

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

+ Writ Petition Nos.31555, 31556,
31696 and 31700 of 2010
and
3261 and 3286 of 2017

% 14-11-2017

W.P.No.31555/2010:

- # 1. The State of A.P., Rep. by its Prl. Secretary to Govt.,
Home Dept., Secretariat Bldg., Hyderabad
- 2. The Director General of Police (Head of Police Force),
Govt. of A.P., Hyderabad
- 3. The Addl. Director General of Police, Railways,
Govt. of A.P., Hyderabad
- 4. The Supdt. of Police, Railway Police Dist.,
Vijayawada, Govt. of A.P.

Vs.

- \$ 1. P.Suresh Dass, S/o Vijaya Prasad Reddy,
Aged: 35 years, Occ: Rly. Police Constable No.222,
GRPS, Eluru; and others

... Petitioners

... Respondents

W.P.No.31556/2010:

- # 1. The State of A.P., Rep. by its Prl. Secretary to Govt.,
Home Dept., Secretariat Bldg., Hyderabad
- 2. The Director General of Police (Head of Police Force),
Govt. of A.P., Hyderabad
- 3. The Addl. Director General of Police, Railways,
Govt. of A.P., Hyderabad
- 4. The Supdt. of Police, Railway Police Dist.,
Secunderabad, Govt. of A.P., Hyderabad

Vs.

- \$ 1. B.Vidya Sagar, S/o B.Bhumaiah,
Rly. Police Constable-7, RPS, Warangal; and others

... Petitioners

... Respondents

W.P.No.31696/2010:

- # 1. The State of A.P., Rep. by its Prl. Secretary to Govt.,
Home Dept., Secretariat Bldg., Hyderabad
- 2. The Director General of Police (Head of Police Force),
Govt. of A.P., Hyderabad

3. The Addl. Director General of Police, Railways,
Govt. of A.P., Hyderabad

4. The Supdt. of Police, Railway Police Dist.,
Secunderabad, Govt. of A.P., Hyderabad

... Petitioners

Vs.

\$ 1. K.Nageshwara Rao, S/o K.P. Obanna,
Rly. Police Constable-523 RPS Kacheguda; and others

... Respondents

W.P.No.31700/2010:

1. The State of Telangana, Rep. by its Prl. Secretary to
Govt., Home Dept., Secretariat Bldg., Hyderabad

2. The Director General of Police (Head of Police Force),
State of Telangana, Hyderabad

3. The Addl. Director General of Police, Railways,
State of Telangana, Hyderabad

4. The Supdt. of Police, Railway Police Dist.,
Secunderabad, State of Telangana, Hyderabad

... Petitioners

Vs.

\$ 1. J.Krishna Rao, S/o J.Raghava, Aged: 31 years,
Occ: Rly. Police Constable-477, RPS, Kacheguda; and others

... Respondents

W.P.No.3261/2017:

1. V.Laxmana Chary, S/o V.Devaiah, Aged: 42 years,
Occ: Rly. Police Constable-478, RPS, Warangal; and others

... Petitioners

Vs.

\$ 1. State of Telangana, Rep. by its Prl. Secretary to Govt.,
Home Dept., Telangana Secretariat, Hyderabad-22

2. The Addl. Director General of Police,
Telangana State Railways, Lakadikapool, Hyderabad-04

3. The Supdt. of Railway Police, Secunderabad-03

4. The Director General and Inspector General of Police,
State of Telangana, D.G.P. Office Campus,
Lakadikapool, Hyderabad

... Respondents

W.P.No.3286/2017:

1. J.Krishna Rao, S/o J.Raghava Rao, Aged: 41 years,
Occ: Rly. Police Constable-477, RPS, Mahabubnagar; and others

... Petitioners

Vs.

