

CONFIDENTIAL

GOVERNMENT OF ANDHRA PRADESH
REVENUE (Ser. II) DEPARTMENT

Memo.No.61384/Ser.II.2/2008

Dated:22-2-2010

Sub:- PSS - Revenue Establishment- Seniority dispute between direct recruit and rank Promotee Deputy Tahsildars - Report of the Expert Committee - Communicated - Reg.

Ref:-1.G.O.Rt.No.1489, Rev(Ser.II.2) Dept. dt. 13-10-2009.
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Government have constituted an Expert Committee in the G.O. cited to have an in-depth study of the dispute relating to inter-seniority between direct recruit Deputy Tahsildars and rank promotee Deputy Tahsildars. The Committee, has submitted its report to the Government. The Government have examined the said report and decided to accept the same.

2. A copy of the said Expert Committee Report is communicated herewith to the Chief Commissioner of Land Administration, A.P., Hyderabad for taking necessary action in the matter.

ASUTOSH MISHRA
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Chief Commissioner of Land Administration,
A.P., Hyderabad. (Copy)

//FORWARDED BY ORDER//


SECTION OFFICER



EXPERT COMMITTEE REPORT

The issue of fixation of inter-se-seniority between the Direct Recruit (Pro. DTs) and Rank Promotee Deputy Tahsildars has a chequered history of litigations dating back to 1988. Several OAs/ WPs were filed from the side of both the Pro. DTs and rank promotees. The matter was also carried to the level of Supreme Court of India. The Revenue Service Association and JAC, Revenue Employees Welfare Association represented to the Government to take a fresh look at the issue. The Revenue Service Association has requested the Government not to revise the settled seniority list of the Deputy Tahsildars, which was already published in consonance with the directions of the courts, and to cancel the Government Memo.No.32175/Ser.II:2/2006-4, Rev. Dept., dated:14.08.2007. The representatives of Direct Recruit Deputy Tahsildars have on the contrary represented that the seniority in the cadre of Deputy Tahsildars be determined in terms of various court orders by strictly observing the quota rota rule in existence. The CCLA has also sought for certain clarifications in this regard.

In view of the intricacies of the issue, Government have decided to constitute a Committee with the following composition and terms of reference to make an in-depth study of the entire issue and accordingly issued orders in G.O.Rt.No.1489, Rev. (Ser.II:2) Department dated: 13.10.2009.

- 1) Principal Secretary to Government,
Revenue (C.T. & Excise) Department. ...Member-Convener.
- 2) Chief Commissioner of Land Administration,
AP, Hyderabad or his nominee ...Member
- 3) Secretary to Government,
General Administration (Services) Dept ...Member
- 4) Secretary to Government (Legal Affairs),
Law Department. ...Member

Terms of reference

- (i) whether the orders issued in Government Memo.No.32175/Ser.II:2/06-6, Revenue Department, dated: 14.08.2007; are strictly in accordance with the legal pronouncements made by the Hon'ble High Court of A.P./ the Supreme Court of India in the matter from time to time; and, the relevant A.P. Revenue Subordinate Service Rules and A.P. State and Subordinate Service Rules in vogue.

- (ii) whether the principles adopted by the Chief Commissioner of Land Administration, AP, Hyderabad in preparing the provisional seniority list in Deputy Tahsildars cadre is in accordance with the said legal pronouncements and relevant rules; and,
- (iii) feasibility of acceptance of the requests made by the Service Associations in the matter of preparation of seniority list of Deputy Tahsildars.

It was also ordered there in that the Committee shall hear the representatives of the promotee and Direct Recruit Deputy Tahsildars and submit its report.

Accordingly the said Committee has deliberated the issue on 21.10.2009, 28.10.2009, 07.11.2009 and 30.01.2010 duly affording opportunity to the representatives of both the Direct Recruit as well as Promotee Deputy Tahsildars to put-forth their respective points of view.

