

State Of Andhra Pradesh And Anr vs K.S. Muralidhar And Ors on 22 January, 1992

Equivalent citations: 1992 AIR 922, 1992 SCR (1) 295, AIR 1992 SUPREME COURT 922, 1992 (2) SCC 241, 1992 AIR SCW 734, 1992 LAB. I. C. 855, (1992) 1 SCR 295 (SC), 1992 (1) SCR 295, (1992) 1 JT 360 (SC), 1992 (1) JT 360, 1992 SCC (L&S) 539, (1992) 2 LAB LN 13, (1992) 1 SCJ 457, (1992) 1 SERVLR 652, (1992) 1 CURLR 394

Author: L.M. Sharma

Bench: L.M. Sharma

PETITIONER:

STATE OF ANDHRA PRADESH AND ANR.

Vs.

RESPONDENT:

K.S. MURALIDHAR AND ORS.

DATE OF JUDGMENT 22/01/1992

BENCH:

REDDY, K. JAYACHANDRA (J)

BENCH:

REDDY, K. JAYACHANDRA (J)

SHARMA, L.M. (J)

CITATION:

1992 AIR 922	1992 SCR (1) 295
1992 SCC (2) 241	JT 1992 (1) 360
1992 SCALE (1) 176	

ACT:

Civil Services:

A.P. Engineering Subordinate Service Rules:

Seniority-Government orders issued from time to time-Supervisors upgraded as Junior Engineers on acquiring degree-Degree holders directly appointed as Junior Engineers on temporary basis-regularisation of-Weightage given to both categories for service rendered-Inter-se seniority-Fixation of-Directions issued.

HEADNOTE:

The A.P. Engineering Subordinate Service Rules were amended in 1972 by way of Government order. It provided that supervisors who acquired B.E./A.M.I.E. degree while in service would be entitled to count 50 % of the services rendered as Supervisors prior to acquiring the said qualification subject to a maximum of four years. However, this was subject to certain conditions, the Chief among them was that they should be considered to have been placed below the last of the Junior Engineer of the year, after giving such weightage. Order dated 10.6.76 required that the Supervisors who acquire the degree qualification while in service would be appointed, as Junior Engineers with immediate effect. The abovesaid order was amended on 8.11.76 giving benefit of the weightage to only those who acquired the degree qualification prior to 28.2.72.

In 1977, by another order of the State Government, the post of Junior Engineer was made Gazetted post.

In separate petition before the Andhra Pradesh Administrative Tribunal, the Supervisors upgraded as Junior Engineers including those who acquired the degree qualification after 28.2.72, as well as the State of A.P. agitated the issue regarding inter-se seniority between the upgraded Junior Engineers and the direct recruit Junior Engineers. The Tribunal heard all the matters together and gave a finding that there was no bar to the retrospective regularisation

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of the directly recruited Engineers from the dates of their initial appointments. The Tribunal also upheld the action of the Government in giving the benefit of the notional date of appointment to the upgraded Junior Engineers and the benefit of the date of regularisation of their services from the dates of their notional appointments subject to maintenance of order or ranking given by the Public Service Commission. The Tribunal also ordered that the ranking given by the Public Service Commission in respect of directly recruited Junior Engineers has to be maintained and each of them would be entitled to count his seniority from the date on which his service has been regularised or from the date of regularisation of the service of the person immediately below in the order of ranking given by the Public Service Commission, whichever was earlier.

In respect of upgraded Junior Engineers who acquired degree qualification after 28.2.1972, the Tribunal gave a specific direction that their seniority has to be fixed on the basis of specific notional date of appointment given to them by interspersing their names among regular Junior Engineers as arranged in chronological order of dates from which such regular Junior Engineers are entitled to count their seniority.

Aggrieved against the Tribunal's order, the State Government and the supervisors upgraded as Junior Engineers, preferred the present appeals.

On behalf of the State, it was contended that the direction of the tribunal particularly interspersing was not workable, since the upgraded Junior Engineers have put in long years of service and were discharging the same duties as the directly recruited Junior Engineers and this factor should be taken into account in fixing the notional date of appointment and inter-se seniority.

On behalf of the upgraded Junior Engineers, it was contended that in G.O. Ms No.559 it is specifically laid down that Supervisors who have acquired graduate qualification may be appointed as Junior Engineers after 28.2.75 and the weightage of four years should be reckoned from the date of acquiring the degree qualification i.e.28.2.72 or thereafter; and their seniority should not be fixed from the date of the order of appointment.

