
(2007) 01 MAD CK 0244

In the Madras High Court

Case No : W.A. No. 500 of 2005, W.P. No's. 31416, 34029, 34030, 36096/04; 9460 and 11744 to 11766, 26990 and 26973 of 2005 and WAMP No. 911/05, WPMP No's. 43423/04, 12809, 12811, 12813, 12815, 12817, 12819, 12821, 12823, 12825, 12827, 12829, 12831, 12833, 12835,

Tamil Nadu Rural Development Engineers Association APPELLANT

Vs

The Secretary to Government, Rural Development RESPONDENT
Department, The Director of Rural Development, The
Registrar, Tamil Nadu Administrative Tribunal and P. Mathu,
Assistant Engineer

Date of Decision : 29-01-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Government of Tamil Nadu General Rules — Rule 39

Citation : (2007) 01 MAD CK 0244

Hon'ble Judges : S. Manikumar, J;P. Sathasivam, J

Bench : Division Bench

Advocate : C. Selvaraju for Srinath Sridevan, in WA No. 500/05 and in WP Nos. 34029, 34030, 36096/04, 11744 to 11766 and 26973 of 2005 and T.R. Rajagopalan for Srinath Sridevan, in WP Nos. 31416/04, 9460 and 26990/05, R. Viduthalai, General assisted by P. Subramanian, for the Appellant; R. Thiyagrajan for Ravi, for R4 in WA No. 500/05, WPs. 34029 and 34030/04, 11744 to 11766/05 and for R5 to R8, R10 to R13, R15 and R16 in WPs. 36096/04 and for R3 to R5 in WP. 31416/04, 26990 and 26973 of 2005, for the Respondent

Judgement

P. Sathasivam, J.—Tamil Nadu Rural Development Engineers" Association (hereinafter referred to as "Association") is the appellant in W.A. No. 500 of 2005 and petitioner in all the Writ Petitions. The Writ Appeal is directed against the order of the learned single Judge, dated 02.12.2004, made in W.P. No. 35315 of 2004, in and by which, the learned Judge, taking into consideration the facts and circumstances of the case, directed the Government to implement the order of the Tamil Nadu Administrative Tribunal, Chennai, in O.A. No. 1799 of 2004, dated 27.04.2004, if there is no impediment, within a period of six weeks from the date of receipt of copy of the order.

2. In W.P. No. 31416 of 2004, the Association prays to issue a writ of mandamus, directing the official respondents to effect promotions to the post of Assistant Executive Engineer, Rural Development Department (in short R.D. Department), from the post of Assistant Engineer on a strict 1:1 ratio between "Assistant Engineer - Direct Recruits" and "Assistant Engineers - promoted by transfer of service" in the R.D. Department as prayed in the representation dated 23.03.2004.

2(a). In W.P. Nos.34029, 34030/04 and 11744 to 11766/05, challenge is made to the order of the Tamil Nadu Administrative Tribunal in O.A. Nos.1068 to 1081 of 2004 and 1791 to 1801 of 2004 on various grounds.

2(b). In W.P. No. 36096 of 2004, the Association challenges the panel and promotion of directly recruited Assistant Engineers issued in G.O. (2D) No. 116, dated 29.10.2004, and G.O.(D) No. 966, dated 16.11.2004.

2(c). In W.P. No. 9460 of 2005, the Association seeks to quash the rejection letter of the Government, dated 29.12.2004, and to fix ratio as 1:1 for promotion to the post of Assistance Executive Engineer (AEE).

2(d). In W.P. No. 26973 of 2005, prayer is for the issuance of a writ of mandamus to the official respondents to give retrospective effect to the promotions made to Overseers as Assistant Engineers (A.Es) on 02.09.2002 as 25.5.1998, ie., the date of effect of the Service Rules.

2(e). In W.P. No. 26990 of 2005, the Association seeks to issue a writ of declaration, declaring Rule 3(2) of Notification-III of G.O. Ms. No. 15, R.D. Department, dated 25.01.2000, as ultra vires in the absence of fixation of quota between A.E. - Direct Recruits and promotees to the post of A.E.E.

3. Case of the petitioner is briefly stated here-under:

As could be seen from W.P. No. 34029 of 2004, the members of the Association (hereinafter referred to as "petitioners") were initially appointed as "Overseers" by the then Highways and Rural Works Department and posted exclusively to various Panchayat Unions for executing all the Civil works / Rural works in the Panchayat Unions of Tamil Nadu. Since they were earlier under the administrative control of the erstwhile Highways and Rural Works Department, they had no proper avenues of promotion especially for the post of A.E. and many of them were languishing in the same post ie., as Overseers, for nearly two decades.

By virtue of G.O. Ms. No. 263, R.D. Department, dated 27.12.1996, the Government decided to set up a separate "Engineering Wing" for the R.D. Department itself so as to exercise adequate control over various Central and State sponsored schemes and accordingly several new posts were created. By virtue of G.O. Ms. No. 102, R.D. Department, dated 25.05.1998, the Government directed that the then Highways and Rural Works Department should cease forthwith from exercising control over the promotions and appointments in the R.D. Department. The Government Order also recognised the rights of the

Overseers, whose entire service is only in the R.D. Department, for promotion to the posts of AEs and Junior Engineers (JEs). Finally, the Government framed Service Rules for various technical posts in the R.D. Department and notified the same in G.O. Ms. No. 15, dated 25.01.2000, by invoking the powers under proviso to Article 309 of the Constitution of India.

As soon as the Engineering Wing was created in the R.D. Department, the posts were filled up by drawing personnel from other technical Departments of Government of Tamil Nadu on "deputation basis" as an interim arrangement. However, the Tamil Nadu Highway Engineers Association opposed the creation of a separate Engineering Wing under the R.D. Department and filed Original Application in O.A. No. 253 of 1997 before the Tamil Nadu Administrative Tribunal (in short "Tribunal"). However, the said Application was dismissed by the Tribunal by order dated 12.11.1997. Aggrieved by the said Order, the said Association filed W.P. No. 6513 of 1998 before this Court. By order dated 02.04.2002, this Court upheld the order of the Tribunal. Validity of G.O. Ms. No. 15, dated 25.01.2000, and G.O. Ms. No. 102, dated 25.05.1998, was challenged before the Tribunal by one K.Loganathan and others in O.A. Nos. 5338 and 7766 of 2000. Both the said Government Orders were upheld by the Tribunal by order dated 03.06.2002.

A group of A.E. - Direct Recruits, on completion of just five years of service in the R.D. Department, filed O.A. Nos.1068 to 1081 of 2004 before the Tribunal, praying that they be considered for promotion to the post of AEE in the R.D. Department under Rule 39 of General Rules of the Government of Tamil Nadu. The Tribunal, by Order dated 16.03.2004, directed the Government and the Director, R.D. Department, to consider and grant promotion to the applicants in the said O.A. under Rule 39 of the General Rules and that regular promotion and selection can be done after preparing a Panel.