To examine the various dimensions of the issue, the Committee has gone into the genesis of the matter. The facts of the case in brief are as follows:-

The post of Deputy Tahsildar is a category under the Andhra Pradesh Revenue Sub-ordinate Service and the conditions of service were initially governed by the A.P. Revenue Subordinate Service Rules issued in G.O.No.1279, G.A. (Rules) Dept., dated: 12.10.1961. Under these Special Rules, appointment to the cadre of Deputy Tahsildar could be made either by direct recruitment or by transfer from members of Andhra Pradesh Ministerial Service employed in the Revenue Department including the office of the Commissioner of Land Revenue, Revenue Settlement and office of the Director of Settlements, Survey and Land Records. Further, according to Rule 3 (b) of the said rules, substantive vacancies in the Deputy Tahsildar cadre would be filled or reserved to be filled-up by direct recruitment and recruitment by transfer in the ratio of 1:1. An amendment was brought in to the said rules in G.O.Ms.No.4582, dated: 09.10.1980 by inserting a provision in the form of Rule 4 (e) according to which the inter-se-seniority between the direct recruits and the promotees should be determined from the date of their confirmation in the substantive vacancy in the proportion of 1:1. The validity of the amended Rule 4 (e) was challenged in the Apex Court in the case of K.V. Subbarao

and others Vs. Government of A.P. and others. The Supreme Court held that the amended Rules can operate prospectively from 9th October, 1980 only and shall have no retrospective effect.

Subsequently, the Government have issued A.P. Revenue Subordinate Service Rules afresh vide G.O.Ms.No.990, Rev. (Ser.III) Dept., dated:24.09.1992 in supersession of the 1961 rules, according to which the quota for direct recruitment in filling up the substantive vacancies was limited to 30% (Note 1 under Rule 3) and it was further provided that not withstanding anything contained in the rule the seniority of a person appointed as Deputy Tahsildar shall be governed by General Rule 33 of the Andhra Pradesh State and Sub-Ordinate Service Rules. Pursuant to the said amendment the Government as well as the CCLA issued clarification stating that Deputy Tahsildars appointed prior to 24.09.1992 will be entitled to have their seniority fixed in accordance with Rule 4 (e) as it stood then.

However, the Promotee Deputy Tahsildars filed O.A.No.7175/95 in A.P.A.T. praying for preparation of seniority lists in accordance with the criteria laid down in the new rules framed in G.O.Ms.No.990, Revenue Dept., dated: 24-09-92. As per the interim directions of A.P.A.T. in O.A.No.7175/95, pending disposal of the matter, promotions were effected to the Tahsildars cadre as per the seniority fixed u/r 33 (a) of A.P.S. &S Rules. Finally the A.P.A.T., in its order dt. 31-7-1995, disposed off O.A.No.7175/95 upholding the validity of Rule 4(e) for the purpose of drawing up the seniority of direct recruit Deputy Tahsildars appointed between 09.10.1980 and 23.09.1992. Against the orders of A.P.A.T. the promotee Deputy Tahsildars filed W.P.No.20296 to 20298/97 in the High Court of A.P. and the High Court in its orders dt. 31.12.1997 allowed the W.P. and directed for fixation of seniority as per rule 33 (a) of A.P.S. &S.S Rules without reference to Rule 4(e). Thereupon, the direct recruit officers filed C.A.No.3056 and 3054/98 in P. Mohan Reddy vs. E.A.A.Charles & Others in the Supreme Court of India against the orders of High Court of A.P., Hyderabad. The Supreme court of India in its order dt. 16-2-2001 set aside the orders of the High Court of A.P., Hyderabad and directed as follows:

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“... we have no doubt in our mind, that in view of the judgement *court in Subba Rao's case (supra)* seniority of Deputy Tahsildars appointed between the dates 10.04.1980 till September, 1992 is required to be determined in accordance with pre-amended Rules which came into existence in September, 1992; and even if, factually such seniority has not been drawn up then the same has to be drawn up in accordance with the criteria indicated in the pre-amended rule and not according to the amended Rules, which came into existence in September, 1992 as has not held by the High Court in the impugned Judgment. 1992 as has been therefore was clearly in error and the said judgment of the High Court is thus set-aside.....”