On the other hand, the direct recruit Junior Engineers contended that the upgraded Junior Engineers can under no

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circumstances be treated as seniors to the directly recruited Junior Engineers for the appointment of Junior Engineers was suspended for some time and in view of the exigencies the degree-holders were appointed on temporary basis and they have served for a number of years; the Government decided to make regular appointments and accordingly a Special Qualifying Test was held in which they qualified and they were given the appointments; and a seniority list strictly on the basis of performance in the test and on merit was prepared by the Public Service Commission and a retrospective effect was given. It was further contended that so far as the upgraded Junior Engineers are concerned all the relevant G.O.Ms. make it clear that the crucial date has to be reckoned on the basis of the actual date of appointment and not on the date of acquiring the degree.

Disposing of the matters, this court,

HELD: 1.1. The weightage of four years in respect of upgraded Junior Engineers as provided in G.O.Ms. No.559 has to be reckoned from the date of appointment and not the date of their acquiring the degree qualification. On the basis of that notional date, their inter se seniority has to be fixed. [311 B-C]

1.2.G.O. Ms. No. 559 makes it abundantly clear that the appointments of the upgraded Junior Engineers who acquired the graduate qualification while in service, would be prospective only and that they would be entitled to the weightage of four years of service rendered before the appointment. It does not anywhere indicate that the weightage should be from the date of acquiring the degree qualification. It is only after acquiring such degree qualification that a Supervisor is appointed as Junior Engineer and having regard to the service rendered by him, the Government, as a policy, decided to give weightage of four years for the purpose of considering the eligibility

for promotion as Assistant Engineer. [308 C-D]

2.1. The regularisation of the degree-holders Junior Engineers who passed the Special Qualifying Test by giving retrospective effect cannot be held to be illegal, and their seniority among themselves shall be subject to the order of ranking given by the Public Service Commission on the basis of the Special Qualifying Test. [311 D]

2.2. The degree-holders were appointed temporarily because of a ban and later the Government again, as a policy decision, decided

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to make regular appointments by direct recruitment but enabled the degree-holders who were in temporary service to appear in a Special Qualifying Test. Here again, as a matter of policy, the Government decided to give some weightage to the service rendered by them before the appointment by selection. Thus, the Government, in fixing the seniority for the purpose of future promotion of the appointees-both the upgraded Junior Engineers as well as those selected by the Public Service Commission in the Special Qualifying Test has taken into account the past service rendered by them. [308 E-F]

3. In the case of upgraded Junior Engineers weightage of four years service was given and in the other case two years, weightage was given. As a matter of policy, the Government gave weightage to both the categories discharging the same duties. The upgraded Junior Engineers who having got the benefit of four years' service, therefore, cannot say that similar weightage should not be given to the direct recruits who, prior to the selection, were working on temporary basis. [308 F; 309 B, F]

Devi Prasad and Ors. v. Government of Andhra Pradesh and Ors., AIR 1980 SC 1185, relied on.

Smt. M. Nirmala and Ors. v. State of Andhra Pradesh and Ors. etc., [1986] 3 SCC 647; Ashok Gulati and Ors. v. B.S. Jain and Ors., [1986] Sup. SCC 597; Direct Recruit Class II Engineering Officers Association v. State of Maharashtra and Ors., [1990] 2 SCC 715; Masood Akhtar Khan and Ors. v. State of Madhya Pradesh and Ors., [1990] 4 SCC 24, referred to.

4. The Tribunal has rightly pointed out that under Rule 23-A of the A.P State and Subordinate Service Rules, 1962 if a person having been appointed temporarily under Rule 10 to a post borne on the cadre is subsequently appointed in the service in accordance with the rules, he shall commence his probation from such subsequent date or the earlier date as the appointing authority may determine. The Tribunal was also right in holding that there was no bar to the retrospective regularisation of the service of the direct recruit Junior Engineers. [308 G-H; 309 A]

5. In the light of this Judgment, the State Government shall prepare a common seniority list of the degree holder Junior Engineers and the upgraded Junior Engineers and that

list shall be the

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basis for all the subsequent promotions. Any promotion already given shall be reviewed and readjusted in accordance with the said seniority list. [311 D-E]

6. Since this litigation has been pending for about two decades, it is high time a finality has to be reached by resolving the controversies and in this context the approval of the Public Service Commission in respect of these appointments need not be sought, if the Government has not already obtained the approval of the Public Service Commission. [311 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 752 of 1984 etc.etc. From the Judgment and Order dated 1.8.983 of Andhra Pradesh Administrative Tribunal, Hyderabad in Representation Petition No. 799 of 1977.

K. Madhava Reddy, T.V.S.N. Chari, Ms. Manjula Gupta, B. Kanta Rao, D. Prakash Reddy, B. Rageshwar Rao, Vimal Dave, K. Ram Kumar, Y. Prabhakara Rao, K.R. Nagaraja, Krishan Kumar and G. Prabhakara for the appearing parties.