It is stated that the Tribunal failed to note that the petitioners, who acquired the Degree in Civil Engineering much earlier than "AE - direct recruits", were promoted to the post of A.E. only after G.O. Ms. No. 15, containing the "Service Rules" were notified. The Government and the Director, R.D., are proceeding with the process of filling up the vacancies in the post of AEE of the R.D. Department by considering only A.E.-direct recruits for promotion. On the other hand, AE-promotees, who are similarly placed as that of AE-Direct Recruits and are in the same post of AE, have not been considered for promotion to the post of AEE.

In WP No. 36096 of 2004, the association, while challenging the panel and promotion of directly recruited Assistant Engineers issued in G.O. (2D) No. 116 dated 29.10.2004 and G.O.(D) No. 966 dated 16.11.2004, contended that till the disposal of W.P. No. 31416 of 2004 relating to fixing a ratio of 1:1 between AE-Direct Recruits and AE-promotees for promotion to the post of AEE, the official respondents have erroneously filled up all the vacant posts of AEE on temporary basis. In G.O. Ms. No. 15, the appointing authority for the post of AEE has not been stipulated. The Association made several representations, highlighting the

lacunae in G.O. Ms. No. 15. The Government and the Director, R.D. Department, without bothering to set right forthwith the lacunae and inequities as pointed out by the Association, proceeded with much haste to fill up the existing vacant posts of AEE by considering a group of AE-Direct Recruits alone. The method being followed is prejudicial to the departmental people whereas the Direct Recruits without any hurdle or battle got selection and now, under the impugned order, they have been further promoted as AEEs. They also made a representation to the Government either to relax the experience (5 years as AE) or to give notional promotion from the date on which the Engineering Wing was formed and the Government Order was issued as the same benefit has been given to the direct recruits giving retrospective effect. Therefore, the present promotion under the impugned order cannot be said as one of equitable balance meeting equity justice.

In Writ Petition No. 9460 of 2005, while seeking to quash the rejection letter of the Government and to fix ratio as 1:1 for promotion to the post of AEE, it is stated that, after the introduction of the Special Rules in G.O. Ms. No. 15, R.D. Department, dated 25.01.2000, it is only the Overseers who were promoted by way of recruitment by transfer and there was no direct recruitment to the post of Assistant Engineer after the Special Rules. Therefore, the directly recruited A.Es. are strangers to the service and they are not at all entitled for promotion and nevertheless they were given promotion as if they were recruited under the Special Rules. When the Government and the Director wanted to give the benefit, they ought to have considered them as the persons recruited under the Special Rules only from the date of issuance of the Special Rules, in which event, they are not having 5 years experience. Therefore, when ineligible persons are promoted as AEEs, applying the same analogy, the petitioners should have been given promotion without insisting for 5 years experience, which has not been done. The Department should have fixed a ratio at least for the present vacancies, because, if all the vacancies are filled up, they would go only to the directly recruited A.Es, who are youngsters and there will not be any vacancy in the near future. Even if future vacancies arise, all such vacancies will go to them only inasmuch as they have gained 5 years of experience and the promotee AEs are to retire only as AEs inasmuch as they already served a number of years in the lower post. Therefore, the denial of ratio is per se arbitrary and without any application of mind. By oversight, there was a lacunae in G.O. Ms. No. 15 by not recognising the justifiable separate identity of AE-promotees and by not fixing a suitable ratio for their promotion to AEE post.

In W.P. No. 26973 of 2005, while seeking for a direction to the Government to give retrospective effect to the promotion made to Overseers as A.Es. on 02.09.2002 as 25.05.1998, it is averred that a Rule cannot have two retrospective dates and that too for the same post ie., for the post of AE, hence, it constitutes an anomaly in G.O. Ms. No. 15. AE promotees are having more than two decades of experience in executing various Panchayat Union Works and they have acquired the Degree Qualification much earlier than the AE - Direct

Recruits as evident from the service particulars submitted. As the delay in effecting promotions is due to the delay on the part of the R.D. Department in not initiating timely action to fill up the vacancies and as AE-Direct Recruits have already been given "double advantage", it is only fair, justifiable and reasonable to give retrospective effect to the promotions given to the Overseers as AE in the RD Department with effect from 25.05.1998, ie., the date of retrospective effect given in G.O.Ms. No. 295 dated 14.12.2001.

In W.P. No. 26990 of 2005, the Association challenges Rule 3(2) of Notification-III of G.O. Ms. No. 15, R.D. Department, dated 25.01.2000. Apart from reiterating what was stated in the earlier Writ Petitions, it is also said that since the direct recruits and the promotees are different and distinct, it is necessary that a ratio should be fixed between them. If it is not done, the petitioners will not get an opportunity to be promoted to the next higher post (AEE) for the rest of the service with the Department and all of them will have to retire in the present post itself, ie., A.E. It is further stated that when once the direct recruits and promotees are posted in one cadre namely Assistant Engineer, no favourable treatment to direct recruits alone shall be given, which is violative of Articles 14 and 16 of the Constitution of India. The respondents ought to have seen that seniority should be fixed by rotation in a case when a service is composed of fixed proportion of direct recruits and promotees. The principle of determination of seniority of the direct recruits and the promotees inter se in the ratio of 1:1 shall have to be followed so as not to cause injustice to anyone in the Department.

4. Case of the Official and contesting respondents:

All Assistant Engineers, comprising of both direct recruits and promotees, Junior Engineers and Senior Draughting Officers were considered for promotion as AEEs for the year 2004-2005. The minimum service qualification for being considered for promotion to the post of AEE is 5 years of service as AE / Junior Engineer / Senior Drafting Officer. The petitioners were promoted only in 2002, therefore, they did not fulfil the minimum service qualification, on the other hand, the directly recruited A.Es. fulfilled the service conditions and most of the eligible persons were promoted as AEEs. The Service Rules have been given retrospective effect from 26.09.1997, on which date, the recruitment for A.Es. was notified, thereby regularising the recruitment of A.E. - direct recruits. The services of the AE-direct recruits have been counted from the date on which they have entered into Government Service. But the services of the petitioners and other similarly persons have been taken into account much prior to their absorption in the R.D. Department, ie., from 1997 onwards. The orders passed by the Tribunal on 16.03.2004 and 27.04.2004 are perfectly consistent with the service rules and valid. Accordingly, the orders were obeyed by the Government and the Director, R.D. The promotee A.Es. (Overseers with B.E. Degree qualification) became full fledged members of the R.D. Engineering Service on par with the directly recruited Assistant Engineers, therefore, there is no

distinction/discrimination between the two categories. If the prayer of the petitioners for reserving 50% posts of AEE to the promotee AEs is allowed, it will amount to creation and perpetuation of an artificial division between equals which will strike at the root of the principle of equality. The Engineering Wing being a technical department, minimum service condition of 5 years is necessary for an individual to acquire the needed experience to enable him to be promoted to a higher post.

