A TAMIL NADU RURAL DEVELOPMENT ENGINEERS ASSOCIATION

v.

THE SECRETARY TO GOVERNMENT RURAL DEVELOPMENT DEPARTMENT & ORS.

B (Civil Appeal No. 8758 OF 2013 etc.)

SEPTEMBER 27, 2013

[SURINDER SINGH NIJJAR AND M. Y. EQBAL, JJ.]

C *SERVICE LAW:*

Seniority between direct recruits and promotee Assistant Engineers – Held: Appellants were absorbed in RD Department as Overseers — Their previous service in D *Highways Department was also on the post of Overseers – Their claim for benefit of previous service on lower post of Overseer for determining seniority on higher post of Assistant Engineer cannot be accepted — Appellants were promoted as Assistant Engineers much later than respondents-* E *Assistant Engineers (direct recruits) had started discharging their functions as Assistant Engineers in RD Department — Respondents had completed five years service as Assistant Engineers and under the relevant rules were eligible to be promoted as Assistant Executive Engineers — Consequently, they were duly promoted as Assistant Executive Engineer —* F *Thus, the action taken by State Government cannot be said to be either arbitrary or violative of Art. 14 or 16 of the Constitution of India.*

Quota for promotion to post of Assistant Executive G *Engineer – Held: For promotion to the post of Assistant Executive Engineer (RD), more than one mode of recruitment i.e. promotion from Assistant Engineer (RD) and recruitment by transfer from the feeder category of Junior Engineer and Senior Draughting Officer have been recognised and*

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stipulated — Further, on the post of Assistant Engineer (RD) there is more than one mode of recruitment i.e. direct recruitment and recruitment by transfer from the feeder category of Overseers – Therefore, rules providing ratio of 6:2:1 cannot be said to be violative of Art.14 or 16 of the Constitution – Further, fixation of quota/ratio is the prerogative of the executive and in the instant case, the ratio was fixed in the service rules framed under Art.309 of the Constitution – Constitution of India, 1950 – Arts. 14, 16 and 309.

The members of the appellant-Association (appellants) were initially appointed as 'Overseers' in the then Highways and Rural Works Department, where, even after putting in 20 years service as such, they did not have any promotional avenues. By G.O. Ms No. 263 Rural Department dated 27.12.1996, the Government of Tamil Nadu decided to set up a separate Engineering Wing for the RD Department and the posts created, namely, Assistant Engineers (AE), Assistant Executive Engineers (AEE), Executive Engineers (EE) and Superintending Engineers (SE), in the RD Department were filled up by drawing personnel from other technical Departments of the State Government on deputation basis as an interim arrangement. On 25.5.1998, the date on which the absorption and recruitment of engineering personnel belonging to other Departments were notified, the appellants were occupying the posts of Overseer in the Highways Department. On 8.3.1999, the appellants gave their consent to be absorbed as Overseers in the RD Department. On 26.9.1997, the State Public Service Commission invited applications for the posts of Assistant Engineers in the RD Department. The respondents-Assistant Engineers were directly recruited from 24.11.1998 to November, 1999. The appellants were promoted as Assistant Engineers on 2.9.2002, having been given the benefit of service as Overseers in the RD Department from the year 1997. The representations of

A the appellants to effect promotions to the post of Assistant Executive Engineers (AEE), RD Department from the post of Assistant Engineer on 1:1 ratio between Assistant Engineer-direct recruits and Assistant Engineers-promotees by transfer of service in the RD B department, did not yield fruits. They filed a writ petition seeking issuance of a writ declaring Rule 3(2) of Notification-III of G.O.Ms. No. 15, RD Department dated 25.1.2000, as *ultra vires* in the absence of fixation of quota between AE-direct recruits and promotees on the post of C AEE. The High Court dismissed the writ petition.

In the instant appeals, the grievance of the appellants was (i) that they could not be deprived of their past service; and (ii) there ought to be a ratio of 1:1 between direct recruits and promotees for promotion to the post D of AEE.