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J. The questions involved in these matters being common they are being disposed of by a common judgment. All these matters arise out of a common order of the A.P. Administrative Tribunal passed in Representation Petitions Nos. 799/77, 548/79 and 140/81. S.L.P. (Civil) No. 5218/85 is filed against a separate order of the Tribunal in R.P. No. 1473/80. The dispute is regarding the inter-se seniority between the Supervisors who are upgraded as Junior Engineers and the degree-holders who are directly appointed as Junior Engineers. All of them belong to the different branches in the A.P. Engineering Subordinate Service. First we shall state the relevant facts in each of the appeals and then formulate the points that arise for consideration. For convenience sake we shall refer to the parties as arrayed before the Tribunal.

CIVIL APPEAL NOS. 752 AND 754/84 :

These two appeals are filed against the order in R.P. No. 799/77. The first one is filed by the State of A.P. and the other one by upgraded Supervisors-Junior Engineers. The petitioners before the Tribunal are all Junior Engineers in Irrigation and Power Department. They were initially appointed as temporary Junior Engineers in the year 1969/70. Later they appeared in a special qualifying test ('SQT' for short) held by the Public Service Commission and on the basis of the result of the test their services were regularised in the post of Junior Engineers with retrospective effect from the date of the temporary appointment subject to the maintenance of the order of ranking given by the Public Service Commission in the test.

The respondent Nos. 3 onwards in these R.Ps. are also Junior Engineers in the same department but they were appointed as Supervisors and on acquiring the degree they have been redesignated as Junior Engineers. Several G.O.Ms were issued by the Government and the important one is G.O.Ms. No. 559 (I & P) Department dated 18.7.77. The post of Junior Engineers was made Gazetted post. The case of the petitioners is that the respondents acquired degree qualification after 28.2.72 therefor they were not entitled to be appointed as regular Gazetted Junior Engineers and at any rate they cannot be treated as seniors on the basis of reckoning their seniority from the date of acquiring degree qualification and that the seniority of these graduate Supervisors should be reckoned from the date of their actual appointment as Junior Engineers and not from the date of acquiring degree qualification. The respondent Supervisors, on the other hand contended that they are entitled to upgradation and weightage of service from the date of their appointment as Supervisors.

CIVIL APPEAL NO. 753/84 :

This appeal is filed against the order in R.P. No. 548/79. The petitioners in this R.P. are all Supervisors who graduated after 28.2.72. Their contention was that they were appointed much before the respondents namely the directly recruited Junior Engineers and the services of the respondents Junior Engineers should not be regularised in such a way so as to effect the seniority of the petitioners and that the seniority of the petitioners should be reckoned from the notional date of appointment.

CIVIL APPEAL NO. 755/84 :

This appeal is filed against the order in R.P. No. 140/81. The sole petitioners before the Tribunal, who is a respondent here, questioned G.O.Ms. No. 466 Transport, Roads and Building and sought a declaration that he should be declared as senior to respondent Nos. 3 and 5 and promote him to the post of Assistant Engineer. The petitioner before the Tribunal was directly recruited Junior Engineer. He also passed the SQT held in the year 1975. The respondents before the Tribunal were upgraded Supervisors who acquired the graduate qualification. G.O. Ms. No. 466 was issued directing that the respondent before the Tribunal namely the upgraded Supervisors should be treated seniors to all the directly recruited Junior Engineers whose services were regularised on the basis of the SQT. The Tribunal held that the findings in the other R.Ps. Nos. 799/77 and 548/79 apply to the facts of this case also and accordingly directed to prepare an inter-se seniority list in the Transport, Roads and Buildings Department on the lines indicated therein. R.P. was disposed of with those observations. The upgraded Supervisors-Junior Engineers who were the respondents before the Tribunal have filed this appeal.

These matters were heard together by the Tribunal. After considering the various G.O.Ms. and the arguments the Tribunal held that there was no bar to the retrospective regularisation of the services of the directly recruited Junior Engineers from the dates of their initial appointments. It also held that the action of the