The review filed by the Government was also dismissed by the Supreme Court of India. Pursuant to this the Government in Memo.No.73220/Sr.II(1)/96-28. Revenue Dept., dt. 8-10-2001 issued instructions for implementation of the orders of Supreme Court of India. Accordingly, the Tahsildars panels from 1995-96 onwards were reviewed on 30-10-2001 by the D.P.C. as per the seniority lists of Deputy Tahsildars published in 1995-96 basing on rule 4(e) of A.P.S.&S.Rules. 1961. Meanwhile, the seniority lists of Direct Recruit Deputy Tahsildars appointed during the above said period of 1980-92 (upto 23.09.1992) were drawn up as per the pre-amended Rules i.e., Rule 4(e) and the same were published by all the District Collectors in the State. On publication of proceedings of the District Collector, Visakhapatnam in Rc.No.134/94-95/A2, dated: 20.05.2000. Sri. S. Visheswar Naidu, the then P.D.T., of Visakhapatnam District, approached the Tribunal in O.A.No.1054/01. The Tribunal, in its orders dated: 12.02.2002, allowed the O.A. and set aside the orders of the Collector, Visakhapatnam and directed to finalise the panels of the DTs for the period subsequent to 29.02.1992 upto the panel year 2000-01 and effect promotions only to the extent of seniority list finalized. The Tribunal also held that the services of Deputy Tahsildars could not be regularized from the date of their appointment in the temporary posts but should be regularized from the date of a substantive vacancy was available.

Aggrieved by the above Tribunal orders, Sri. V. Nageswar Rao and others filed W.Ps.17430, 20977 and 4525/02 and the Hon'ble High Court, while dismissing the writ petition, gave the following directions on 28.11.2003:

1. That the seniority of the direct recruits will have to be determined from the date of their actual appointment. They cannot claim seniority from an imaginary date prior to their actual appointment on the basis of availability of a

2. That the quota would have to be determined on the basis of rules applicable at the time of issuance of the notification for direct recruitment.
3. That inter-se-seniority of officers appointed before September, 1992 will be determined on the basis of the judgment of the Supreme Court reported in P.Mohan Reddy Vs. E.A.A.Charles (1st supra);
4. That the inter-se-seniority of the promotees shall be determined on the basis of the appointment against a substantive vacancy and not on the basis of date on which a person had been promoted against a temporary vacancy.
5. The inter-se-seniority of direct recruits and promotees be determined in accordance with rules applicable and in accordance with above given directions.
6. That the official respondents may act accordingly and after preparation of the list of available posts, they may further proceed to fix the seniority of promotees.

In order to comply with the above directions of the Hon'ble High Court Government vide its memo No.57987/Ser.II.2/2002-9, dated:1.1.08.2004, while according permission under rule 24 (c) of A.P. State and Sub-ordinate Service Rules, 1996, requested the CCLA to revise the approved panels of Deputy Tahsildars for the year 1992-93 onwards.

Subsequently, the Government have issued certain instructions vide Govt. Memo.No. 32175/Ser.II (2)/06-4, dt. 14-8-2007 for implementation of the High Court and Supreme Court orders-

"That the Seniority of direct recruits and promotee Deputy Tahsildars during the period from 12.10.1961 to 8.10.1980 will be determined from their date of regular appointment to the post. During the period from 09.10.1980 to 23.09.1992, their Inter se Seniority will be determined from the date of their regular appointment to the posts within their quota. The Inter se-Seniority of direct recruits and promotees during the period from 09.10.1980 to 23.09.1992 should be determined on the basis of the confirmation in the substantive vacancies in the proportion of 1:1 by redrawing the same if necessary and further directed that the Seniority of direct recruits and promotees from 21.04.1992 till date shall be finalized earmarking 30% substantive vacancies to the direct recruits and 70% substantive vacancies to the promotees and their Seniority will be fixed basing on the appointment within their quota and the seniority of direct recruits will be reckoned from the date of his joining to duty in the post. Accordingly, the Inter se Seniority of the persons appointed shall be prepared and later on year wise panel shall be prepared, and that in respect of 1994-95 batch of direct recruits their seniority will be determined from the date of their confirmation in the substantive vacancies in the ratio 1:1 which was in force at the time of issuing recruitment notification in the year 1990".

