taken into consideration, which always may not necessarily be the inter se seniority as allotted by the Public Service Commission. This is for the reason that at times, it may so happen that the dates of completion of probation would be extended, for reasons like going on extraordinary leave, non-passing of departmental tests, pendency of disciplinary proceedings etc."

We find that the observations are also not warranted. The seniority is required to be fixed by the authorities in accordance with Rule 33(b). How to prepare the seniority cannot be explained by the Tribunal. But, it is only when the authorities

have issued proceedings fixing the final seniority, the Tribunal can find out whether the same is in accordance with the Rule 33(b) or not, but directing the authorities to deal with the situation in a particular manner cannot be said to be the power of the Tribunal. Under those circumstances, we are of the considered view that the said directions are illegal and contrary to law.

25. Now the following situation emerges:

The merit-cum-seniority rule which is applicable to Assistant Excise Superintendents as contemplated under old Rule 4 (new Rule 5) is upheld and the action of the Government in preparing the panel list on the basis of the seniority-cum-fitness is set aside. It is also observed that Seniority List year-wise panel have been prepared number of times and they were set aside either at the appellate stage or by the Tribunal, thus coming to the starting point. Even though nearly two decades have been elapsed, the seniority list and the panel in the cadre of the Assistant Excise Superintendents 1982-83 onwards is still in a fluid stage. In order to give a finality to the situation, we find that the matter should be dealt with by the Government straightaway instead of dealing the seniority matter at the Deputy Commissioner level, Commissioner level and then Government level. Therefore, in order to put a quietus to the matter, we issue the following directions:

(i) The Government shall prepare a panel of Assistant Excise Superintendents Zone-wise for the year 1982-83 onwards basing on the principle of merit and ability as already assessed by the D.P.C. and final Seniority List shall be prepared after giving opportunity to the concerned persons.

(ii) Multi zonal panels for Multi-Zones I, II and III shall be prepared from 1982-83 onwards keeping in view the provisions contained in the relevant General Rules or Special Rules as the case may be and finalise the same after giving opportunity to the persons concerned.

(iii) The assessment of substantive vacancies and inter se seniority between the promotee Officers and the direct recruits in the cadre of Assistant Excise Superintendents shall be prepared keeping in view the relevant provisions of the Andhra Pradesh State and Subordinate Service Rules.

(iv) Basing on the multi-zone seniority, further promotion to the cadre of Excise Superintendents and thereafter shall be prepared in accordance with rules.

(v) While preparing the panel list of Assistant Excise Superintendents for the aforesaid years, the cyclic points meant for Superintendents, Lab Assistants, Examiners shall be taken into consideration as provided under the A.P. Excise Rules.

(vi) The entire exercise shall be done within a period of four months from the date of receipt of a copy of this Order.

(vii) It is desirable that the Government shall constitute Special Cell for sorting

out the Seniority List so as to maintain quietus in the excise department.

26. Accordingly, the orders of the Tribunal in OA No. 66 of 2000 and Batch, dated 19-12-2000 are set aside. Consequently, the Writ Petition Nos. 4272 of 2001, 6007 of 2001, 18288 of 2001 and 22814 of 2003 are disposed of with directions.

27. In view of the Orders passed in WP No. 4272 of 2001 and Batch, dated 24-12-2003, no further orders are necessary in WP Nos. 8682 of 2002 and 3138 of 2002 and the writ petitions are accordingly closed.