Government in giving the benefit of the notional date of appointment to the upgraded Junior Engineers and the benefit of the date of regularisation of their services from the dates of their notional appointments subject to maintenance of order of ranking given by the Public Service Commission is justified. The Tribunal further held that the order of ranking given by the Public Service Commission in respect of directly recruited Junior Engineers has to be maintained and each of them will have to be treated as being entitled to count his seniority from the date on which his service has been regularised or from the date of the regularisation of the service of the person immediately below him in the order of ranking given by the Public Service Commission, whichever is earlier. In paragraph 23 of the Order the Tribunal specifically held thus: "23. We are of the opinion that once the dates from which the directly-recruited Junior Engineers can claim seniority are thus fixed on the basis of this formula, it should not be difficult to fix their inter-se seniority vis-a-vis the upgraded Junior Engineers on the basis of the notional dates of appointment given to the latter. In this connection we would like to point out that, whereas in the case of an upgraded Junior Engineer who acquired degree qualification before 28.2.1972, seniority will have to be fixed by putting him below all the regular Junior Engineers including directly-recruited Junior Engineers who are entitled to claim seniority from any date during the year in which such upgraded Junior Engineer has been given the notional date of appointment, this practice cannot be followed in case of an upgraded junior Engineer who has acquired degree qualification after 28.2.1972, in view of the fact that the provision for fixing his seniority below other Junior Engineers of the particular year (as was made in G.O. Ms. No. 893 dated 15.6.72) was not made in the amended Rule as issued under G.O.Ms. No. 54 dt. 15.2.1983 His seniority will, therefore have to be fixed on the basis of the specific notional date of appointment given to him by interspersing his name among the regular Junior Engineers as arranged in chronological order of dates from which such regular Junior Engineers (including directly recruited Junior Engineers) are entitled to count their seniority."

It is this part of the Order that has given rise to all these appeals before us.

The State of A.P. being aggrieved by this Order filed C.A. No. 752/84 and both petitioners and respondents namely the Junior Engineers directly recruited and upgraded Supervisors as Junior Engineers are the main respondents before us. Civil Appeal Nos. 753-54 are filed by the upgraded Supervisors-Junior Engineers. In these two matters the Junior Engineers directly recruited are the respondents. Thus in all these matters the Junior Engineers directly recruited are the respondents.

It is contended on behalf of State of A.P. that the direction given by the Tribunal particularly interspersing is not workable. Learned counsel for the State, however, pointed out that the upgraded Supervisors have put in long years of service and they have been discharging the same duties as directly recruited Junior Engineers and that this fact also has to be borne in mind in fixing the notional date of appointment of the two categories officers and in fixing their inter-se seniority.

Shri B.Kanta Rao, learned counsel appearing for all the upgraded Supervisors-Junior Engineers contended that in G.O. Ms. No. 559 it is specifically laid down that Supervisor who have acquired graduate qualification may be appointed as Junior Engineers after 28.2.72 and the weightage of four years should be reckoned from the date of acquiring the degree qualification i.e. 28.2.72 or thereafter. He also contended that the seniority of the upgraded Supervisor- Junior Engineers should not be fixed from the date of the Order of appointment dated 8.8.77. On behalf of the directly recruited Junior Engineers Shri K.Madhava Reddy, learned counsel submitted that the upgraded Supervisors can under no circumstances be treated as seniors to the directly recruited Junior Engineers. According to him appointment of Junior Engineers was suspended for some time and in view of the exigencies the degree-holders were appointed on temporary basis and they have served for a number of years. Later the Government decided to make regular appointments and accordingly a Special Qualification Test was held and such of those temporary Junior Engineers who were degree-holders got qualified and were given the appointments and a seniority list strictly on the basis of performance in the test and on merit was prepared by the Public Service Commission and a retrospective effect was given. His further submission was that so far as the upgraded Supervisors are concerned all the relevant G.O.Ms. make it clear that the crucial date has to be reckoned on the basis of the actual date of appointment and not on the date of acquiring the degrees.

For appreciating these rival contentions it becomes necessary to refer to some of the G.O.Ms. particularly with a view to arrive at the ("crucial date") in respect of each of these categories for the purpose of fixation of the seniority. In respect of upgraded Supervisors who acquired a degree, certain G.O.Ms. were issued from time to time. In the year 1972 G.O.Ms. No. 893 dated 15.6.72 was issued amending the special rules for the A.P. Engineering Subordinate Service. The same provided that Supervisors who while in service acquire B.E./A.M.I.E. degree qualification, shall be entitled to count 50% of the service rendered as Supervisors prior to the acquisition of such qualification subject to a maximum limit of four years. This was subject to certain conditions. One of the conditions was that they should be considered to have been placed below the last of the Junior Engineer of the year after giving such weightage. In the year 1976 another G.O.Ms No. 451 (I & P) dated 10.6.76 ordered that the Supervisors who acquire the graduate qualification while in service should be appointed as Junior Engineers with immediate effect. On 8.11.76 G.O.Ms. No.815 (I & P) was issued. Clause 4 of the Conditions stipulated in G.O.Ms. No.893 was amended and the benefit of the weightage was directed to be given effect only to those who acquired the aforesaid degree qualification prior to 28.2.72. Then came the important G.O.Ms. No. 559 (I & P) dated 18.7.77. Relying on the contents of the above G.O.Ms. the upgraded Supervisors claimed that the weightage of four years should be reckoned from the date of acquiring the qualification and not from the date of actual appointment.