- \$ 1. State of Telangana, Rep. by its Prl. Secretary to Govt.,
Home Dept., Telangana Secretariat, Hyderabad-22
2. The Addl. Director General of Police,
Telangana State Railways, Lakadikapool, Hyderabad-04
3. The Supdt. of Railway Police, Secunderabad-03
4. The Director General and Inspector General of Police,
State of Telangana, D.G.P. Office Campus,
Lakadikapool, Hyderabad
5. The A.P. Administrative Tribunal,
Rep. by its Registrar, Purani Haveli, Hyderabad
6. A.Chandra Shekar Reddy
7. P.Muneswar Rao
8. P.Narsimha Rao
9. Shaik Abdul Rahaman
10. Arepally Sukumar Reddy
(Respondents 6 to 10 are not necessary)

... Respondents

! Counsel for Petitioners : Special Government Pleader
in W.P.Nos.31555,31556, for Services-I (Telangana)
31696 and 31700/2010 &
for respondents in
W.P.Nos.3261&3286/2017

Counsel for Respondents : Mr. J.R. Manohar Rao
in W.P.Nos.31555, 31556,
31696 and 31700/2010 &
for petitioners in
W.P.Nos.3261&3286/2017

< Gist:

> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition Nos.31555, 31556,
31696 and 31700 of 2010
and
3261 and 3286 of 2017

Common Order: (per V.Ramasubramanian, J.)

While the writ petitions of the year 2010 are filed by the State challenging the orders of the Andhra Pradesh Administrative Tribunal, the two writ petitions of the year 2017 are filed by individual employees challenging an order of the Andhra Pradesh Administrative Tribunal refusing to allow their prayer to send them for training for promotion to the post of Head Constables in the Railway Police.

2. We have heard the learned Government Pleader for Services (AP) and Mr. J.R. Manohara Rao, learned counsel appearing for the employees.

3. The employees, who are the petitioners in the writ petitions of the year 2017 and who are respondents in the writ petitions filed by the State, were originally appointed as Police Constables (Civil) way back in the years 1990, 1992 and 1995. While working in the Civil wing of the State Police Department, they were sent on deputation to the Railway Police, which is a Special Establishment. The deputation was on various dates in the years 1991, 1993, 1994 and 1997.

4. By a memo dated 27-12-2000, issued by the Director General of Police, options were called for, from the employees

for absorption into the Railway Police. The employees involved in these writ petitions exercised options for absorption into the Railway Police. The options were accepted and they were absorbed into the Railway Police. They were also intimated that the lien held by the employees in the Civil Police stood terminated.

5. However, by a memo dated 26-07-2007, the absorption of the employees into the Railway Police was cancelled and they were repatriated to the Civil Police. Challenging the said repatriation, the employees filed a batch of cases in O.A.Nos.4311, 4324, 4362 and 4696 of 2007. The Tribunal initially granted an interim order directing the Government to maintain status quo. Eventually by an order dated 20-08-2010, the Tribunal allowed O.A.Nos.4311 and 4367 of 2007 by a reasoned order. Thereafter, O.A.Nos.4324 and 4696 of 2007 were also allowed by a brief order dated 31-08-2010.

6. Challenging the orders passed on 20-08-2010 and 31-08-2010 in all the four Original Applications, the State has come up with W.P.Nos.31555, 31556, 31696 and 31700 of 2007. While ordering notice in the writ petitions, an interim order to maintain status quo was granted by this Court. Therefore, the employees were not sent for training for promotion to the post of Head Constables in the Railway Police.

7. Thereafter, the employees filed a fresh set of cases in O.A.Nos.8739 of 2011 and 2013 of 2012, praying for a direction to the State to send them for training for promotion to the post of Head Constables. These two applications were dismissed by the Tribunal by an order dated 02-09-2015, on the ground that there was an order of status quo passed by this Court in the four writ petitions filed by the State. Therefore, the employees have come up with W.P.Nos.3261 and 3286 of 2016, seeking appropriate directions.

8. In view of the fact that the two writ petitions filed by the employees are only a fall out of the interim orders passed in the batch of four writ petitions, it will be enough to dealt with four writ petitions filed by the State, as the fate of the two writ petitions filed by the employees will automatically fall in line. Therefore, we shall take up the four writ petitions filed by the State first.

9. The main grounds on which the State has come up with the above writ petitions are:

- (1) that Railway Police is a Special Establishment, which does not have a permanent cadre strength and hence, the question of absorption of any one permanently into the Railway Police does not arise; and
- (2) that in any case, the Government alone was competent to send a person belonging to a local cadre to

an establishment, which falls outside the purview of the Presidential Order and hence, the order of absorption passed by the Director General of Police was without jurisdiction.

11. We have carefully considered the above submissions.

12. The first ground of challenge to the order of the Tribunal is that there is no permanent cadre strength for the Railway Police, as it is constituted as a Special Establishment. This contention is based upon the notification issued by the Government of India, Ministry of Home Affairs in GSR No.526 (E), dated 18-10-1975. This notification was issued by the Central Government, in terms of clause (i) of sub-paragraph (1) of paragraph 2 of The Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975.