Regarding the claim that promotion should be given to them with retrospective effect from 25.05.1998, the date on which the service rules for the A.Es have been notified; it is stated that the petitioners, on that date, were working in a lower post viz., as Overseers, and they were members of the Highways Department. Based on their option alone, they were absorbed as Overseers (a lower post) in the R.D. Department in 1999. They were fully aware of the consequence of being absorbed in the R.D. Department that they would be placed in a lower position to that of direct recruits. Further, AE-direct recruits had entered into service in 1998 itself and, at that time, the petitioners and similarly placed persons were working as Overseers only.

The petitioners have no legal right to be promoted as AEEs as on date. They do not fulfil the conditions for promotion to the said post and all of them are well aware of these facts. Further, as per the ad hoc Rules, issued in G.O. Ms. No. 15, an Assistant Engineer becomes eligible for promotion as AEE only after he has put in five years of service as A.E in the R.D. Department. None of the petitioners has completed five years of service as A.E. They were all promoted as A.Es. as per Rules only in the year 2002 and, therefore, they are admittedly far juniors to the Assistant Engineers/Direct Recruits. When the petitioners have not come within the zone of consideration, they lose their claim and hence all the writ petitions are liable to be dismissed. Unless the rules are amended to promote the petitioners as A.Es with retrospective effect, they cannot claim seniority over the direct recruits. Inasmuch as the Rules have also been upheld, the Association cannot challenge the same as on date. When the Government has not relaxed the stipulation/condition and the ad hoc rules specify five years of service to be completed as A.E. for promotion to the post of AEE, the petitioners have no locus standi to challenge the order of the Tribunal. With regard to the claim that there is no appointing authority specified in the statutory rules for the post of AEE, it is specifically stated that the Government is the appointing authority for the said post and that the said aspect has been clarified to the petitioners in the Government letter dated 29.12.2004. None of the grounds raised in the Writ Petitions is well-founded, hence, the same are liable to be dismissed.

5. With the above pleadings, we heard Mr.T.R.Rajagopalan and Mr.C.Selvaraju, learned Senior Counsels for petitioners in the Writ Petitions and appellant in the Writ Appeal; Mr.R.Thiyagrajan, learned Senior Counsel for AE-direct recruits/impleaded respondents; and Mr.R.Viduthalai, learned Advocate General for the

State/official respondents.

6. The following issues arise for consideration.

(i) Whether mandamus can be issued to the Government to fix the ratio in a particular manner as claimed by the petitioners.

(ii) Whether the petitioner-association is entitled to ask for quota or ratio between various feeder categories.

(iii) Whether the Tribunal is right in issuing direction to consider the directly recruited A.Es for promotion as AEE.

(iv) Whether the petitioner-association has locus standi to file 25 writ petitions, questioning the Tribunal's order when its members are not qualified as per Rules.

(v) Whether a claim can be made to promote the petitioners retrospectively to the higher post ie., A.E., from the date when they have not even discharged the duties in that post in the R.D. Department.

(vi) In the absence of fixation of quota between the persons drawn from different sources after being integrated into one class for the purpose of promotion, whether a statutory rule can be declared as ultra vires and discriminatory.

(vii) Whether the High Court can issue mandamus to the State Government to legislate under Article 309 of the Constitution of India or even indirectly require the executive to exercise its rule making power in a particular manner.

(viii) Whether the Court or Government can order retrospective promotion to the date back to a period when the promotees were not born on the cadre, which would adversely affect the interests of the direct recruits already in service.

7. Since all the above issues are interconnected, they are being considered and answered conjointly in the following paragraphs.

8. It is not in dispute that service rules in regard to the posts from Assistant Engineer up to Superintending Engineer (SE) came to be framed in G.O. Ms. No. 15 dated 25.01.2000 by virtue of the power conferred by the proviso to Article 309 of the Constitution of India. It is also not in dispute that the said G.O. has been given retrospective operation only for the post of A.Es., that too for Direct Recruits, dating back to 26.09.1997, ie., the date of TNPSC's Notification inviting applications to fill up 200 numbers of A.Es to be appointed by direct recruitment in the R.D. Department. The said G.O. stipulates that appointments to the posts of A.E., R.D. Department, should be made by way of Direct Recruitment through the TNPSC and by way of recruitment by transfer from among the Overseers possessing a Degree in Civil Engineering or equivalent. The next promotional post after Assistant Engineer is AEE. G.O. Ms. No. 15 prescribes that appointments to the post of AEE shall be by way of promotion from the category of A.E. (direct recruits and promotees) and by recruitment by transfer from the categories of Junior Engineer (JE) and Senior Draughting Officer (SDO). The ratio

for appointment to the post of AEE by promotion from the category of AE and by recruitment by transfer from the categories of JE and SDO was prescribed as 6:2:1. The G.O. also stipulates that promotion to the post of AEE shall be on the basis of merit and ability and where merit and ability are approximately equal, then only seniority shall be considered.

It is the claim of the AE promotees that, even though they are originally from the same pool of Subordinate Engineering Service, they have to be treated separately and given a separate identity by virtue of their merit ie., degree qualification, and ability, ie., additional experience in the higher post of AE cadre than J.Es and SDOs. It is also their claim that AE - direct recruits and AE - promotees are even though equals in terms of qualification, duties and responsibilities and scale of pay, AE - promotees have to be given a separate identity within the same pool of A.Es in the Engineering Service of the R.D. Department. It was projected that, at the time of entering into the service, the age of AE - direct recruits was about 30 years, and by 35 years of age they would become eligible for AEE post, on the other hand, AE promotees have so far put in nearly 20 to 23 years of total service, out of which, 15 to 20 years was in the Subordinate Engineering Service and therefore, AE promotees will become eligible for AEE post only at the age of 43 - 46 years even though more than 50% of them have so far put in 10 to 15 years of service after passing the degree qualification in Civil Engineering. Moreover, the seniority for the AE-direct recruits is based on the date of entering the service, whereas, for AE-promotees, seniority can only be based on the date of passing the degree qualification. Hence, it is claimed that AE-promotees have to be given a separate identity and they cannot be treated on par with AE-direct recruits for the purpose of determining the eligibility and for effecting promotion to the next promotional post of AEE in the RD Department. It is projected that if such a separate identity for AE-promotees is not maintained and promotion to AEE post is effected from the common pool of A.Es, then, AE-promotees can never become eligible and promoted to the post of AEE and they will have to retire as A.Es only as their promotional avenues to the post of AEE and above will be completely choked by AE-direct recruits, who are much younger than AE-promotees by at least 8 years of age. According to them, if AE-promotees are given a separate identity within the post of AE and a suitable ratio is given for promotion to the post of AEE, then, personnel from various categories with varying age and experience will be occupying the post of AEE, which is desirable. It is pointed out that EE post alone is to be treated as the merging point of all personnel from various categories; therefore, it is imperative that whatever ratio that has been fixed amongst the various categories of personnel from the Engineering Service and Subordinate Engineering Service should be extended upto the AEE post in the R.D. Department.

