



GOVERNMENT OF ANDHRA PRADESH
GENERAL ADMINISTRATION (SER. A) DEPT.

Cir. Memo. No. 16/Ser.A/93-99

Dated : 21.4.1999

Sub: P.S.-Quota/Rota rule applicable only for purpose of recruitment and not for purpose of determining inter-se-seniority of the incumbents- Clarificatory Orders issued in G.O.Ms.No. 607, G.A. (Ser.A) Dept, dated 6.11.1992-challenged before A.P.A.T. in O.A. No. 22/93 and batch- Disposed of- Further instructions - issued.

Ref: 1. Govt. U.O. Note No. 16/Ser.A/93-6, dt. 30-4-93.

2. Govt. Memo. No. 16/Ser.A/93-16, dt. 6-3-96

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The Special Rules and Adhoc Rules for certain services provide a ratio or cycle for recruitment by promotion and by transfer and for direct recruitment which are the three accepted methods of recruitment. Experience has shown that, recruitment through various methods is not being done in the prescribed ratio or cycle (rota) for various reasons. In such situations and in the exigencies of administration, it has become necessary to induct persons from one source in excess of their quota. On account of this, there is an endless litigation resulting in vacancies in promotional posts remaining unfilled.

2. Rule 33 of the Andhra Pradesh State and Sub-ordinate Service Rules regulates the seniority of the incumbents appointed to a service, class, category etc. The scope and applicability of this rule was discussed by the Supreme Court of India in Sri Dasoola Rama Rao and another Vs. State of Andhra Pradesh, Sri K. Siva Reddy Vs. State of Andhra Pradesh and Sri M. Gangadharan and others Vs. State of Andhra Pradesh etc.

3. A study of several judicial pronouncements in this regard shows that various interpretations have been placed on this quota or rota rule and the preponderance of the view taken is that the quota or rota rule is meant only for purposes of recruitment to a particular category, but not to determine the inter-se-seniority of the incumbents belonging to a particular category who are appointed to the post included in that category through different methods of recruitment viz., direct recruitment, promotion and appointment by transfer.

4. Government have, therefore, decided to issue clarificatory order in this regard. Accordingly an Adhoc rule was issued in G.O.Ms.No. 607, G.A. (Ser. A) Dept, dated 6.11.1992 clarifying that, the quota or rota if any prescribed in the said Special Rules or Ad-hoc Rules shall apply only for determining the number of vacancies earmarked for recruitment by promotion or appointment, by transfer and for direct recruitment but not for determining their inter-se-seniority, and that their inter-se-seniority shall be determined in accordance with rule 33 (a) and (b) of the State and Subordinate Services Rules.

5. Sri P. Ganeswar Rao and others of Panchayat Raj Department have filed O-A.No. 22/93 in Andhra Pradesh Administrative Tribunal for fixing up their inter-se-seniority, and the adhoc rule issued in G.O.Ms.No. 607, G.A. (Ser.A) Dept., dated 6.11.1992 has also been challenged. Similar other O.As. have also been filed before the Andhra Pradesh Administrative Tribunal in their order dated 24.12.1992 in O.A. No. 22/93 have passed the following interim orders :

"As the impugned adhoc rule is likely to have far reaching effect and the G.O.Ms.No. 607, dated 6.11.92 does not indicate that the A.P.P.S.C. was consulted or its copy marked for publication in the gazette and it has not given any retrospective effect, we consider it appropriate to issue a direction that it will not effect any orders already passed or seniority for the period prior to the issue of G.O.Ms.No. 607, dated 6.11.1992 and in implementation of any orders passed by the Courts, A.P.A.T. erstwhile Tribunal, subsequently to be passed by the authority in respect of period prior to the issue of adhoc rules."

6. The Andhra Pradesh Administrative Tribunal in their another order dated 4.3.1993 in O.A.No. 1103/93 filed by Sri V. Naveen Chand and another has directed the Respondent No. 1 i.e. Chief Secretary, General Administration Department as follows :

"It is expected that the respondent No. 1 takes steps to either have the interim order varied or vacated after filling a counter or until so done, intimate all other Departments about the interim orders of the Tribunal which will apply to all services wherever the impugned G.O. is sought to be relied upon for taking action."