13. It is true that under the Notification G.S.R.526 (E), dated 18-10-1975, the Central Government notified 7 different Offices/ Establishments as Special Offices, for the purposes of the 1975 Presidential Order. Serial No.5 in the table given in the notification dated 18-10-1975 contains the name of Railway Police. Therefore, there is no doubt that the Railway Police was constituted as a Special Establishment.

14. It must be noted at this stage that The Andhra Pradesh Public Employment (Organization of Local Cadres

and Regulation of Direct Recruitment) Order, 1975, was issued by the President of India in exercise of the powers conferred by clauses (1) and (2) of Article 371D of the Constitution.

15. Under the said order, the State Government was ordained to organise classes of posts in the civil services of, and classes of civil posts under, the State into different local cadres for different parts of the State to the extent, and in the manner provided in the order. After organising posts into local cadres, allotment of persons is to take place.

16. Under Para 5 of the Presidential Order, each part of the State for which a local cadre has been organised in respect of any category of posts, shall be a separate unit for the purposes of recruitment, appointment, discharge, seniority, promotion and transfer. However, under sub-para (2) of Para 5 of the Presidential Order, the State Government was made entitled to make provision for the transfer of a person from any local cadre to any Office or Establishment to which the Presidential Order does not apply, or *vice-versa*. It may be useful to extract paragraph 5 of the Presidential Order, which reads as follows:

“5 Local cadres and transfer of persons: -

(1) Each part of the State for which a local cadre has been organised in respect of any category of posts, shall be a separate unit for purposes of recruitment, discharge, seniority, promotion and transfer, and such other matters

as may be specified by the State Government, in respect of that category of posts.

(2) Nothing in this Order shall prevent the State Government from making provision for –

(a) the transfer of a person from any local cadre to any Office or Establishment to which this Order does not apply, or *vice-versa*;

(b) the transfer of a person from a local cadre comprising posts in any Office or Establishment exercising territorial jurisdiction over a part of the State to any other local cadre comprising posts in such part, or *vice-versa*;

(c) the transfer of a person from one local cadre to another local cadre where no qualified or suitable person is available in the latter cadre or where such transfer is otherwise considered necessary in the public interest; and

(d) the transfer of a person from one local cadre to another local cadre on a reciprocal basis, subject to the condition that the person so transferred shall be assigned seniority in the latter cadre with reference to the date of his transfer to that cadre.”

17. Pursuant to the Presidential Order, 1975, the Government of India, Ministry of Home Affairs, issued a Notification in GSR 526(E), dated 18-10-1975. By this Notification, the Central Government notified 7 different offices such as Anti Corruption Bureau, offices of the Assistant Agricultural Directors, offices of the Chief Rationing Officer, Vigilance Cell (Civil Supplies), Railway Police, Police Communication Organisation, Flying Squads, Mobile Survey Parties and Traverse Survey Party, Hyderabad, as special establishments. Each of these special establishes were attached to different departments. Out of these 7 special offices notified by the Central Government under GSR 526(E),

two offices viz., Railway Police and Police Communication Organisation were attached to the Police Department.

18. The Presidential Order, 1975 and the Central Government Notification GSR 526(E), dated 18-10-1975, were followed by an order of the State Government in G.O.(P).No.728, General Administration, dated 01-11-1975. In paragraph-3 of the said order, it was stated that the scheme of organization of local cadres under the Presidential Order applies generally to all Non-Gazetted categories other than those specifically exempted under Government of India Notification dated 18-10-1975. Paragraph-8 of G.O.(P).No. 728, dated 01-11-1975, stipulated posts and offices which are excluded from the application of the provisions of the Presidential Order. This paragraph also reiterated that the offices declared as special establishments are excluded from the organization and local cadres.