9. With reference to the claims and counter-claims, at first, let us consider the decisions relied on by Mr.T.R.Rajagopalan and Mr.C.Selvaraju, learned Senior Counsels, appearing for the petitioners/appellant.

A. At the foremost, they brought to our notice the decision reported in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, , placing reliance on paragraph No. 55 thereof, which reads as under:

55. We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate articles 14 and 16 of the Constitution and must be upheld.

In the said decision, the Supreme Court had held that though persons appointed directly and by promotion were integrated into a common class of A.Es., they could, for the purpose of promotion to the cadre of EE be classified on the basis of educational qualification. Applying the same principle, there cannot be further classification among the graduates who have been integrated into one class by promotion from Overseer as Assistant Engineer on acquiring B.E. Degree qualification and by direct recruitment as Assistant Engineer. As rightly pointed out by Mr.R.Thiyagrajan, learned Senior Counsel for the impleaded respondents / AE-direct recruits, this decision cannot be relied on by the writ petitioners as their prayer is to further classify the Assistant Engineers as A.E.-promotees and A.E.-direct recruits. In such circumstances, the principle laid down in the above Supreme Court decision cannot be relied on by the writ petitioners; in fact, this decision supports the stand of the Government and the impleaded respondents.

B. The decision reported in *State of Gujarat Vs. C.G. Desai and Others*, , relied on by the learned Senior Counsels for the petitioners, is also not helpful to their case since, in that decision, the Supreme Court concluded that the petitioners did not possess the requisite length of service in Class-II to entitle them for promotion when the respondents were included in the list and promoted. In view of the same, since the petitioners do not have the qualifying service of five years as A.Es., there cannot be two classes amongst the same group as AE-promotees and AE-direct recruits.

C. The other decision relied on is the one reported in *C.A. Rajendran Vs. Union of India (UOI) and Others*, . On going through the factual details therein and the law laid down, we are of the view that the same is not applicable to the cases on hand.

D. Next decision relied on is *Dr. Ms. O.Z. Hussain Vs. Union of India and others*, , wherein, the Supreme Court held that promotion is a normal incidence of service. Their Lordships pointed out that there was no justification while similarly placed officers in other ministries would have the benefit of promotion, the non-medical "A" group scientists in the establishment of Director General of Health Services would be deprived of such advantage. The Court directed that appropriate rule should be framed providing promotional avenues for "A" category scientist in the non-medical wing of the Directorate. As rightly pointed out by the counsels for

the respondents, the petitioners have been provided promotional avenues under the rules framed in G.O. Ms. No. 15, R.D. Department, dated 25.01.2000, upto the cadre of Superintending Engineer. It is brought to our notice that some of the writ petitioners, who have joined as Overseers on 08.03.1999 in the R.D. Department were promoted as A.Es within 3 1/2 years, ie., on 02.09.2002 and after serving in the R.D. Department as A.Es for five years, from 02.09.2002 to 02.09.2007, they are qualified for further promotion as A.EEs. It is also not in dispute that a separate ratio has been fixed for promotion among A.Es, J.Es and S.D.Os as 6:2:1. Thus, the said case law cannot be made applicable to the case of the petitioners.

E. Reliance was also placed on the decision reported in *P. Murugesan and Others Vs. State of Tamil Nadu and Others*, . In this case, the Apex Court held that after the Constitution Bench Judgment in *Triloki Nath Khosa's* case (referred supra), rules can be framed barring altogether the diploma holders from promotion; the rule making authority cannot be precluded from restricting the promotion. In that case, the ratio of 3:1 between the graduates and diploma holders, which was followed since 1965, was upheld by the Supreme Court. The factual details in all these writ petitions are different as there is no classification made on the basis of educational qualification, hence, the said decision is not helpful to the writ petitioners.

F. In the decision reported in *Maharashtra Vikrikar Karamchari Sangathan Vs. The State of Maharashtra and Another*, , the factual details show that challenge was made by the promotees against the direct recruits as to the seniority list of Sales-tax Inspectors in the Sales-Tax Department, Maharashtra. The Supreme Court, rejecting the plea of the promotees, held that, after there is a violation of quota rule, the result must follow and all the promotees who remain in office for 17 years cannot take advantage of the situation. As could be seen, the contrary contention of the promotees was rejected and, in those circumstances, the petitioners cannot claim that their services as Overseers for nearly 10 years and above in Highways Department should be taken into account in R.D. Department for the purpose of further promotion.

G. In the decision reported in *Suraj Parkash Gupta and Others Vs. State of Jammu & Kashmir Others*, , one of the points that arose for consideration by the Supreme Court was whether the direct recruits could claim a retrospective date of recruitment from the date on which the post in direct recruitment was available even though the direct recruit was not appointed by that date and was appointed long thereafter. It is clear from the conclusion therein that the direct recruits can claim seniority only from the date of the regular appointment and not from an earlier date. It is relevant to point out that the impleaded respondents, who are direct recruits, are not claiming seniority from the date of notification and have been given seniority by the department only from the date of their regular appointment. The rules were framed on 25.01.2000 and the retrospective effect was given from 26.09.1997 for the post of AE for the purpose

of validating the Tamil Nadu Public Service Commission's notification calling for applications for appointment as AE and due to this retrospective framing of rules, the direct recruits have not gained any seniority and they have been given seniority from the date of appointment. In such circumstances, the Assistant Engineers, who were promoted from the cadre of Overseers, can only claim seniority from the date of their regular appointment as A.E. ie., from 2.09.2002, within their quota. That being so, the claim of the petitioners to give them retrospective promotion from 1998 in excess to their quota would be contrary to rules; therefore, such claim is liable to be rejected.

H. In *U.T. Chandigarh v. Avtar Singh and Ors.*, (2002) 10 SCC 432, , it has been held that stagnation in service for an unduly long period without avenues of promotion is not in the interest of administration. In the said decision, the question was whether the provision of Panchayati Raj Act 1994 applies to Chandigarh and whether the post of Block Development and Panchayat Officer for the Union Territory of Chandigarh is a must. In the cases on hand, there is no stagnation in the promotion for an unduly long period without avenue of promotion in the R.D. Department. As mentioned earlier, the prayer made is to promote the petitioners as A.Es. from the retrospective date when they were not even qualified as per rules. As rightly pointed out, avenues of promotion, quota and rotation system have all been well prescribed under the Rules; therefore, no discrimination can be attributed to the same.