The directly recruited Junior Engineers also based their claim on G.O. Ms. Ms. Nos. 451 and 559 and they further contended that the upgraded Supervisors should be treated as regularly appointed only with effect from the date of their appointment.

It may not be necessary for the purpose of this case to extract the entire contents of the G.O. Ms. that preceded G.O. Ms. Nos. 451 and 559. It would suffice if we just give the gist of those respective G.O.Ms. Under G.O.Ms. No. 787 dated 9.6.71 the Government declared that posts of Junior

Engineers would be filled in by graduate Engineers which will be made a separate category and they will be made gazetted. Therefore G.O.Ms. No.240 dated 28.2.72 was issued. Under the said G.O.Ms. 1870 posts of Supervisors in Public Works Department were declared to constitute a category of Junior Engineers and similarly in the Roads and Buildings Department 620 posts were declared to constitute as a category of Junior Engineer as distinct from Supervisors and both these categories were made gazetted with effect from that date. The G.O.Ms. also provided for temporary appointments in the case of qualified Junior Engineers being not available for filling up all such gazetted posts, and all these posts of Junior Engineers in both the Departments were declared to be within the purview of the A.P. Public Service Commission and the method of recruitment to the post of Junior Engineer should be by direct recruitment. Then came the G.O. Ms. No. 893 dated 15.6.72 amending the special rules for the A.P. Engineering Subordinate Service under which the Supervisors who acquired the qualification were declared to be entitled to count 50% of their service subject to a maximum limit of four years for the purpose of promotion to the post of Assistant Engineer from Junior Engineer. G.O. Ms. No. 782 dated 3.5.74 was issued permitting the Junior Engineers recruited during emergency on temporary basis to apply for SQT held by the Public Service Commission. Accordingly the Rules were amended as per G.O. Ms. No. 786 dated 7.8.74 and the adhoc rules were framed enabling the computation of period of two years with or without break in the service rendered by such degree-holders Junior Engineers who appeared in the SQT held by the Public Service Commission and were declared to be selected and thus their services were regularised retrospectively giving them the benefit of the service of two years rendered prior to the actual selection. In conformity with the same Rule 33A was also relaxed for the purpose of fixing their inter-se seniority. The next important G.O.Ms. with which we are concerned is G.O.Ms. No. 451 dated 10.6.76. It reads as under:

"GOVERNMENT OF ANDHRA PRADESH ABSTRACT Establishment-Irrigation and Power Department- Appointment of Supervisors who have acquired Graduate Qualification as Junior Engineers-Orders- Issued.

Irrigation and Power (Ser.II) Department G.O. MS. No. Dated: 10-6-1976 ORDER: Consequent on the declaration of the posts of Junior Engineers as Gazetted with effect from 28.2.1972, the upgradation of Supervisors who acquired Graduate Qualification while in service, as Junior Engineers, ceased. Since then representations have been made to Government by several Associations that the benefit of upgradation should be extended also to Supervisors who acquired the Graduate qualification on or after 28.2.1972.

"2. On a reconsideration of the matter, the Government are of the view that some consideration should be shown to the Supervisors who have acquired the Graduate qualification while in service. Accordingly the Government have decided that the Supervisors in P.W. (Irrigation) Department who have acquired Graduate qualification while in service should be appointed temporarily as Junior Engineers (Prospectively) with immediate effect.

The Chief Engineer (General) is requested to take action accordingly, Orders regarding other consequential matters will issue separately. (BY ORDER AND IN THE NAME OF THE GOVERNOR OF A.P.) M. GOPALAKRISHNAN, SECRETARY TO GOVERNMENT "

Under this G.O. Ms. it is proposed to extend the benefit of upgradation to Supervisors who acquired the graduate qualification on or after 28.2.72 but the second para makes it clear that they should be appointed temporarily as Junior Engineers and that too prospectively only.

The next and the important G.O.Ms. is No.559 dated 18.7.77 which reads as under:

"GOVERNMENT OF ANDHRA PRADESH ABSTRACT ESTABLISHMENT-Irrigation & Power Department Appointment by transfer of Supervisors who have acquired Graduate qualification from 28.2.1972 onwards as Junior Engineers-Further orders-Issued.

IRRIGATION & POWER (SERVICE-III) DEPARTMENT G.O. Ms. No.559 Dated 18th July, 1977 Read the following:-

G.O. Ms. No.451, Irrigation & Power (Ser.III) Department, dated 10.6.76.