19. Paragraph-11 of G.O.(P).No.728, General Administration Department, dated 01-11-1975, dealt with the question of filling up of the posts in the offices of special establishments, which fall outside the purview of the Presidential Order. Paragraph-11 of G.O.(P).No.728, dated 01-11-1975, reads as follows:

“11. Equitable sharing of certain opportunities:-
While certain posts remain outside the purview of the Presidential Order and para 5 of that order permits transfer of persons from a post in a local cadre to such posts and vice-versa, the Government have, as a matter of policy

decided that the benefit of the employment and promotional opportunities in such non local cadre posts which are filled by transfer of persons from local cadres should be shared equitably amongst different local cadres. Towards this end it has been decided as follows:

i) Where persons are taken whether on tenure basis or on permanent transfer from different local cadres to fill posts in Major Development Projects, State-level Offices/ Institutions, Offices of the Heads of the Department and Secretariat the number of persons drawn from each such cadre shall, as far as practicable, be in proportion to the basic strength of each such cadre.

ii) where persons are taken from different local cadre on tenure basis or on permanent transfer to fill posts in any Special Office or Establishment such persons shall be drawn from the local cadre located in the areas served by such Office or Establishment and the numbers so drawn from each local cadre shall, as far as practicable be in proportion to the basic strength of each such cadre.”

20. A separate order in G.O.Ms.No.795, Home (SPF) Department, dated 30-6-1976, was also passed, approving the scheme of organization of local cadres in the Police Department. In the scheme for organization of local cadres in the Police Department, appended to the said Government Order G.O.Ms.No.795, the Government gave the list of offices which fell outside the purview of the Presidential Order, 1975, together with the reasoning for such exemption. Paragraph-3 of the said scheme appended to G.O.Ms.No.795, dated 30-6-1976, is as follows:

“(3) The following offices of the Police Department are outside the purview of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation

of Direct Recruitment) Order, 1975 for the reasons given against them.

Name of the Office	Reasons for Exemption
01. Office of the Inspector General Police	Being office of the Head of the Department
02. Railway Police 03. Police Communications Organisation	Being Special office or establishment vide Notification No.GSR 526(E), dated 18-10-1975
04. Police Training College, Ananthapur 05. Office of the Deputy Inspector General of Police (Intelligence), Hyderabad 06. Office of the Deputy Inspector General of Police, Railways, Crimes and Training, Hyderabad 07. Police Transport Organization 08. Office of the Director of Police Communications 09. Office of the Director of Forensic Science Laboratory, Hyderabad	Being the state level of Offices or institutions vide Notification No.GSR 527(E) dated 18-10-1975
10. All categories of posts in the Special Police Battalions including Special Armed Police, Amberpet other than Ministerial Categories	Being exempted categories vide Notification No.GSR 529(E), dated 18-10-1975
11. Any Posts of Police Officer as defined in Clause (b) of Section 3 of the Hyderabad City Police Act, 1348-F	Vide Para 14(f) of the Presidential Order

21. Paragraph-4 of the scheme approved in G.O.Ms.No. 795, dated 30-6-1976, gave the list of offices to which the Presidential Order would apply. Paragraph-4 of the scheme reads as follows:

“(4) Thus the Presidential Order, dated 18-10-1975, will apply to the remaining offices of the Police Department as given below:

1. Offices of the six Police Ranges (viz., Northern, Eastern, Central, Southern, Warangal and Hyderabad);
2. Ministerial Staff of office of the Commissioner of Police, Hyderabad.
3. Ministerial Staff of the Special Police Battalions including Special Armed Police.
4. Ministerial Staff of the District Police Office.

5. District Police i.e., Regular Police Force.”

22. In paragraph-8 of the said scheme, there was a provision for apportionment of the posts in the Railway Police Offices at Vijayawada and Secunderabad. Paragraph-8 of the scheme reads as follows:

“At present the Railway Police Offices at vijayawada and Secunderabad are independent units for recruitment to the categories of Head Constables and Police Constables. It has now been decided that these posts may be apportioned among the districts in Andhra and Telangana respectively according to the basic strength of the respective district cadres. However, this will not apply to the existing personnel, who belong to the Railway Police units concerned. The future vacancies of these categories (Head Constables and Police Constables) only will be filled up by drawing personnel from the different district cadres.”

23. The very same paragraph-8 of the scheme made it clear that for the posts of Constables and Head Constables, District will be the unit of appointment and that the Appointing Authority will be the Superintendent of Police. Paragraph-11 of the scheme indicated that the posts of Sub-Inspectors of Police, Reserve Inspectors of Police and Inspectors of Police will form part of the Zonal cadres and that the Appointing Authority would be the Deputy Inspector General of Police. As we have pointed out earlier, there were six Police Ranges at that time and hence the posts of Sub-Inspectors, Reserve Inspectors, Inspectors etc., became Zonal cadres for which the unit of appointment was the Range.