Aggrieved by the Government memo dated:14.08.2007, several O.As have been filed by the Direct Recruits before the Hon'ble A.P.A.T. The cases were disposed by the Hon'ble APAT by giving the following orders.

"the O.A. is disposed of by giving liberty to the applicants to agitate and are aggrieved by the final list to be prepared by the Government and respondents are directed to expedite the process and complete the who exercise within a period of 4 months. The respondents are further directed to consider the case of the persons who were appointed in substantive vacancies in the category of D.T. for promotion to the post of Deputy Collector and any promotions made in the meanwhile will be subject to review after the final seniority list is issued."

In terms of the Court/Tribunal orders and clarifications issued by the Government vide memo. No.32175/Ser.II.2/06-4, dated: 14.08.2007 the seniority of DTs from the year 1980 onwards has been revised and provisional inter-se-seniority of DTs and integrated seniority list of Dy.Tahsildars have been published in all the districts.

At this stage, the Revenue Service Association and Joint Action Committee have represented to the Government not to revise the settled seniority list of Deputy Tahsildars which were already published in consonance with the direction of the courts and to cancel the Government Memo. No.32175/Ser.II.2/2006-4, Rev. Dept., dated: 14.08.2007. On the other hand the Direct Recruit DTs have represented to the Government to fix the seniority of the Deputy Tahsildars in terms of the Court orders by strictly observing the quota-rota rules in existence. In order to examine the contending view points of either side the Government have constituted the present Committee.

The Committee has heard the representatives of the Revenue Service Association and the representatives of the Direct Recruit Deputy Tahsildars. They have put forth their contentions before the Committee quoting several court judgments. One of the main contentions of the Revenue Service Association is that there is no clear rule with regard to carry forward of vacancies earmarked for Direct Recruits and inspite of this the Direct Recruit vacancies, not filled up in any particular panel year are being carried forward for several years till such recruitment is made. They have suggested that such vacancies be carried forward upto a maximum of 2 years and then filled-up by rank promotion in the exigency of administration. They have also pointed out that the root cause for the present seniority dispute is that the Government has not been recruiting Pro. DTs at regular intervals, recruitment is taking place after a

gap of 5 to 10 years and there by in the panel years corresponding to the years of direct recruitment a large number of direct recruit Deputy Tahsildars are getting bunched up because of which promote Deputy Tahsildars, placed below them in the seniority list, do not get opportunity for further promotion and thus face hardship. They have also stated that the seniority list in the cadre of Deputy Tahsildars was already drawn up as per the judgement of the Apex Court in Mohan Reddy's case and that nowhere in the High Court judgement it was mentioned to review the seniority list from 1980 onwards. They have finally represented that the review now contemplated will unsettle the settled seniority and therefore the orders issued in Government Memo.No.32175/Ser.II.2/07-4, Rev. Dept., dated: 14.08.2007 should be cancelled.

On the other hand, the representatives of the Direct Recruit DTs have submitted that the orders of the Apex Court/ High Court of A.P. and the instructions issued in Govt. Memo.No.32175/Ser.II.2/07-4, Rev. Dept., dated:14.08.2007 be scrupulously followed to finalize the seniority list

With the above background we now proceed to give our views on each of the issues referred to the Committee

Issue (1):- Correctness or other wise of Government instructions issued in Memo No.32175/Ser.II.2/2006-4 Revenue Dept., dated 14.08.2007.

A table indicating the operative portion of the instructions contained in the above mentioned memo and the views of the Committee thereon is given below:

Instruction issued	Views of the Committee
1. Seniority of direct recruits shall be reckoned from the date of joining duty by maintaining the ranking assigned by the recruiting agency.	These instructions are in accordance with the 1 st direction issued by the Hon'ble High Court in W.P No.17430/2002 and also rule 33(b) of A.P State & Sub Ordinate Service Rules.
2. The Promotees are entitled to reckon the seniority from the date of appointment in the quota meant for them.	This is in accordance with the judgement of the Hon'ble High Court in W.P No.17430/2002 where the Court held that "In this case reliance can be placed on a judgment of Supreme Court reported in M.S.L. PatilVs. State of Mah. (S.C). This is a small judgment, but it laid down that where recruitment was required to be

	made on the basis of prescribed quota promotions were made in excess of quota, the promotees promoted in excess of the quota cannot claim seniority from the date of their promotion. They can be considered for seniority only from the date when the quota for them was available".
3. The seniority of direct recruits and promotee D.Ts during the period from 12-10-1961 to 08.10.1980 will be determined from their date of regular appointment to the post.	This is in accordance with the decision of the Apex Court in Suraj Prakash Gupta & Others Vs. State of Jammu & Kashmir and Others and direction(4) of the A.P High Court in WP No.17430/2002
4.The inter-se seniority of direct recruits and promotees during the period from 09.10.1980 to 23.09.1992 should be determined on the basis of the confirmation in the substantive vacancies in the proportion of 1:1 by redrawing the same if necessary	This is in accordance with rule 4 (e) of A.P Revenue Subordinate Service Rules and the decision of the Apex Court in the case of P. Mohan Reddy Vs. E.A Charles and direction (3) of A.P High Court in W.P.No.17430/2002
5. The seniority of direct recruits and promotees from 24.04.1992 till date shall be finalised earmarking 30% substantive vacancies to the direct recruits and 70% substantive vacancies to the promotees and their Seniority will be fixed basing on the appointment within their quota and the seniority of direct recruits will be reckoned from the date of his joining to duty in the post.	This is in terms of provisions of A.P Revenue Subordinate Service Rules issued vide G.O.Ms.No.990 Revenue (Ser.III) Dept. dt.24.09.1992 and direction (5) of Andhra Pradesh High Court in W.P No.17430/2002.
6. In respect of 1994-95 batch of direct recruits their seniority will be determined from the date of their confirmation in the substantive vacancies in the ratio of 1:1 which was in force at the time of issuing recruitment notification in the year 1990	This instruction is in accordance with direction (2) of A.P. High Court in WP No.17430/2002 read with rule 4(e) of A.P Revenue Sub-ordinate Service Rules.

In the light of the above the Committee is of the opinion that the instructions

issued in Government Memo No.32175/Ser.II (2)/06-4 dated 14.8.2007 is entirely in accordance with the provisions of the relevant Service Rules and the directions of

Hon'ble Supreme Court and High Court of Andhra Pradesh.

Issue (2): Correctness of the principle adopted by the CCLA

Regarding the issue as to whether the principles adopted by the CCLA, AP, Hyderabad in preparing the provisional seniority list of Deputy Tahsildars cadre is in accordance with the legal pronouncements and relevant rules the Committee observed that in pursuance of the instructions issued by the Government in Memo No.32175/Ser.II (2)/06-04 dt 14.8.2007, the CCLA has addressed all the Collectors in his reference No. XI/1091/2006 dt.30.6.2008 to furnish particulars of Deputy Tahsildars (both Probationary Deputy Tahsildars and Promoted D.Ts) regularised from 9.10.1980 to 23.9.1992 in the ratio of 1:1 and from 24.9.1992 onwards in the ratio of 30:70 duly indicating the number of substantive vacancies for finalization of seniority of the Deputy Tahsildars. From the above position, it is clear that the procedure followed by the CCLA is in accordance with the legal pronouncements.

Issue (3): Feasibility of acceptance of requests made by Revenue Service Association:

The Andhra Pradesh Revenue Service Association has made several demands before the Government in its representation dated 24.09.2009. The main requests pertaining to the contentious issue of inter-se seniority between the direct recruits and promotees are as follows:

- 1) To cancel Govt. Memo.No.32175/Ser.II (2)/06-4, dt 14.8.2007.
- 2) Not to take up revision of seniority from 1980 since that was already settled.
- 3) To fix roster point system for Direct Recruits.
- 4) Unfilled Direct Recruitment vacancies should not be carried forward beyond two years, after which they should be earmarked for rank promotees.
- 5) Seniority of promotees should be reckoned from the date of continuous officiation without reference to whether the vacancy is substantive or not.
- 6) To bring in amendment to G.O.Ms.No. 990 to the effect that instead of a fixed quota of 30% of vacancies being earmarked for direct recruitment of Deputy Tahasildars, at the time of filling up of vacancies in any panel year adequacy of Direct Recruit candidates to the tune of 30% of the entire D.T cadre may be observed.