I. In *Madalai Muthu's case* 2006 (6) SCC 508, the point urged before the Supreme Court was regarding seniority between direct recruits and promotees in the Registration Department and whether the temporary service rendered by a promotee can be counted for seniority and whether the direct recruits can be pushed down. On carefully studying the above case law, we find that the factual aspects involved therein are completely different from the ones in the cases on hand. Once the petitioners are appointed as Assistant Engineers on acquiring degree qualification, they are to put in five years of qualifying service in the R.D. Department to come within the zone of consideration for further promotion as A.Es as per rules. They got merged in the common cadre of A.E. for further promotion and, therefore, the said decision is not applicable to the cases on hand.

J. In *Kuldeep Kumar Gupta and Ors. v. H.P. State Electricity Board and Ors.* 2001 (1) SCC 475 the Supreme Court had held that providing a quota is not new in service jurisprudence and whenever the feeder category itself consists of different category of persons and when they are considered for any promotion, the employer fixes a quota for each category so that promotional cadre would be equally balanced. As discussed earlier, this decision is also not helpful to the petitioners since in the ad hoc rules framed in G.O. Ms. No. 15, R.D. Department, dated 25.01.2000, quota has been fixed for each category ie., A.E., J.E. and S.D.O. as 6:2:1.

K. In *State of Tripura and Others Vs. K.K. Roy*, , the Supreme Court reiterated the general principle of promotion, being a condition of service. In that case, the

Law Officer-cum-Draftsman in the Government of Tripura had no promotional avenue nor granted higher scale of pay after completion of 12 years of service as done in other States. In the cases on hand, the petitioners, who were absorbed as Overseers on 08.3.1999, were promoted as A.Es within 3 1/2 years on 02.09.2002 and they are entitled to further promotion as AEEs, E.Es and S.Es on acquiring the service qualification within their quota. Therefore, the above decision is not helpful to the case of the petitioners.

10. Now, let us take up the decisions relied on by the counsel for respondents - directly recruited A.Es.

(I) In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , it was made clear that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. In order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report and the history of the times. Those principles will have to be borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws. As rightly pointed out, the petitioners have not established as to how the impugned ad hoc rules framed in G.O. Ms. No. 15, dated 25.01.2000, are in violation of Article 14 of the Constitution and the conditions laid down to be fulfilled to pass the test of permissible classification.

(II) In the decision reported in *Govind Dattatray Kelkar and Others Vs. Chief Controller of Imports and Exports and Others*, , a Constitution Bench of the Supreme Court held that when a State makes a classification between two sources of recruitment, unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the Court that the said classification is unreasonable and violative of Article 16 of the Constitution. In para No. 15, the Supreme Court declined to accept the arguments of the appellants therein when it was suggested that 75% by direct recruitment and 25% by promotion was discriminatory and held that rotational system did not violate the principle of equal opportunity and unless the ratio is so unreasonable it was not possible for the Court to strike it down or suggest a different ratio. As rightly pointed out, the ad hoc rules prescribed rotational system for promotion as AEE and the Courts cannot suggest a different system.

(III) In *Roshan Lal Tandon Vs. Union of India (UOI)*, , a Constitution Bench of the Apex Court had held thus,

5. ... In our opinion, the constitutional objection taken by the petitioner to this part of the notification is well founded and must be accepted as correct. At the time when the petitioner and the direct recruits were appointed to Grade "D", there was one class in Grade "D" formed of direct recruits and the promotees

from the grade of artisans. The recruits from both the sources to Grade "D" were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade "C". To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade "C". In the present case, it is not disputed on behalf of the first respondent that before the impugned notification was issued there was only one rule of promotion for both the departmental promotees and the direct recruits and that rule was seniority-cum-suitability, and there was no rule of promotion separately made for application to the direct recruits....

It is clear that, while dealing with identical facts to that of the present cases, the Supreme Court categorically held that there cannot be any discrimination for further promotion between the direct recruits and promotees when they are absorbed into one cadre and they form one class for the purpose of further promotion. In the cases on hand, A.Es were recruited directly and Overseers who have degree qualification were promoted as A.Es and they form one class for the purpose of further promotion as AEEs. As per the above Supreme Court decision, there cannot be further bifurcation of the existing ratio in favour of recruits from one source as against recruits from other source in the matter of promotion as requested by the writ petitioners. Therefore, the claim for further bifurcation among one common integrated class cannot be accepted and liable to be rejected.

(IV) In the decision reported in AIR 1974 SC 1 (cited supra) which we have already referred to while considering the arguments on the side of the petitioners, the main question was, if persons drawn from different sources are integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications. The Supreme Court upheld classification among persons drawn from different sources after integration into one class on the basis of educational qualification and held that classification is primarily for the legislature or the statutory authority charged with the duty of framing the terms and conditions of service. The Government had rightly laid down a ratio of 6:2:1 ie., 6 A.Es with degree qualification; 2 J.Es who possess Diploma in Civil Engineering; and 1 S.D.O. with Diploma in Civil Engineering for further promotion as A.E.Es on rotation basis of 2:1. We are of the view that the classification rests on rational and reasonable basis.

(V) In A.K. Subraman and Others Vs. Union of India (UOI) and Others, , it was held that when recruitment is from two or several sources, it should be observed that there is no inherent invalidity in introduction of quota system and to work it out by a rule of rotation. The existence of a quota and rotational rule by itself will not violate Articles 14 and 16 of the Constitution. In the cases on hand, the ad hoc rules prescribed quota among A.Es; J.Es and Draughting Officers and also prescribed promotion by rotational system; in such circumstances, the rule

cannot be struck down as violative of Articles 14 and 16 of the Constitution.

(VI) In *Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others*, , the Apex Court held thus,

13. ... The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India.

It is clear from the decision of the Supreme Court that the Court cannot require the executive to exercise their rule making power in any manner. It was further held that the Court cannot assume itself a supervisory role over the rule making power of the executive under Article 309. As rightly pointed out by the learned Counsel for the respondents, the prayer made in W.P. No. 31416 of 2004 to alter the ratio of 6:2:1 which is existing now as 1:1 and the claim made in W.P. No. 26990 of 2005 to fix the ratio or quota between the cadres which do not exist under the Rules, cannot be accepted in the light of the principles laid down by the Supreme Court.

(VII) In *State of Bihar and others Vs. Sri Akhoury Sachindra Nath and others*, the Supreme Court ruled thus:

12. ... It is well settled that no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter se amongst the Assistant Engineers in Bihar Engineering Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This being the position of law respondents 6 to 23 cannot be made senior to respondents 1 to 5 by the impugned government order as they entered into the said service by promotion after respondents 1 to 5 were directly recruited in the quota of direct recruits....

In the above decision, the Apex Court made it clear that the promotee cannot be made senior to direct recruit as the promotee entered service by promotion after the direct recruits were recruited within their quota.