Dismissing the appeals, the Court

HELD: 1.1. The Appellants having voluntarily opted E to be absorbed in the RD Department, without any protection of their previous service in the Highways Department, cannot be permitted to make a grievance that they have not been treated at par with the direct recruits. The direct recruits joined on the post of AE. The appellants were working on the post of Overseer in the Highways F Department, the parent Department, even though they were degree holders. Having given the option to be absorbed in RD Department on the post of Overseer, their claim for absorption as AE is without any legal or factual justification. [Para 27] [857-G-H; 858-A-B, C]

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1.2. On 25.5.1998, when the State Government issued orders for absorption and recruitment of the Engineering Staff through GO Ms. No.102 RD Department, the appellants were occupying the posts of Overseer in the H Highways Department, but on temporary service in the

RD Department. On the basis of the exercise of option, they appellants were absorbed in the RD Department on 8.3.1999. Thereafter, the Government issued Notifications I to IV with ad hoc rules for the Engineering Wing for the RD Department by notification GO Ms. No.15 dated 25.1.2000. These notifications were given effect from 25.5.1998, the date on which the absorption and recruitment of engineering personnel belonging to other Departments were notified. The seniority of the respondents has been reckoned with reference to the date of appointment on the post. This is a well recognised general principle of computing seniority and no exception can be taken to it. In fact, the service of the appellants has been counted form 1997 i.e. from the time when they started serving as Overseers in the RD Department on deputation from the Highways Department under GO Ms. No. 263 dated 27.12.1996. [Para 25-26] [856-B-C, F-H; 857-A, C, F-G]

1.3. The appellants were promoted as Assistant Engineers on 2.9.2002, having been given the benefit of service as Overseers in the RD Department from the year 1997. They did not question their appointment as Assistant Engineers since they were well aware that they had been so appointed on completion of five years service as Overseers in the RD Department by virtue of GO Ms. No.15 dated 25.1.2000 as amended by GO Ms. No.295 dated 14.12.2001. On the other hand, the respondents-Assistant Engineers (direct recruits) had started discharging their functions as Assistant Engineers in RD Department between 24-11-1998 to November, 1999. They were duly promoted under the rules as Assistant Executive Engineer after they had completed five years service as Assistant Engineers. Thus, the action taken by the State cannot be said to be either arbitrary or violative of Art. 14 or 16 of the Constitution of India. [Para 28] [858-D-G]

A **1.4. The appellants were absorbed in the RD Department as Overseers. Their previous service in Highways Department was also on the post of Overseers. The appellants claimed the benefit of the previous service on the lower post of Overseer for determining the** B **seniority on the higher post of Assistant Engineer, which cannot be accepted for the simple reason that the appellants had voluntarily accepted and given the option to be absorbed in the RD Department on the post of Overseer. No claim was made at that stage to be either** C **absorbed or promoted as Assistant Engineer or to be given the benefit of the service already rendered by them in the Highways Department. Further, their claim that the degree holder Overseers ought to be exempted from having rendered five years service in the RD Department,** D **before they can be eligible to be considered for promotion as Assistant Executive Engineer cannot be accepted. [Para 31] [860-H; 861-A-B, F-G]**

Sub-Inspector Rooplal and Another v. Lt. Governor through Chief Secretary, Delhi and Others **1999 (5)** E **Suppl. SCR 310 – distinguished.**

2.1. It cannot be disputed that for promotion to the post of Assistant Executive Engineer (RD) Notification No. III GO Ms. No.15, more than one mode of recruitment F **i.e. promotion from Assistant Engineer (RD) and recruitment by transfer from the feeder category of Junior Engineer and Senior Draughting Officer have been recognised and stipulated. Further, it is also a matter of record that on the post of Assistant Engineer (RD) there** G **is more than one mode of recruitment i.e. direct recruitment and recruitment by transfer from the feeder category of Overseers only. Therefore, the rules have provided a ratio on appointment to the post of Assistant Executive Engineer (RD) as 6:2:1 (promotion from AE (RD); JE; SDO). Prior to the absorption of the appellants**

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in the RD Department, they had no chance of being promoted on the post of Assistant Executive Engineer, Executive Engineer or Superintending Engineer. It is only upon their absorption that they have got a chance of being promoted on the higher posts. The ratio of 6:2:1 cannot, in any manner, be said to be violative of Art. 14 or 16 of the Constitution. [Para 29] [859-D-H; 860-A]

2.2. Even otherwise, the fixation of the quota/ratio is the prerogative of the executive. Further, the ratio of 6:2:1 has been fixed in the service rules in exercise of the powers of the governor under proviso to Art. 309 of the Constitution. In the absence of the appellants placing on the record material to establish that fixation of such a ratio is patently arbitrary, the action of the Government cannot be nullified. Fixation of rota/quota on the basis of qualification is well accepted in service jurisprudence. Therefore, it cannot be said that the ratio of 6:2:1 ought to be replaced with the ratio by 1:1. [Para 30] [860-B-C]

Case Law Reference:

1999 (5) Suppl. SCR 310 distinguished para 31

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8758 of 2013.