ORDER:

It was ordered in the G.O., cited that the Supervisors in the Public Works (Irrigation) Department, should be appointed temporarily as Junior Engineers (Prospectively) with immediate effect. It was also indicated therein that orders regarding other consequential matters would issue separately.

2. Accordingly, matters relating to weightage, seniority, etc., have been examined by the Government and the following orders are issued:-

(i) Supervisors who acquire Graduate qualification may be appointed as Junior Engineers on or after 28.2.1972, subject to the availability of vacancies in the cadre of Junior Engineers.

They will not be entitled for appointment as Junior Engineers automatically from the date of acquisition of degree qualification;

(ii) A Supervisor, who is appointed as Junior Engineer, shall be entitled to count 1/3rd of the service rendered by him as Supervisor, before his appointment as Junior Engineer, subject to a maximum of four years, for the purpose of computing the service as Junior Engineer, which will render him eligible for consideration for promotion as Assistant Engineer.

(iii) The seniority of the Supervisors, who are appointed as Junior Engineers, shall be fixed with reference to the notional date arrived at after giving weightage of service;

(iv) A Supervisor, who is appointed as Junior Engineer, shall put in a minimum service of one year as Junior Engineer to become eligible for promotion as Assistant Engineer;

(v) No Supervisor shall ordinarily be eligible for appointment as Junior Engineer unless he has put in a minimum service of three years as Supervisors. A Supervisor with less than three years of service, who is appointed as Junior Engineer for any special reason, shall not be entitled to any weightage for his past service.

3. Necessary amendment to the Special Rules for the Andhra Pradesh Engineering Service will be issued separately. The Transport, Roads & Building/Panchayati Raj/Housing, Municipal Administration & Urban Development Department will issue amendments to the Special Rules with which they are concerned in accordance with the above decisions in consultation with the Andhra Pradesh Public Service Commission.

4. The cadre strength of Junior Engineers was last fixed in G.O.Ms. No. 240, Public Works (VI) Department, dated 28.2.1972. Since then a large number of posts of Junior Engineers/Supervisors have been sanctioned by Government. The Chief Engineer (General) is requested to submit proposals for suitably enhancing the strength of the two orders.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF A.P.) M. GOPALAKRISHNAN,
SECRETARY TO GOVERNMENT."

G.O. Ms. No. 451 is referred to in this G.O.Ms. and in the Preamble it is clearly noted that the appointments of the upgraded Supervisors as Junior Engineers should be temporary and prospectively only. In Paragraph 2 (i) it is also made abundantly clear that they will not be entitled for appointment as Junior Engineers automatically from the date of acquisition of degree qualification. Coming to the weightage it is clarified in paragraph 2 (ii) to the effect that a Supervisor who is appointed as Junior Engineer shall be entitled to count 1/3rd of the service rendered by him as Supervisor, before his appointment as Junior Engineer, subject to a maximum of four years and the same would be taken into account to render the appointee eligible for consideration for promotion as Assistant Engineer. Paragraph 2 (iii) is very important regarding the seniority and the same has to be fixed with reference to the notional date arrived at after giving weightage of service, Paragraph 2 (v) gives a clue that the weightage could be from the date of appointment. The Government, however, issued proceedings dated 8.8.77 and fixed the seniority of these upgraded Supervisors who acquired the degree qualification from the date of acquiring the degree. We have already noted that vide G.O. Ms. No. 893 the special rules were amended. After the G.O. Ms. No. 559 was issued, representations were made by the Association of Andhra Junior Engineers as well as from the Diploma-holders Engineers Association. Having considered these representations, the Government came out with another G.O. Ms. No. 593 dated 29.7.77 and clarified that the rules only refer to the date of appointment and does not refer to selection and that the seniority of an individual or a class or category has to be fixed according to the date of his first appointment and

not with reference to the date of selection and the Chief Engineer (General) was requested to fix the seniority accordingly. The Chief Engineer (General) Vide proceedings No. Rc. Gel. MI/58062/74-75 dated 8.8.77 fixed the seniority. But in doing so he has taken the date of passing the examination by the upgraded Junior Engineers as the date of appointment. As already noted this fixation of seniority was questioned before the Tribunal.

From the above resume of all the G.O.Ms. it is clear that an interpretation of G.O. Ms. No. 559 would be decisive in the these matters.