(VIII) In the decision reported in *State of Andhra Pradesh and another Vs. K.S. Muralidhar and others*, , the point for consideration was whether the seniority can be dated back from the date of acquiring degree qualification or from the date of appointment. The order of the Tribunal was upheld by the Supreme Court holding that seniority can be counted only from the date of appointment and not

from the date of acquiring degree qualification. As per the above principle, claim of the petitioner in W.P. No. 9460 of 2005 that, having acquired a qualification earlier, weightage should be given to the service and he should be given separate ratio cannot be accepted.

(IX) In *V.K. Sood Vs. Secretary, Civil Aviation and others*, the Supreme Court held that, in the exercise of rule making power, the President or authorised person is entitled to prescribe method of recruitment and qualifications both educational as well as technical for appointment or conditions of service to an office or a post under the State. The Rules, thus, having been made in exercise of power under proviso to Article 309 of the Constitution, being statutory, cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated individuals. It was further held that it is settled law that no motives can be attributed to the Legislature in making the law. In view of the above principles, the allegation that favourable treatment has been given to direct recruits alone is baseless and liable to be rejected.

(X) In *Uday Pratap Singh and Others Vs. State of Bihar and Others*, the following conclusion is relevant,

6. By a catena of decisions of this Court, it is now well-settled that by an executive order the statutory rules cannot be whittled down nor can any retrospective effect be given to such executive order so as to destroy any right which became crystallised. In this connection, it is profitable to refer to a decision of this Court in *T.R. Kapur v. State of Haryana* wherein it is held that rules framed under Article 309 of the Constitution cannot affect or impair vested rights, unless it is specifically so provided in the statutory rules concerned. It is obvious that an executive direction stands even on a much weaker footing. It is true, as laid down in *Bishan Sarup Gupta v. Union of India*, that effect of upgradation of a post is to make the incumbent occupy the upgraded post with all logical benefits flowing therefrom and can be treated as promoted to the post. Still it cannot be gainsaid that no retrospective effect could be given to any merger of erstwhile lower branch into higher branch in the cadre so as to affect the vested rights of incumbents already occupying posts in the erstwhile higher branch of the cadre....

The factual details of the above decision shows that the Government of Bihar, by resolution dated 01.04.1975 merged different cadres ie., Senior Branch and Junior Branch with effect from 01.04.1974. Prior to the Government resolution, ie., 01.04.1975, a person belonging to Junior Branch in Bihar Finance service can aspire to reach Senior Branch by promotion. The Government granted retrospective promotion to 102 Junior Grade personnel as Seniors with effect from 01.04.1974 as a result of merger and the Patna High Court quashed the government's decision. The Supreme Court upheld the decision of the Patna High Court on the ground that direct recruits appointed on 12.05.1974 cannot be denied their seniority and their accrued rights cannot be taken away by ordering retrospective promotion to the promotees. In view of the above principle, the

claim of the petitioners to grant retrospective promotion is liable to be rejected.

(XI) In the decision reported in *Dwarka Prasad and Others Vs. Union of India (UOI) and Others*, , the Supreme Court has held that fixation of quota in the feeder cadres based upon structure and pattern of the department is prerogative of the employer mainly pertaining to the policy making field. In the present cases, the petitioners have claimed to fix the ratio of 1:1 between the AE - direct recruits and AE - promotees contrary to the fixation of quota made by the Government. By applying the principle laid down in the above decision and as rightly pointed out by the learned Senior Counsel for the respondents, it is neither for the writ petitioners nor for the courts to advise or decide as to how the ratio has to be fixed.

(XII) In *Tamilaga Asiriyar Koottani v. The Government of Tamil Nadu and 19 Ors.* 2005 WLR 389 a Division Bench of this Court while considering similar grievance expressed by *Tamilaga Asiriyar Koottani* in respect of G.O. Ms. No. 13, dated 09.02.2005, has observed that if any educational institution or Headmaster or Teacher is aggrieved by the impugned Government Order it is for such person to file writ petition or writ appeal and not for any Association. Learned Senior counsel for the respondents pointed out that the principle of this decision is applicable to the cases on hand since all the 30 writ petitions and one writ appeal have been filed by the Tamil Nadu Rural Development Engineers Association represented by its General Secretary. It is further pointed out that since the cases for individual seniority and promotion have to be filed by A.Es. concerned in their personal capacities, the Writ Petitions filed by the Association is liable to be dismissed.

Though Association is entitled to maintain a writ petition in common cause, the objection raised by the respondents, particularly failure on the part of the individuals, projecting their seniority and promotion, cannot be ignored lightly.

11. We have already mentioned that the Government, by G.O. Ms. No. 263, R.D. Department, dated 27.12.1996, created an exclusive Engineering Wing for the R.D. Department. Apart from sanctioning posts for S.E., A.E.E. & A.E., other supporting posts were also created. Though certain personnel were drawn temporarily on "deputation basis" from other Departments, it is pointed out that post like "Overseer" was found only in the R.D. Department, but it was staffed by personnel of the Highways Department. It is the stand of the official respondents that to strengthen the R.D. Department and to safeguard the career prospects of such personnel and similarly placed persons, option was given to them to be permanently absorbed in the R.D. Department, making it clear that such personnel would also be eligible to be promoted as per Rules. Though the separation of R.D. Engineering Wing from the Highways Department was challenged by other persons, it is not in dispute that the same was upheld by this Court by order dated 02.04.2002 made in W.P. No. 6513 of 1998. Based on the service rules, eligible personnel of the R.D. Department were promoted to the next higher post. Overseers of the R.D. Department, who were promoted as

A.Es., agitated before this Court by filing writ petitions that they should not be merged with the directly recruited A.Es. of the R.D. Department. According to them, they should be treated as a separate category, distinct from the directly recruited A.Es. It is also their claim that the next higher post of A.Es should be earmarked between the directly recruited A.Es and the promotee A.Es. in the ratio of 1:1. In other words, 50% of the posts of A.Es should be reserved for the promotee A.Es. The said claim cannot be accepted in view of the following reasons/information furnished,

In the R.D. Department, there are 3 categories of posts, which are as follows,

- i) Entry level posts
- ii) Promotion from the lower rank posts
- iii) Entry level cum promotion posts.

Following are entry level posts,

- i) Road Inspectors (Education Qualification : ITI Certificate in Draughtsmanship)
- ii) Overseers (Educational Qualification : Diploma in Civil Engineering)
- iii) Assistant Engineers (Educational Qualification BE in Civil Engineering)

Following posts are filled up by promotion from the feeder category/transfer of service from the lower cadre,

- i) Junior Engineers (Educational Qualification: Diploma in Civil Engineering)
- ii) Assistant Executive Engineers (Both B.E. Degree holders and Diploma holders in Civil Engineering are eligible to be promoted, if they had put in 5 years of service as Assistant Engineers/Junior Engineers/Senior Draughting Officers)
- iii) Executive Engineers (Educational Qualification: BE in Civil Engineering and 5 years of service as Assistant Executive Engineers)
- iv) Superintending Engineers (Education Qualification: BE in Civil Engineering and 4 years of service as Executive Engineers)

Following posts are filled up by both the methods that is by direct recruitment and by promotion from the lower category.