From the Judgment & Order dated 29.01.2007 of the High Court of Judicature at Madras in Writ Petition No. 26990 of 2005.

WITH

C.A. Nos. 8759, 8762, 8763, 8764, 8765 of 2013.

P.S. Patwalia, Indu Malhotra, Nisha Bagchi, Vivek Jain, Nishtha Kumar, Pooja Sharma, Vikas Mehta for the Appellant.

Subramonium Prasad, AAG, B. Balaji, K.V. Rathee, M. Yogesh Kanna, A. Santha Kumaran, N. Shoba, Sri Ram J. Thalapathy, V. Adhimoolam, S. Thananjayan for the Respondents.

A The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1.Leave granted in all the Special Leave Petitions.

2. These appeals are directed against the common judgment
B and final order dated 29th January, 2007 passed by the High Court of Judicature at Madras in Writ Petition Nos. 26990 and 26973 of 2005; 36096 of 2004, Writ Appeal No.500 of 2005, Writ Petition Nos. 31416 of 2004 and 9460 of 2005. By this order, the High Court dismissed the Writ Petitions and the Writ Appeal filed by the
C Appellant-Association.

3. Since the facts involved in the controversy in all the appeals are common, we shall make a reference to the facts as narrated by the High Court. This shall be supplemented by any additions made by the parties in this Court.

D 4. The facts noticed by the High Court are that the members of the Tamil Nadu Rural Development Engineers' Association (hereinafter referred to as 'Appellants') were initially appointed as 'Overseers' by the then Highways and Rural Works Department and posted exclusively to various Panchayat Unions for executing
E 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 Assistant Engineer (for short 'AE') and many of them were languishing in the
F same post, i.e., as Overseers, for nearly two decades.

5. By virtue of G.O. Ms. No. 263, Rural Development Department (in short 'RD Department'), dated 27th December, 1996, the Government of Tamil Nadu decided to set up a separate 'Engineering Wing' for the RD Department itself so
G as to exercise adequate control over various Central and State sponsored Schemes and accordingly several new posts such as Assistant Engineers (AE). Assistant Executive Engineers (AEE), Executive Engineers (EE) and Superintending Engineers (SE), were created.

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6. By virtue of G.O. Ms. No. 102, RD Department, dated 25th May, 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 RD Department. The Government Order also recognised the rights of the Overseers, whose entire service is only in the RD Department, for promotion to the posts of AEs and Junior Engineers (JEs). Finally, the Government framed Service Rules for various technical posts in the RD Department and notified the same in G.O. Ms. No. 15, dated 25th January, 2000, by invoking the powers under proviso to Article 309 of the Constitution of India. On 14th December, 2001 G.O. M.S. No. 295 (RD) Department was issued to amend the service rules with effect from 25th May, 1998

7. As soon as the Engineering Wing was created in the RD 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 RD Department and filed Original Application in O.A. No. 253 of 1997 before the Tamil Nadu Administrative Tribunal (in short 'Tribunal'). This Application was dismissed by the Tribunal by order dated 12th November, 1997. Aggrieved by the order of the Tribunal, the Association filed W.P. No. 6513 of 1998 before the Madras High Court. By order dated 2nd April, 2002, the Madras High Court upheld the order of the Tribunal.

8. The constitutional Validity of G.O. Ms. No. 15, dated 25th January, 2000, and G.O. Ms. No. 102, dated 25th May, 1998, was challenged before the Tribunal by a group of individuals and by the Association of Tamil Nadu Engineering Graduates in O.A. Nos. 5338 and 7766 of 2000. Both the Government Orders were upheld by the Tribunal by order dated 3rd June, 2002.

9. A group of AE - Direct Recruits, on completion of five

A years of service in the RD 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 RD Department under Rule 39 of General Rules of the Government of Tamil Nadu. The Tribunal, by Order dated 16th March, 2004, B directed the Government and the Director, RD Department, to consider and grant promotion to the applicants under Rule 39 of the General Rules. It was also held that regular promotion and selection can be done after preparing a Panel. This order was challenged by the Appellants in Writ Petition Nos. 34029 C and 34040 of 2004 and 1174 of 2005.