In order to examine the above request the Committee, apart from going through the decisions of the Hon'ble Supreme Court of India in P. Mohan Reddy Vs. E.A. Charles and that of the Hon'ble High Court in V.Nageswara Rao & others Vs.

Government of A.P. and others, perused several related judgments Apex Court the observations / decisions of the Apex Court in some of them are as below:-

The Hon'ble Supreme Court, in the case of KESHAV CHANDRA JOSHI AND OTHERS ETC., Vs. UNION OF INDIA AND OTHERS reported in AIR 1991 SUPREME COURT 284 has held as follows:

"If the concerned rules provide the procedure to fix inter se seniority between direct recruits and promotees, the seniority has to be determined in that manner.

Accordingly, we have no hesitation to hold that the promotees have admittedly been appointed on ad hoc basis as a stop-gap arrangement, though in substantive posts, and till the regular recruits are appointed in accordance with the rules. Their appointments are de hors the rules and until they are appointed by the Governor according to rules, they do not become the members of the service in a substantive capacity. Continuous length of ad hoc service from the date of initial appointment can not be counted towards seniority. The governor shall have to make recruitment by promotion to substantive vacancies in the posts of Asst. Conservator of Forest, if not already made in accordance with R.5(b) read with Appendix 'B' and R.6. their seniority shall be counted only from the respective dates of appointment to the substantive posts in their quota under R.6 as per the rules. The direct recruits having been appointed in accordance with R.5(a) read with Appendix 'A', their seniority shall be counted from the date of their discharging the duties of the post of Asst. Conservator of Forest and the seniority of the direct recruits also shall accordingly be fixed. The inter se seniority of the direct recruits and promotees shall be determined in accordance with R.5,6 and the R.24 in the light of the law declared in the judgement.

The Hon'ble Supreme Court, in the case of SURAJ PRAKASH GUPTA AND OTHERS VS.STATE OF J & K AND OTHERS reported in (2000) 7 SCC 561 has held as follows:

Summarising the position, we therefore hold that the ad hoc/stop gap service of the promotees can not be treated as non est because PSC was not consulted in respect of continuance of the ad hoc/stopgap service beyond six months. Such service is capable of being regularized under rule 23 of the J&K (CCA) rules, 1956 and rectified with retrospective effect from the date of occurrence of a clear vacancy in the promotion quota, subject to eligibility, fitness and other relevant factors. There is no "rota" rule applicable. The "quota" rule has not broken down. Excess promotees occupying direct recruitment posts have to be pushed down and adjusted in later vacancies within their quota, after due regularization. Such service outside the promotee quota can not count for seniority. Service of the promotees which is regularized with retrospective effect from the date of vacancies within the quota counts for seniority. However, any part of such ad hoc/stopgap or even regular service rendered while occupying the direct recruitment quota can not be counted. Seniority of the promotees or transferees is to be fixed as per

quota and from the date of commencement of probation/regular appointment as stated above. Seniority of direct recruits is from the date of substantive appointment. Seniority has to be worked out between direct recruits and promotees for each year"

The Hon'ble Supreme Court, in the case of C.K.ANTONY VS B.MURALEEDHARAN AND OTHERS reported in (1998) 6 SCC 630 has held as follows:

" A direct recruit to the cadre of ACF can count seniority only with effect from the date of his appointment as a Probationary Assistant Conservator. A person who has been appointed to a service or post temporarily or provisionally as a stopgap arrangement, can never be considered as one who has been appointed to that post or service. If there is no substantive vacancy in the permanent cadre available, no direct recruitment can be resorted to. The direct recruits should get substantive vacancies in the permanent cadre while recruits by transfer can be adjusted against a permanent vacancy or a temporary vacancy depending upon the vacancy position. A person who gets a temporary appointment or promotion, as the case may be, shall not be regarded as a probationer in that category and on account of that temporary appointment or promotion, he can not have any preferential claim to that post. Any commencement of probation for the purpose of counting seniority must precede by an appointment in accordance with the rules. In case a temporary appointee is allowed to start his probation from a date anterior to the date of his subsequent appointment in accordance with the rules, that should be without prejudice to the seniority of others in the service, in this case, without prejudice to the seniority of direct recruits.