In our view the G.O. Ms. No. 559 makes it abundantly clear that the appointments of these upgraded Supervisors who acquired the graduate qualification while in service, would be prospective only and that they would be entitled to the weightage of four years of service rendered before the appointment. The G.O. Ms. does not anywhere indicate that the weightage should be from the date of acquiring the degree qualification. It must be borne in mind that it is only after acquiring such degree qualification that a Supervisor is appointed as Junior Engineer and having regard to the service rendered by him the Government as a policy decided to give weightage of four years for the purpose of considering the eligibility for promotion as Assistant Engineer. In this context it is pertinent to note that the degree-holders were appointed temporarily because of a ban and later the Government again as a policy decision decided to make regular appointments by direct recruitment but enabled the degree-holders who are in temporary service to appear in a SQT. Again as a matter of policy the Government decided to give some weightage to the service rendered by them before the appointment by selection. It can thus be seen that the Government in fixing the seniority for the purpose of future promotion of the appointees both the upgraded as well as those selected by the Public Service Commission in SQT has taken into account the past service rendered by them. In the case of upgraded Junior Engineers weightage of four years' service is given and in the other case two years' weightage is given. In this context it is contended on behalf of the upgraded Junior Engineers that the regularisation of the direct Junior Engineers retrospectively that is with effect from two years prior to the date of their appointments is unwarranted. In this context the Tribunal has rightly pointed out that under Rule 23-A of the A.P. State and Subordinate Service Rules, 1962 if a person having been appointed temporarily under Rule 10 to a post borne on the cadre is subsequently appointed in the service in accordance with the rules he shall commence his probation from such subsequent date or the earlier date as the appointing authority may determine. We agree with the Tribunal that there is no bar to the retrospective regularisa-

tion of the service of the direct Junior Engineers. However, in the instant case, it was a special selection by SQT restricted to the directly recruited Junior Engineers who had put in two years of service and the objective was to regularise their services. As stated supra as a matter of policy the Government gave weightage to both the categories. In *Devi Prasad and others v. Government of Andhra Pradesh and others*. AIR 1980 SC 1185, G.O. Ms. No.893 referred to above was questioned on the ground of unreasonableness in the matter of giving weightage to the upgraded supervisors. This Court held that in the light of their experience there is nothing unreasonable in giving them limited benefit or weightage. It was further observed as under:

"Ultimately; it is a matter of Government policy to decide what weightage should be given as between two categories of Government servants rendering somewhat similar kind of service. In the present case, there may be truth in the case of the appellants that they are hit hard because of the new rule. Dr. Chitale tried to convince us of the hardship that his clients sustain consequent on this rule and weightage conferred thereby. But mere hardship without anything arbitrary in the rule does not call for judicial intervention, especially when it flows out of a policy which is not basically illegal. However, Government must be interested in keeping its servants specially in strategic areas like engineering contented and efficient. In so producing contentment, it may have to evolve a flexible policy which will not strike a group as inflicting hardship on them. A sense of justice must permeate both the groups."

However, the upgraded Junior Engineers who having got the benefit of four years' service cannot be heard to say that similar weightage cannot be given to the direct recruits who prior to the selection were working on temporary basis.

Shri Kanta Rao, learned counsel relied on the decisions of this Court in Smt. M.Nirmala and other v. State of Andhra Pradesh and others etc., [1986]3 SCC 647; Ashok Gulati and others v. B.S. Jain and others., [1986] Supp. SCC597; Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others, [1990] 2SCC 715 and Masood Akhtar Khan and others v. State of Madhya Pradesh and others, [1990] 4 SCC 24 and contended that both the categories were discharging the same duties and there should not be any discrimination.

Learned counsel also relied on some unreported judgments of the Andhra Pradesh High Court in writ Petitions Nos. 1929, 1006 and 2387/ 73 and also Writ Petitions Nos. 3897/72. We have perused all these judgments and we are of the view that such a question did not arise in these cases. The question to be considered is from which date the weightage of four years' service should be given to the upgraded Junior Engineers namely the Supervisors. Is it the date of acquiring the degree qualification or the date of their appointment? Having given our earnest consideration and for the reasons stated above we hold that the weightage can be given only from the date of their appointment.

The Tribunal in the course of its order, however, observed that in accordance with the existing rules the appointments of these Junior Engineers from the notional date have to be cleared by the Public Service Commission and the appointments cannot be held to be regular appointments as long as they are not approved by the Public Service Commission. Having referred to the Rules, the Tribunal in paragraph 18 observed thus:

"We thus find that the appointment of the upgraded JEs as well as the direct JEs to the Gazetted posts have not been made strictly in accordance with the Rules and, hence, it is necessary for the Government to issue specific orders after following the procedure laid down in the Rules, in regard to their appointment to the Gazetted post of `Junior Engineers."

Having so observed the Tribunal suggested some working formula in the meanwhile. In evolving this formula the Tribunal further held thus.