10. Appellant-Association made representations to the respondent to fix a ratio of 1:1 among AE- direct recruits and AE- Promotees, for promotion to the post of AEE. The above ratio was requested to be fixed based on the cadres strength D in category of AEs, between AE- direct recruits and AE- promotees, which is 1:1. The same ratio was sought to be maintained for the promotional post of AEE as well.

11. It is stated that without reference to the ratio envisaged E in G.O. Ms. No. 15, respondent No.2 sought to make a common Seniority List for direct recruits and promotees. The Appellant-Association challenged the common Seniority List in W.P.No.26276 of 2004. An interim stay was granted in the said W.P. on 2nd September, 2004. Later, the Writ Petition was withdrawn by the Appellant-Association with liberty to file a fresh F Writ Petition.

12. Shortly thereafter respondent No.1 effected promotions of a group of direct recruits who had completed 5 years of service as AEE by issuing G.O.(2D) NO.116 on 29th October, G 2004. This was followed by G.O. (D) No. 966 (RD) (E1) dated 16th November, 2004 issuing posting orders of these promotees. Appellant-Association then filed W.P. No. 36096 of 2004 challenging the promotions and posting of the direct recruits as AEE.

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13. Appellant-Association also filed W.P. No. 31416 of 2004 seeking a writ of Mandamus directing the respondents to effect promotions to the post of Assistant Executive Engineers, RD Department, from the post of Assistant Engineer on 1:1 ratio between 'Assistant Engineer-Direct Recruits' and 'Assistant Engineers -Promoted by transfer of service' in the RD Department.

14. In the meantime, the High Court passed an order dated 2nd December, 2004 in Writ Petition 35315 of 2004 directing the Government to implement the order of the Tribunal in O.A. No. 1799 of 2004 and to consider the case of the Promotees who had been absorbed from the Highways Department, if there were no other impediments. Appellant-Association filed Writ Appeal No. 500 of 2005 against the order of the Single Judge.

15. The Government vide letter dated 29th December, 2004 rejected the request of the Appellant-Association to fix a ratio of 1:1, on the ground that the promotions of both the categories have to be made on the basis of the date of joining as Assistant Engineer, irrespective of the source. This led the Appellant-Association to file W.P. No. 9460 of 2005 praying for quashing of the rejection letter issued by the Government on 29th December, 2004.

16. Appellant-Association also filed W.P. No. 26973 of 2005 seeking issuance of a writ of Mandamus directing the respondents to give retrospective effect to the promotions given to Overseers as Assistant Engineers from 25th May, 1998, i.e., the date from which the Service Rules for 'AE-Promotees' as notified in G.O. M.S. No.295 Rural Development (E1) Department dated 14th December, 2001, came into effect.

17. Aggrieved by the non-fixation of ratio for 'AE - Promotees' inspite of various representations, the members of the Appellant-Association, filed a Writ Petition No. 26990 of 2005 seeking issuance of writ declaring Rule 3(2) of Notification-III of G.O. Ms. No. 15, RD Department, dated 25th

A January, 2000, as ultra vires in the absence of fixation of quota between AE- Direct Recruits and Promotees to the post of AEE.

18. By the impugned judgment, the Division Bench of the High Court has held that Service of the Appellants in the RD
B Department before absorption and immediately after the absorption was in a lower post, i.e., Overseer. Therefore, they could not be equated with the direct recruits who joined the RD Department as Assistant Engineers. The post of Overseer was a feeder post for promotion on the post of Assistant Engineer.
C It was further noticed that admittedly, the Appellants had voluntarily given the option to be absorbed as Overseers. Hence, they cannot claim to be equated with the Assistant Engineers. Further, the Appellants, after absorption, were given benevolent treatment by way of being considered for promotion
D and, in fact, promoted as AEs. The High Court opined that it 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
E experience before taking up 'higher responsibilities' so as to achieve administrative efficiency in the Engineering services. The Appellants cannot claim that the services rendered by them in the Highways Department as Overseers for 20 years be taken into account for promotion in the RD Department. They
F 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, i.e., from 1997 onwards; whereas, the services of the direct recruits were counted from the date on which they
G entered Government Service; therefore, benefit in fact has been extended only to the Appellants and not to the direct recruits. In equity also, the claim of the Appellants was without any merit as after being absorbed in the RD Department, they have been given promotion and made to stand on par with the direct recruits. Therefore, there is no justification at all in asking for
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further classification in the integrated cadre and relaxation of five years experience for the purpose of promotion. It was made clear that 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 Appellants 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 Appellants' 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 RD Department with their consent as overseers was on 8th March, 1999; their promotion as AEs was on 2nd September, 2002; and they would be completing the 5 years of service as AEs. only on 2nd September, 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 destroy the right accrued to their seniors/direct recruits. It is reiterated that rules having been made in exercise of the power under proviso to Article 309 of the Constitution, being statutory, cannot be impeached for 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 the High Court to sustain the claim that the orders of the Tribunal suffer from infirmities warranting interference. With these reasons, the High Court has held that the impugned part of the Government Order does not in any way offend Articles 14 and 16 of the Constitution and no Mandamus can be issued as prayed for. Resultantly, the Writ Petitions and the Writ Appeal were dismissed.