It is contended on behalf of the appellants that though the appointments of the appellants were temporary, the Government has regularized those appointments prior to the appointments of the direct recruits and, therefore, they are entitled to claim seniority over the direct recruits. We are unable to agree with this contention as any appointment/regularization contrary to the rules, which would prejudice the rights of direct recruits, can not be sustained

" We, therefore, hold that the present was not a case about which it could be said that the quota rule had broken down. In this connection, it would be apposite to refer to Keshav Chandra Joshi Vs. Union of India (1992 Supp (1) SCC 272) and A.N.Sehgal Vs.Raje Ram Sheoran (1992 Supp (1) SCC 304) which are judgements by three judge and two Judge Benches respectively. Both these cases dealt with the promotions given to the persons concerned in excess of the quota, because of which it was stated that their promotions were not according to rules. The promotions were, therefore, held to be fortuitous; it was also observed that the seniority could not be counted from the dates of fortuitous promotions. These cases voiced the feeling of the Court that the State having made the rules should implement them in letter and spirit; any justification for

derection in implementation should not be countenanced; it should really be snubbed

It is not in dispute that there is a ratio prescribed for the direct recruits and the promotees, namely, 1:1. In other words, for every 100 vacancies the promotees are entitled only to 50 vacancies. It is not in dispute that these promotees have been promoted in excess of the quota. Under those circumstances, it is settled law that the promotees who are appointed in excess of the quota can not get the entire length of service. Therefore, they are required to be fitted into seniority according to the rules. As to what is the date on which the promotees or the direct recruits came to be appointed into the respective quota is a matter of record and the seniority is required to be determined according to the law laid down by this Court. In several judgements of this Court, it is now firmly settled that merely because of the fact that the State Government could not make direct recruitment due to its inaction, it can not be said that the rule of quota has been broken down. Therefore, as and when the direct recruitment has been made, the direct recruits are entitled to placement of their seniority into the vacancies reserved for them as per the ratio and Similarly, when the promotees came to be promoted in accordance with the rules in excess of their quota, this court stated in Keshav Chandra Joshi, Vs. Union of India through a Bench of three Hon'ble Judges that the promotees in excess of the quota can not be given seniority from the respective dates of their promotions. They have to be considered only from the respective dates on which their respective quota is available. The same decision was followed and reiterated in A.N. Sehgal Vs. Rajee Ram Sheoran.

The Hon'ble Supreme Court in the case of UTTARANCHAL FOREST RANGERS ASSOCIATION (DIRECT RECRUIT) AND OTHERS VS. STATE OF U.P. AND OTHERS reported in (2006) 10 SCC 346 has categorically laid down in paragraph 37 that earlier promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of earlier promotion or subsequent confirmation. It was further held that rule of quota being a statutory one, it must be strictly implemented and it is impermissible for the authorities to deviate from the rule due to administrative exigency or expediency. The Apex Court has further held that pushing down of promotees appointed in excess of quota may work out hardship but it is unavoidable and any understanding otherwise would be illegal nullifying the force of statutory rules and would offend Article 14 and 16 (1) of the Constitution of India. Similarly in the case of SURAJ PRAKASH GUPTA AND OTHERS VS. STATE OF J&K AND OTHERS reported in (2000) 7 SCC 561, all paragraph 36 to 39, it has been held that a mere failure to resort to direct recruitment can not be presumed that quota rule is broken down.

The Supreme Court in K. Madalai Mutur vs. State of T.N (2006 (6) SCC 558) held that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment

rules, cannot be said to be in service till such time his appointment is regularized. It, therefore, follows that it is only from the date of which is services are regularized that such appointee can count the seniority in the cadre.