"Thus, after having examined the points raised for and against the action taken by the Government in giving the upgraded Junior Engineers the benefit of the notional dates of appointment given to them and in giving the direct Junior Engineers benefit of the dates of the regularisation of their services from the dates of their initial appointment subject to the maintenance of the order ranking given by the P.S.C., we feel that the Government action in this respect was quite justified."

Towards the end the Tribunal, however, observed that the seniority of the upgraded Junior Engineers who acquired the degree qualification before 28.2.72 will have to be fixed by putting them below all the regular Junior Engineers. Likewise those who have acquired the degree qualification after 28.2.72 their seniority have to be fixed on the basis of notional date of appointment by "interspersing" among the regular Junior Engineers. The learned counsel for the State of A.P. submitted that this exercise of "interspersing" becomes impossible at this stage.

Having given our careful consideration particularly to the fact that this litigation has been pending for the last so many years, about two decades. We feel that it is high time a finality has to be reached by resolving the controversies and in this context we are of the view that the approval of the Public Service Commission in respect of these appointments need not be sought, if the Government has not already obtained the approval of the Public Service Commission. To sum up, our conclusions are as under:

- (i) The weightage of four years in respect of upgraded Junior Engineers as provided in G.O. Ms. No. 559 has to be reckoned from the date of appointment and not the date of their acquiring the degree qualification;
- (ii) On the basis of that notional date, their inter-se seniority has to be fixed;
- (iii) The regularisation of the degree-holder Junior Engineers who passed the SQT by giving retrospective effect cannot be held to be illegal, and their seniority among themselves shall be subject to the order of ranking given by the Public Service Commission on the basis of the SQT;
- (iv) The Government shall prepare a common seniority list of the degree-holders Junior Engineers and the upgraded Junior Engineers on the above lines and that list shall be the basis for all the subsequent promotions. Promotions, if any, already given shall be reviewed and readjusted in accordance with the said seniority list; and
- (v) The approval of the Public Service Commission in respect of these appointments and their seniority thus fixed need not be sought at this distance of time.

Accordingly Civil Appeal Nos. 752-55/84 are disposed of as per the directions given above. There will be no order as to costs.

S.L.P.(C) No. 5218/85:

This Special Leave Petition arises out of a separate order passed by the A.P. Administrative Tribunal in R.P. No. 1473/80. The petitioners before the Tribunal belong to A.P. Panchayati Raj Engineering Department in Zone No. 1. They are all graduates in Civil Engineering and were temporarily appointed as Junior Engineers originally in the Public Works Department in 1969. Their services were terminated for want of vacancies. However, during the year 1973 they were again appointed in the A.P. Panchayati Raj Engineering Department. They also appeared in the Spe-

cial Qualifying Test and they were selected by the Public Service Commission and they were appointed as regular Junior Engineers. They commenced their probation. The respondents before the Tribunal were appointed as Supervisors and after they acquired the degree qualification they were designated as Junior Engineers. The grievance of the petitioners was that the respondents could not have been put above the petitioners in the matter of seniority and their seniority should have been reckoned from the date of their acquiring the graduate qualification. G.O. Ms. No. 422 issued by the Department declaring them as seniors to the petitioners, was specifically questioned before the Tribunal. The Tribunal held that the impugned G.O.Ms. is vitiated firstly on the ground that the principles of natural justice have not been observed and secondly that the petitioners before the Tribunal who were the direct recruits and who were selected by the Public Service Commission after holding the SQT, are entitled to count their service in the ranking of Junior Engineers from the date of their appointment subject to the order regarding the maintenance of ranking given by the Public Service Commission. The said order of Tribunal is questioned in this Special Leave Petition by the upgraded Junior Engineers who were the respondents before the Tribunal. In this petition also the grounds raised are the same as in Civil Appeal Nos. 752-55/84. The conclusion reached by us in the above matters also govern the points in this petition. Accordingly this Special Leave Petition is disposed of in terms of the directions given in Civil Appeal Nos. 752-55/84. There will be no order as to costs.

W.P. (C) No. 3566/85:

This Writ Petition is filed under Article 32 of the Constitution of India. The petitioners are all upgraded Junir Engineers of A.P. Panchayati Raj Engineering Service. They have questioned G.O.Ms. No. 376/84 under which some promotions were made on the basis of the inter-se seniority list of the direct recruits and upgraded Junior Engineers. The conclusions reached by us in Civil Appeals Nos. 752-55/84 also govern the points raised in this Writ Petition. Accordingly the Writ Petition is disposed of in terms of the directions given in Civil Appeals Nos.

752-55/84. There will be no order as to costs.

G.N.

Matters disposed of.