19. We have heard the learned counsel for the parties at length.

20. The submissions made by the Appellants are as follows :

It is submitted that the State Government has proceeded

A arbitrarily in filling up the post of Assistant Engineer created in 1996 by initiating the process of direct recruitment in 1997 when the Appellants (Overseers) being more qualified and experienced as well as being available for recruitment by transfer in terms of G.O. Ms. No.15 dated 25th January, 2000. B It is further submitted that the recruitment rules in respect of direct recruit Assistant Engineers were notified with effect from 26th September, 1997 retrospectively, facilitating the en-masse promotion of direct recruits to Assistant Executive Engineer. The Appellants further claimed that the provisions of G.O. Ms. C No. 15 dated 25th January, 2000 have been wrongly interpreted to impose the condition that even the Overseers who possessed the degree in Civil Engineering need to have 5 years service for being promoted as Assistant Engineers. Imposing such a condition has deprived the members of the Appellant-Association and their previous service as Overseers D over the last two decades. The Appellants also claimed that G.O. Ms. No.295 dated 14th December, 2001 would not be applicable to them, it would result in depriving them of their best at rights retrospectively. The Appellants claimed that they are entitled to be transferred as Assistant Engineers with effect from E 25th May, 1998 the date on which the service rules for the Assistant Engineers were notified. It is further submitted that the ratio of 1:1 which is provided between the direct recruits and the Appellants for recruitment on the post of Assistant Engineer has also to be maintained for the next promotional F post of Assistant Executive Engineers.

21. The respondents on the other hand submitted that the Appellants have no legal cause to challenge the direct recruitment which was initiated in 1997. They were not even eligible for absorption in the RD Department till the issuance G of G.O. Ms.No.102 dated 25th May, 1998. According to the respondents, various posts were filled under G.O. Ms. No. 263 dated 27th December, 1996 on deputation and transfer from other Departments. But this was a temporary arrangement which was made for a period of 3 years. There was no scheme H

providing for the absorption and recruitment of the Engineering Personnel drawn from other Departments in the RD Department till the issuance of G.O. Ms. No. 102 dated 25th May, 1998. There was no impediment to the post being filled by the direct recruitment of the post created under G.O. Ms. No. 263 dated 27th December, 1996. It is further submitted that the Appellants are wrongly claiming that the direct recruits have been given any undue benefit with retrospective effect from 26th September, 1997. The aforesaid date was given only for regularising the recruitment of the Assistant Engineer direct recruits. For all other purposes, the services rendered by the Assistant Engineer direct recruit have been taken into account from 1998. The respondents claimed that in fact the Appellants have been given benefit of the service from the date much prior to their absorption, their services have been taken into account from 1997 onwards whereas they were not absorbed in the RD Department in 1998. Learned counsel for the respondents then submitted that the Appellants did not raise before the High Court the issue that G.O. Ms. No.15 dated 25th January, 2000 should not be interpreted to impose the condition of 5 years service as Overseers for the holders of degree in Civil Engineering for being promoted as Assistant Engineers. The only submission before the High Court was that the appointment on the post of Assistant Executive Engineer should also be made in the ratio of 1:1 and not in the ratio of 6:2:1 as mentioned in notification of G.O. Ms. No.15 dated 25th January, 2000. It is also pointed out by the respondents that even otherwise G.O. Ms. No. 15 was amended by G.O. Ms. No.295 dated 14th December, 2001 which amended the qualification for recruitment by transfers and provided that the candidate "must possess a BE degree in Civil Engineering" or "must have passed AIME" and (ii) "must have rendered service as Overseer for not less than 5 years." G.O. Ms. No. 295 was never challenged by the Appellants.