7. Accordingly, the above interim order was communicated to all the Departments of Secretariat under reference 1st cited. Subsequently the APAT, in its part judgment, dated 27-4-1995 in O.A.No. 22/93 and batch held that Adhoc Rule issued in the G.O. referred above is invalid and accordingly declared it void and quashed the same. But the

other contentions of the petitioners have not been disposed of by the Andhra Pradesh Administrative Tribunal.

8. The Government after examining the above orders of Andhra Pradesh Administrative Tribunal dated 27.4.1995, carried the matter in appeal to the Supreme Court of India vide SLP. (c) No. 25247-249/95. The Apex Court in its interim orders dated 9.12.1995 stayed the operation of the judgment of Andhra Pradesh Administrative Tribunal dated 27.4.1995 after notice and pending further orders. This order of the Supreme Court of India has been communicated to all concerned for further action at their end in Government Memo second cited.

9. While the case is pending before the Supreme Court of India, the Andhra Pradesh Administrative Tribunal in its another order dated dated 6.11.1992 will have overriding effect of the provisions contained in General Rules or Special Rules as the G.O. is in accordance with the judgment of the constitution bench of the Supreme Court of India rendered in Maharashtra Engineers case.

10. Subsequently the Hon'ble Supreme Court of India took up the SLP (c) No. 25247-24/95 on 20.8.1996 and dismissed the Special Leave Petition but observations, that it is open to the petitioners to approach the Tribunal for any modification or clarification of the directions made in its orders dated 27.4.1995 by pointing out the difficulties being faced by the petitioners and the Tribunal when so moved shall decide that application, uninfluenced by the dismissal of these special Leave Petitions on its own merits. It has also been clarified that this order shall not be construed as any expression of opinion on the merits of the case and that the orders dated 27.4.1995 would be open to be questioned, if the need so arises, by either of the parties after the final disposal of the pending original applications by the tribunal.

11. The Supreme Court of India also observed that the delay in disposal of the applications by the Tribunal apparently appears to have arisen because of the interim stay granted by this Court, which now stands vacated and therefore requested to dispose of the original applications expeditiously.

12. Based on the said order of the Supreme Court of India, affidavits have been filed before the Andhra Pradesh Administrative Tribunal, indicating the orders of Andhra Pradesh Administrative Tribunal dated 11.6.1996 in O.A.No. 4917/94 and batch.

13. The Andhra Pradesh Administrative Tribunal has now finally disposed of the O.A. No. 22/93, 7642/92 and batch cases in its judgment dated 1.12.1998 and up-held the validity of G.O.Ms.No. 607, G.A. (Ser.A) Dept, dated 6.31.1992, The Government in the light of the above judgment of the Andhra Pradesh Administrative Tribunal dt. 1.12.98 examined the matter further and issue the following clarifications :

a) for determining the seniority of the employees, the provisions contained in Genl, Rule 33 of the Andhra Pradesh State and Subordinate Service Rules shall be followed;

b) the seniority of a direct recruit is to be determined only from the date of his/her joining duty but not from the date on which the vacancy earmarked for a direct recruitment arose;

c) if an employee is promoted to a post earmarked for direct recruitment, his probation shall not be commenced from the date of his appointment in to the post earmarked for direct recruitment shall the reckoned only from the date on which he would have occupied the vacancy meant for promotee "

d) the inter-se-seniority of direct recruits shall be as per the ranking assigned to them by the recruiting agency irrespective of their dates of joining" provided they all joined within the time allowed for them to join as per rule 11 of the Andhra Pradesh and Subordinate

Service Rules; and

e) The seniority lists already finalised by the various authorities based upon the Courts Judgments in individual cases which have become final shall be disturbed. If such cases are not finalised, they may be settled now as per these instructions.

All the Departments of Secretariat, Heads of departments, District Collectors etc. are therefore requested to follow above guidelines while fixing the inter-se-seniority of the persons recruited through various methods of recruitment as per the respective service rules.

V. ANANDARAU

Chief Secretary to Government