The Supreme Court in *R.K. Mobisana Singh vs. K.H. Temba Singh* (2008 (1) SCC 747) held that when promotion is given only in the exigency of situation without following the rules the period cannot be counted towards seniority. If they have been given regularization with retrospective effect, the same by itself may not be a ground to apply the said order ipso facto for determining the inter-sc seniority --- Retrospective regularization, whether in terms of the directions of the High Court or otherwise, thus although could confirm other service benefits to the officer concerned, but the same cannot be held to be of any assistance for reckoning the seniority with retrospective effect.

The Supreme Court in *AFHQ/ISOs/(DP) Association vs. Union of India* (2008(3)SCC 331) held that:

"The relevant Rules clearly envisage that continuous officiation in a service without break also gives benefit of seniority, but in a case where recruitment is from two sources and the quota is prescribed, then the person from one source cannot take the benefit available to the other source within the quota. Thus, promotees who have been promoted within the quota of 75% under the rules as prescribed under the Third Schedule read with rule 16 (7) of the Rules would get benefit of continuous officiation from the date of their substantive appointment to the grade on availability of a substantive post and after having worked on temporarily basis in the grade. Those who have been appointed temporarily under Note (2) from the cadre of Assistants to the grade of Assistant Civilian Officers temporarily would not get the benefit of their continuous officiation and shall be liable by operation of law to be reverted or there shall be deemed reversion when the nominees from UPSE would join on the recommendations of UPSC. Such temporary officers may not actually face reversion because by the time the vacancies of the next year

may become available in their quota of 75% and they can, by virtue of their seniority, earn the benefit of substantive appointment under the third schedule."

The Supreme Court in Radha Mohan Malakar vs. Usha Ranjan Bhattacharjee (2009 (9) SCALE 280) held that:

"In our opinion the principle of the decision in N.K.Chauhan's case (1997 (1) SCC 308) (supra) can be illustrated by taking a hypothetical example. Suppose in a particular service 50% of the vacancies are to be filled in by promotion and 50% by direct recruitment, and suppose there is a rule that the inter se seniority of direct recruits and promotees is to be fixed according to the rotation of vacancies between direct recruits and promotees in the manner that the first post will go to a promotee, the second to a direct recruit, the third to a promotee, the fourth to a direct recruit, and so on. Even here the ordinary rule that seniority will depend on the length of the continuous officiating service has to be followed unless the quota of direct recruits or of the promotees has been exceeded. It is only if the said quota is exceeded that the appointees have to be pushed down in the seniority, otherwise seniority has to be taken from the date of continuous officiating service"

The Committee is of the view that the requests made at Sl. No. (3), (4) and (5) above are not tenable in view of the clear decisions of the Apex Court in the cases cited supra. The Committee has already expressed its opinion relating to the request at Sl.No. (1) vide issue (1) discussed earlier. In respect of request no. (2), the Committee is of the view that the seniority list in any category of post is a continuous chain. As has been stated at the beginning, the relative position in that chain has been the subject matter of a series of litigations since 1988. In order to determine the inter-se seniority among the D.Ts it is necessary to know, panel year wise, total number of substantive vacancies, the number apportioned out them to the Direct Recruits and Promotees as per their quota (is, 50:50 before 24.09.1992 and 30:70 afterwards), the number of DRs / Promotees in excess of their quota, if any, who need to be pushed down etc. This exercise has to be gone through, if not already completed, right from 09.10.1980 as

directed by the Apex Court in Mohan Reddy's case in order to be in a position to Prepare the panels for promotion for different years. In case it is found, after preparation of the inter-se seniority list and year-wise panels basing on the above exercise, that some of the D.Ts have already been promoted to higher cadre basing on some earlier seniority list and cannot be accommodated in any vacancy of Tahsildar's in any of the promotion panels, they may not be reverted and their cases may be referred to the Government for considering their adjustment against supernumerary posts to be created till sufficient vacancies arise in the higher (promotion) cadre.

In respect of request no (6), the Committee is of the view that this involves a matter of general policy of the Government relating to composition of various service cadres and the relative importance that the Government wishes to attach to the induction of Direct Recruit fresh blood into various services in each panel year. As such, this issue is not within the purview of deliberations of this Committee.

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