22. Learned counsel for the respondents further submitted that the Appellants cannot claim any benefit on the basis of the previous service as Overseers for 20 years. They were well aware that their services in the Highways Department would not

A be counted for the purpose of seniority in the RD Department as early as on 8th March, 1999 when they had given their consent to be absorbed as Overseers in the RD Department. Having given the option, they cannot now make the grievance that they have lost the benefit of 20 years service. With regard B to the submission of the Appellants that G.O. Ms. No. 295 dated 14th December, 2001 cannot affect the vested rights of the Appellants. It is submitted by the respondents that this submission of the petitioner is contrary to the prayer made by them in W.P. No. 26973 of 2005 wherein the Appellants had C relied on the aforesaid notification. In the aforesaid writ petition, the Appellants had specifically prayed to be given retrospective promotion on the basis of G.O. Ms. No. 295. The respondents claimed that the submission of the Appellants that they are entitled to be transferred as Assistant Engineers with effect from D 25th May, 1998 cannot be accepted as on that date they were working on the lower post of Overseer and further they were members of the Highways Department. It was only on the basis of their option that they were absorbed as Overseers in the RD Department in 1998. On the other hand, Assistant Engineers direct recruit had entered into service in 1998 itself. The E respondents further submitted that the claim of the Appellants with regard to maintaining the ratio 1:1 for the promotional post of Executive Engineer cannot be considered as it was given up by the Appellants before the High Court.

F 23. We have considered the submissions made by the learned counsel for the parties.

24. In essence, the grievance of the appellant is two fold:-

(i) They can not be deprived of their past service.

G (ii) Their ought to be a ratio of 1:1 between Direct Recruits / Promotees for promotion on the post of A.E.E.

25. In our opinion, the Appellants can not now claim that the past service in the Highways Department should be H recognised in the RD Department. It has been noticed earlier

that the members of the Appellant-Association 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 promotions especially for the post of A.E. Many of them were languishing in the same post i.e., as Overseers, for nearly two decades. On 27th December, 1996, the Government set up a separate Engineering Wing (GOMs.No.263; RD Department dated 27th December, 1996) for the RD Department itself. This was necessary to exercise adequate control over the various Central and State sponsored scheme. 384 posts of Assistant Engineers were created for a period of three years. These posts were filled up on a purely temporary basis on deputation/ transfer of service basis by drawing engineering personnel from other Departments like Highways and Rural Works, Public Works Department, Agricultural Engineering, Tamil Nadu Water Supply and Drainage Board etc. The Appellants although belonging to the Highways Department were already discharging the functions of Overseers in the Rural Development Department for a number of years. On 26th September, 1997, Tamil Nadu Public Service Commission invited application for the posts of Assistant Engineers in the RD Department. The respondents-Assistant Engineers were directly recruited from 24th November, 1998 to November, 1999. Drawing of technical staff on deputation basis from different Departments was causing administrative difficulties in implementing various pivotal schemes of the State as well as the Centre. It was noticed that the implementing authority did not have adequate powers to exercise control over the engineering staff of other departments. Therefore, it had become imperative need from a purely administrative point of view that RD Department should have an Engineering Wing of its own. It was further noticed that as a first step GO Ms. No.263 RD Department dated 27th December, 1996 had been issued.

A B C D E F G H

A Government had created 384 additional posts of Union Engineers i.e. one Assistant Engineer for each block, 15 additional posts of Assistant Executive Engineers, and 28 posts of Executive Engineers. The Engineers required for these posts were drawn from Highways and Rural Works Department,
B Public Works Department, Agricultural Engineering, Tamil Nadu Water Supply and Drainage Board and other technical Departments. On 25th May, 1998, the State issued orders for absorption and recruitment of the Engineering Staff through GO Ms. No.102 RD Department, which provided as follows :

C "III. Although the posts of overseers are found only in the panchayat unions, the incumbents cannot be promoted against a part of the posts of Block Engineers/Assistant Engineers (RD) because they are presently staff of Highways Departments. They need to be permanently
D absorbed into RD Department by getting individual options and only thereafter can the question of their promotions be taken up. ...the Chief Engineer (H&RW) may be requested to obtain options from all those personnel and place them at the disposal of Rural Development Department.

E IV. 209 posts in the category of Block Engineers/Assistant Engineer (RD) will be earmarked to be filled up by promotion from the feeder categories of Overseers and Junior Draughtsman. But this route would be open to them only after they exercise their option and are permanently
F absorbed in RD Department....."