- i) Overseers
 - a) Direct recruitment (Educational Qualification: Diploma in Civil Engineering)
 - b) Promotion from the post of Road Inspectors (Only those who possess Diploma in Civil Engineering alone are eligible for promotion as Overseers)
- ii) Assistant Engineer
 - a) Direct recruitment (Educational Qualification: BE in Civil Engineering)

b) Promotion from the post of Overseers (only those who possess B.E. Degree in Civil Engineering alone are eligible to be promoted as Assistant Engineers).

It is pointed out that, on the basis of their higher educational qualifications, the petitioners and similarly placed persons, who joined the services as Overseers, have been promoted to the next higher post of A.E.; Overseers with Diploma in Civil Engineering have been promoted as Junior Engineers, a lower post to that of Assistant Engineer. The scale of pay for both the posts is as follows:

i) Assistant Engineer - Rs. 6500 - 200 -10500 ii) Junior Engineer - Rs. 5500 - 175 - 9000

12. The above particulars clearly show that the petitioners have been rewarded for the higher educational qualification and promoted in higher posts with higher pay and allowances. Further, the A.E. promotees are being treated on par with the directly recruited A.Es both in pay scales and status. As rightly pointed out by the respondents, any internal separation between the members of the same service with identical pay scale and educational qualifications will be irrational and will only lead to creation of vested interest and unnecessary group rivalries, and adversely affect the working atmosphere.

It is also clear that both the promotee A.Es and directly recruited A.Es have become members of the same service; therefore, there cannot be any further internal separation between the members of the same service. Further, prior to promotion as A.E., the petitioners belonged to a different service - subordinate service and after promotion as Assistant Engineers, all of them had become members of the same service with same pay scale; therefore, both the categories, the direct recruits and the promotees, are treated as members of the same service. We are satisfied that minimum qualifying service of 5 years in the post of A.E. has been prescribed because it was felt that they should acquire the needed practical experience before taking up higher responsibilities. It is brought to our notice that similar service qualification has been prescribed for the post of EE (5 years of service as AEE) and for the post of SE (for the said post alone, 4 years of service as EE). In those circumstances, as rightly pointed out by the respondents, no group has been singled out for any favourable treatment.

13. The Order passed by the Tribunal in O.A. No. 1071 of 2004 is in accordance with the Service Rules and the ultimate directions cannot be faulted with. It is not in dispute that the appointing authority for the AEE is the Government. It is also brought to our notice that in obedience to the directions of this Court in W.P. No. 32683 of 2004, dated 10.11.2004, the petitioners' objections were adequately addressed and a reply was given by the first respondent vide letter dated 29.12.2004. As rightly pointed out, inasmuch as the members of the Association do not fulfil all the conditions to be promoted as AEE, they have no legal right to be promoted to the said post as on date.

14. Though the petitioners have claimed for waiving the condition relating to five years of service in the post of AE, as rightly pointed out, the Engineering Wing,

being a technical department, a minimum service condition of 5 years is necessary for an individual to acquire the needed experience to enable him to be promoted to a higher post. In fact, for promotion posts in all services, a minimum qualifying service is mandatory. Equally, the claim of the petitioners that promotion should be given to them with retrospective effect from 25.05.1998, the date on which the service rules for the A.Es have notified, is liable to be rejected. The petitioners and similarly placed persons, on that date, were working in a lower post - Overseers only and they were members of the Highways Department. Based on their option alone, they were absorbed as Overseers (a lower post) in the R.D. Department in 1999. Whereas, A.E - direct recruits had entered into service in 1998 itself and they are quite senior to the promotees and other similarly placed persons. In those circumstances, promotion of senior-most AE - Direct Recruits cannot be faulted with.

15. With regard to the claim of the Association that certain ratio has to be fixed between A.E. - direct recruits and A.E. - promotees; it is seen that, to effect promotion to the post of AEE, the statutory rule framed under Article 309 of the Constitution in G.O. Ms. No. 15, dated 25.01.2000, and the consequential amendments do not prescribe any ratio between a common integrated class. However, the statutory rule prescribes the ratio 6:2:1 ie., for A.Es/J.Es/S.D.Os on rotation basis. That being so, the petitioners cannot compel this Court to issue mandamus contrary to the statutory rules.

16. As said earlier, the Association itself filed 25 Writ Petitions challenging the orders of the Tamil Nadu Administrative Tribunal, which issued directions to the Government to consider the cases of directly recruited A.Es in the R.D. Department for promotion as A.Es as they are qualified as per Rules and not to fill up the posts on deputation basis. The particulars furnished in the counter affidavit of the official respondents clearly show that none of the petitioners was eligible to be promoted as AEE in the year 2004 or even till date since the petitioners were absorbed in the R.D. Department from Highways Department with their consent as Overseers on 08.03.1999 and were promoted as A.Es from 02.09.2002. Undoubtedly, they are entitled to promotion as AEEs on completing 5 years of service in AE cadre. Though it was contended that they were not heard by the Tribunal, in view of the admitted factual position and of the fact that the Tribunal has granted limited relief in favour of the direct recruits, the said contention is liable to be rejected. It is seen that, as on the date of preparation of panel, in fact, even as on date, since none of the members of the Tamil Nadu Rural Development Engineers' Association is qualified for promotion as AEE, the Government had promoted directly recruited A.Es as AEEs for the year 2004-2005. In such circumstances, the contention of the petitioners relating to preparation of panel has to be rejected.

17. The petitioners also prayed to effect notional promotion from 26.09.1997 or relax 5 years' experience in the post of A.E. prescribed for promotion to the post of AEE and consider their representation dated 13.05.2004. As directed by this

Court, the Government, in its letter dated 29.12.2004, after considering the representation, rejected the same on the ground that the ratio of 1:1 was not permissible once the Overseers are posted as A.Es and their seniority was fixed along with A.E. direct recruits. In addition to the same, the Government had also communicated that the posts of A.Es / E.Es / S.Es are borne on the State Service and Government is the appointing authority. As said earlier, any direction to the Government to reconsider fixing the ratio of 1:1 between the direct recruit A.Es and promotee A.Es would run contrary to the statutory provisions and there is no material before us to hold that those Rules are either arbitrary or violative of any of the statutory provisions.