26. It also deserves to be noted here that on 25th May, 1998, the Appellants were occupying the posts of Overseer in the Highways Department, but on temporary service in the RD Department under the GO Ms. No.263 dated 27th December,
G 1996. The Appellants were given an opportunity to be permanently absorbed in the RD Department, by seeking their option as to whether they were willing to be absorbed. On the basis of the above exercise of option, the Appellants were absorbed in the RD Department on 8th March, 1999.
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Thereafter, the Government issued ad hoc rules for the Engineering Wing for the RD Department by notification GO Ms. No.15 dated 25th January, 2000. The four notifications (I to IV) in the GO Ms.No.15 providing the qualification and mode of recruitment on the post of Superintending Engineer, Executive Engineer, Assistant Executive Engineer and Assistant Engineer respectively. The first three categories of Superintending Engineer, Executive Engineer and Assistant Executive Engineer did not admit of any direct recruitment. Therefore, these notifications were given effect from 25th May, 1998, the date on which the absorption and recruitment of engineering personnel belonging to other Departments were notified. It was only under Notification IV in respect of Assistant Engineers that provided for direct recruitment. Since the process of direct recruitment to the post of Assistant Engineer in RD Department was initiated by TNPSC vide notification dated 26th September, 1997, the rules under notification IV in respect of Assistant Engineer were declared to be deemed to have come into force on 26th September, 1997. This was necessary to regularise the action taken to recruit Assistant Engineer for RD Department, directly through TNPSC on the basis of the executive order. It is, however necessary to clarify that such retrospective operation of the rules did not confer any benefit whatsoever on the direct recruits in the matter of seniority. The seniority of the respondents has been reckoned with reference to the date of appointment on the post. This is a well recognised general principle of computing seniority and no exception can be taken to it. In fact, the service of the Appellants has been counted form 1997 i.e. from the time when they started serving as Overseers in the RD Department on deputation from the Highways Department under GO Ms. No. 263 dated 27th December,1996.

27. The Appellants having voluntarily opted to be absorbed in the RD Department, without any protection of their previous service, can not now be permitted to make a grievance that they have not been treated at par with the Direct Recruits. We have

A noticed above that the Direct Recruits joined on the post of AE. Appellants, even though some of them possessed the degree qualification, were absorbed on the post of Overseer. They were working on the post of Overseer in the Highways Department, the parent Department, even though they were degree holders. B As noticed earlier, they were stagnating in the Highways Department without any prospect of career advancement. They, therefore, willing gave the option to be absorbed in the RD Department as Overseers, even though they possessed the degree qualification. Having given the option to be absorbed C in RD Department on the post of Overseer, their claim for absorption as AE is without any legal or factual justification.

28. It would also be relevant to notice here that the Appellants were promoted as Assistant Engineers on 2nd September, 2002, having been given the benefit of service as D Overseers in the RD Department from the year 1997. The Appellants did not question their appointment as Assistant Engineers since they were well aware that they had been so appointed on completion of five years service as Overseers in the RD Department by virtue of GO Ms. No.15 dated 25th E January, 2000 as amended by GO Ms. No.295 dated 14th December, 2001. On the other hand, the respondents-Assistant Engineers (Direct Recruits) had started discharging their functions as Assistant Engineers in RD Department from 24th November, 1998 to November, 1999. Therefore, they had F completed five years service as Assistant Engineers for the period between November, 2003 to November, 2004 under the relevant rules (Notification III in GO Ms. No.15 dated 25th January, 2000) eligible under the rules to be promoted as Assistant Executive Engineers. Consequently, they were duly G promoted as Assistant Executive Engineer. In our opinion, the action taken by the State cannot be said to be either arbitrary or violative of Article 14 or 16 of the Constitution of India.

29. The claim of the Appellants that the promotion on the post of Assistant Executive Engineer ought to be made in the H ratio of 1:1 is also wholly devoid of any merit. The Appellants

claimed such ratio on the basis that the direct recruits-respondents are much younger in age. The Appellants had already spent over 20 years in the Highways Department before their absorption in the RD Department. Therefore, in case the promotions are to be based purely on the basis of seniority, the Appellants would never get a change to be promoted on the higher ranks. They would have to retire as Assistant Engineer only as their promotional avenues to the post of AEE and above will be completely choked by AE-Direct Recruits who are atleast 8 years younger than the Assistant Engineer Promotees. It is also the case of the Appellants that the ratio of 1:1 which is fixed for appointment on the post of Assistant Engineer ought to be maintained for the next promotional post of Assistant Executive Engineer. It cannot be disputed that for promotion to the post of Assistant Executive Engineer (RD) Notification No. III GO Ms. No.15, more than one mode of recruitment i.e. promotion from Assistant Engineer (RD) and recruitment by transfer from the feeder category of Junior Engineer and Senior Draughting Officer have been recognised and stipulated. Further more, it is also a matter of record that on the post of Assistant Engineer (RD) there is more than one mode of recruitment i.e. direct recruitment and recruitment by transfer from the feeder category of Overseers only. Therefore, the rules have provided a ratio on appointment to the post of Assistant Executive Engineer (RD) as 6:2:1 (promotion from AE (RD); JE; SDO). The Appellants, however, claimed that this ratio ought to be 1:1, on the ground that otherwise they would stagnate on the position of Junior Engineer. We are unable to accept the submissions made by the learned counsel for the Appellants. Prior to the absorption of the Appellants in the RD Department admittedly they had no chance of being promoted on the post of Assistant Executive Engineer, Executive Engineer or Superintending Engineer. It is only upon their absorption that they now enjoy a chance of being promoted on the higher posts. We are unable to agree with the submissions of the learned counsel for the Appellants that the aforesaid ratio is, in any manner, violative

A of Article 14 or 16 of the Constitution of India.

30. Even otherwise, the fixation of the quota/ratio is the prerogative of the executive. It is not disputed that the ratio of 6:2:1 has been fixed in the service rules in exercise of the powers of the governor under proviso to Article 309 of the
B Constitution of India. In the absence of the Appellants placing on the record material to establish that fixation of such a ratio is patently arbitrary, the action of the Government cannot be nullified. Fixation of rota/quota on the basis of qualification is well accepted in service jurisprudence. We, therefore, see no
C merit in the submissions of the Appellants that the ratio of 6:2:1 ought to be replaced with the ratio by 1:1.

31. The Appellants, thereafter, submitted that the Overseers possessing the degree qualification ought to be exempted from rendering five years service in the RD
D Department for being considered for further promotion on the basis of Assistant Executive Engineer. We are unable to accept this submission, as the Appellants had willingly given the option to be absorbed as Overseers. In case the submission made by the Appellants is accepted, it would mean that the Appellants
E were actually absorbed on the post of Assistant Engineer which would be factually incorrect. Under the rules, an Assistant Engineer can only be considered for promotion as Assistant Executive Engineer on completion of five years service in the RD Department. Therefore, it would not be possible to accept
F the submission of the Appellants that the services rendered by the Appellants in the Highways Department ought to be substituted for the service to be rendered in the RD Department. In fact, the Appellants have already been given benefit of two years service in the Highways Department on the
G basis that they had actually been functioning in the RD Department since 1997. But such concession would not create a legal right in favour of the Appellants to claim that the services rendered in the Highways Department ought to be treated as service rendered in the RD Department. We, therefore, see no
H merit in the submissions that the degree holder Overseers

ought to be exempted from having rendered five years service in the RD Department, before they can be eligible to be considered for promotion as Assistant Executive Engineer. The Appellants had relied on the judgment of *Sub-Inspector Rooplal and Another Vs. Lt. Governor through Chief Secretary, Delhi and Others*[1] in support of the submission that their past service of 20 years cannot obliterated. The aforesaid submission cannot be accepted for the simple reason that the Appellants were absorbed in the RD Department as Overseers. Their previous service in Highways Department was also on the post of Overseers. In *Rooplal's case* (supra), the Appellants were Sub-Inspectors of Boarder Security Force who were initially taken on deputation in Delhi Police as Sub-Inspectors (Executive) and were later on absorbed in Delhi Police in the same capacity. While fixing their seniority in Delhi Police, service already rendered by them as Sub-Inspectors in BSF was not taken into consideration. This Court, therefore, held that there is no reason why the Appellants on being absorbed in *equivalent* cadre in the transferred post should not be permitted to count their service in the parent department. The Appellants herein claimed the benefit of the previous service on the lower post of Overseer for determining the seniority on the higher post of Assistant Engineer. The aforesaid submission cannot be accepted for the simple reason that the Appellants had voluntarily accepted and given the option to be absorbed in the RD Department on the post of Overseer. No claim was made at that stage to be either absorbed or promoted as Assistant Engineer or to be given the benefit of the service already rendered by them in the Highways Department. Having considered the entire matter, we see no reason to differ with the view taken by the High Court.

32. The appeals are accordingly dismissed.

R.P. Appeals dismissed.

1. 2000 (1) SCC 644.