18. Regarding the direction to the Government to give retrospective promotion, made to Overseers as A.Es on 2.9.2002, with effect from 25.05.1998, as observed earlier, the petitioners belonged to Highways Department and they were governed by the Tamil Nadu Engineering Subordinate Service Rules until 08.03.1999. On 25.05.1998, they were working as Overseers in Highways Department and, therefore, there cannot be any direction to promote them as A.Es from 25.05.1998. It is relevant to point out that in G.O. No. 102, R.D. Department, dated 25.05.1998, the Government had specifically mentioned that Overseers, who were staff members of the Highways Department, can be absorbed in R.D. Department only after getting individual options and that promotions can be considered only thereafter. It is further seen that the Government had earmarked 209 posts of Block Engineers and Assistant Engineers to be filled up by promotion by Overseers and Junior Draughtsmen after they exercise their options and they were permanently absorbed in the R.D. Department. It is not in dispute that the petitioners gave consent to the Chief Engineer, Highways Department and the Government that they are willing to be absorbed in the R.D. Department as Overseers and accordingly, they were so absorbed on 08.03.1999 in the R.D. Department. It is also not in dispute that they worked as Overseers which post carries lower scale of pay than that of A.E. from 08.03.1999 to 01.09.2002 and that they never made any claim for retrospective promotion. When they had not discharged the duties in the post of A.E. in the R.D. Department, no retrospective promotion can be given to them as A.Es. In such circumstances, the prayer of the writ petitioners cannot be accepted.

19. It was vehemently argued on the side of the petitioners that since the AE-direct recruits and promotees are different and distinct, it is necessary to fix a ratio between them. It was also contended that if ratio is not fixed between them, the petitioners will not get an opportunity to be promoted to the next higher post ie., AEE, and all of them will have to retire in the present post itself. They also prayed that the seniority should be fixed by rotation in a case where a service is composed of fixed proportion of direct recruits and promotees.

As discussed and observed earlier, the Association has nowhere made out or substantiated any discrimination or violation of Articles 14 and 16 and they

merely pleaded to effect promotion and postings. By quoting various decisions, we have already observed that courts cannot direct the legislature to frame rules in a particular manner. We have also demonstrated how further classification and reservation is permissible after merger. In those circumstances, all the contra contentions relating to the Rules, particularly Rule-3(2) of Notification-III of G.O.Ms. No. 15, R.D. Department, dated 25.01.2000, for the absence of quota between AE - direct recruits and AE - promotees to the post of AEE, are rejected.

20. Coming to Writ Appal No. 500 of 2005, questioning the order of the learned Judge, rendered in WP No. 35315 of 2004, dated 02.12.2004, as rightly pointed out, the learned Judge merely directed the Government to implement the order of the Tribunal in O.A. No. 1799 of 2004 if there were no other impediments. The respondents have already substantiated that the petitioners are not qualified for promotion as AEEs on the relevant date and even as on date. We are of the view that the appellant cannot question the order of the learned Judge, directing the Government to implement the orders of the Tribunal which had directed to consider qualified A.Es for promotion as AEEs. In the light of the Rules, the members of the association are Juniors in the cadre of AE and they are not qualified to be promoted as AEEs at the relevant time and even as on to-day. AE-direct recruits were all appointed and joined service from 24.11.1998 to November, 1999 and completed 5 years of service as Assistant Engineers by 2003 and 2004. In such circumstances, the claim of the direct recruits that they are fully qualified for promotion as AEEs cannot be rejected; hence, the panel prepared and issued by the Government in G.O.(2D) 116, dated 29.10.2004, and G.O. (D) No. 127, dated 22.02.2006 cannot be faulted with as it is legally valid. We have already mentioned that the Rules have been upheld by this Court. That being so, we are unable to accept any of the contentions raised by the Association.

21. Before parting, we deem it necessary to summarise our views and conclusions.

In view of the lengthy arguments advanced before us on various issues in a broad spectrum; we exhaustively analysed the same in different dimensions and from the root level, viz., paucity of hands in the R.D. Department; temporary measures taken by them to cope up with the situation; position of the petitioners before and after absorption in the R.D. Department; purpose behind framing of the impugned ad hoc rules; reasons for imposing minimum experience for promotion to the post of AEE; adverse operation or otherwise of the stipulation; genuineness in the claim made by the association, etc.; and also carefully considered the series of case laws relied on by the learned Counsels. Service of the petitioners in the R.D. Department before absorption and immediately after the absorption was only in a lower level ie., Overseer, and they were not equals in grade and qualification when compared to the direct recruits, who were, at the time of entry itself, took upon the assignments as Assistant Engineers. Admittedly, the petitioners themselves gave the option; hence, they knew well

that they would be absorbed only in a lower post, ie., Overseer, in the R.D. Department. Further, the petitioners, after absorption, were given benevolent treatment by way of being considered for promotion and, in fact, promoted as A.Es. We cannot lightly ignore the specific stand of the Government that the minimum qualifying service of 5 years in the post of AE for promotion to the post of AEE has been prescribed for the reason that the incumbents should acquire the needed practical experience before taking up "higher responsibilities" so as to achieve administrative efficiency in the Engineering services. The petitioners cannot claim that the services rendered by them in the Highways Department as Overseers for 10 years be taken into account "for promotion" in the R.D. Department. They cannot make use of the currency that is extinct and not in vogue. Already, they were rewarded well inasmuch as their past services had been taken into account much prior to their absorption ie., from 1997 onwards; whereas, the services of the direct recruits were counted from the date on which they entered the Government Service; therefore, benefit has been extended only to the petitioners and not to the direct recruits. On equity also, the petitioners lose their case since, after being absorbed in the R.D. Department, they have been given promotion and made to stand on par with the direct recruits, and there is no justification at all in asking for further classification in the integrated cadre and relaxation of five years experience for the purpose of promotion. To put it clear, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be further classified for the purpose of promotion. It is not the case of the petitioners that the requisite experience as provided in the Rules is applied only in respect of their case and the direct recruits are let free to climb the ladder to reach the zenith. In fact, though the petitioners voice that retrospective promotions should have been given to them, admittedly, they are not qualified for promotion till date, in that, their absorption in the R.D. Department with their consent as overseers was on 8.3.1999; their promotion as A.Es. was on 02.09.2002; and they would be completing the 5 years of service as A.Es. only on 02.09.2007. As on date, they are all juniors to the direct recruits, hence, they cannot unfairly ask for a relief contrary to the procedure and statutory provisions so as to divest the dividend accruable to their seniors/direct recruits. The facts adverted to by us in an elaborate manner are rather self-explanatory as to where the petitioners stand with reference to their expectations. We reiterate that rules having been made in exercise of the power under proviso to Article 309 of the Constitution, being statutory, cannot be impeached on whimsical and flimsy reasons. In service law, it is settled principle that fixation of quota between various feeder categories is prerogative of the employer/authority. No valid ground was raised or invincible argument made before us to sustain the claim that the orders of the Tribunal suffer from infirmities warranting interference. For the reasons expressed by us, we hold that the impugned part of the Government Order does not in any way offends Articles 14 and 16 of the Constitution and no mandamus can be issued as prayed for. We find absolutely no valid ground to entertain any of the pleas/claims raised by the petitioner/appellant Association.

In the result, all the Writ Petitions and the Writ Appeal fail and they are dismissed. No costs. Connected Miscellaneous Petitions stand closed.