24. Annexures-IV and V to the Government Order G.O. Ms.No.795, dated 30-6-1976, contained two statements, both showing the cadre strength of localized cadres in the Andhra Pradesh Police Subordinate Service in the category of Constables. These statements contained 8 columns viz., (1) Serial number, (2) Territorial spread of the proposed local cadre, (3) Unit Officer, (4) Basic strength of the local cadre, (5) Share of the total of the posts in Secretariat/Office of the Head of the Department, State level Office/ establishment, Major development project distributed in the ratio of the posts, (6) Share of posts in Special establishments/offices distributed in the ratio of the posts in column (4), (7) Effective strength of the local cadre columns and (8) Remarks.

25. The information contained in the statements provided in Annexures-IV and V to G.O.Ms.No.795, dated 30-6-1976, give an indication that certain number of posts were actually diverted from each of the 21 units/districts to the Railway Police, which was treated as Special Office/Special Establishment. In Column No.(6) of the table given in Annexures-IV and V, the number of permanent posts and temporary posts diverted from each of the 21 units/ districts to the Railway Police is indicated.

26. Therefore, the contentions raised by the State –
(i) that the Railway Police is a special establishment that does not fall within the purview of the Presidential Order, 1975,

(ii) that these special establishments were manned by persons drawn from the local cadre in a particular proportion, appears to be correct. If these two are correct, then as a corollary, the contention that no permanent cadre strength was created for the Railway Police created as a special establishment, with one office in Vijayawada and another office in Secunderabad, also should be correct.

27. But for reasons which we are unable to decipher, the Government also issued an order in G.O.Ms.No.535, Home (SPF) Department, dated 16-10-1982, according sanction for transferring permanently three Armed Reserve Platoons, at the rate of one each from Central Police Lines, at Amberpet (Hyderabad), Vijayawada and Chittoor along with three 5-Tonners. G.O.Ms.No.536, dated 16-10-1982 reads as follows:

“In the circumstances reported by the Director General of Police in para-2 of the letter second read above, sanction is accorded for transferring permanently 3 Armed Reserve Platoons at the rate of one each from Central Police Lines, Amberpet, Hyderabad, Vijayawada and Chittoor along with Three 5-Tonners against the sanction accorded in the G.O., third read above. The consequential vacant posts in the State Police should not be filled up. The Director General of Police is requested to ensure that actual creation and recruitment to the posts sanctioned in the G.O. third read above is restricted to 3 Platoons and 3 posts of R.Is. only.”

28. Following the aforesaid Government Order, instructions were also issued by the Director General of Police

to the Commandant of Central Police Line, Amberpet, Hyderabad and the Superintendents of Police, Krishna and Chittoor Districts and the Superintendents of Police of Secunderabad, Vijayawada and Guntakal. These instructions make an interesting reading. Paragraphs-2 to 5 of these instructions issued by the Director General of Police by endorsement in Rc.No.1147/E3/82, dated 20-10-1982, read as follows:

“2. Three ear-marked Railway Police Platoons from the C.P.L. Amberpet, R.P.A.R. Vijayawada and A.R. Chittoor respectively will be deemed to be retrenched in the concerned districts as on 31-10-1982 A.N. and the retrenched Platoons will be transferred to the newly formed Railway A.R. detachments at Secunderabad, Vijayawada and Guntakal respectively with effect from 01-11-1982 F.N. These Platoons should be completed in formation consisting of 1 RSI, 1 ARSI, 9 HCs and 36 PCs. They will move to their new locations along with their weapons.

3. Armed Reserve Personnel who are willing for these transfers should first be selected. In case sufficient number of people are not willing, then the junior-most in the respective Armed Reserves, in the different categories, should be selected and sent to the Railway Police Armed Reserve.

4. In case any of these personnel are occupying Government accommodation, they are permitted to retain the same in the respective units until arrangements are made to provide them accommodation at the Railway Police Armed Reserve district headquarters.

5. The above mentioned personnel should move on 31-10-1982 after drawing their salaries in their present units and should report at the Railway Police Armed Reserve District Headquarters concerned on 01-11-1982 F.N.”

29. Therefore, a confusion arises as to how one could reconcile the earlier orders providing for mere diversion of personnel from 21 different units to the special establishment with G.O.Ms.No.536 whereby 3 earmarked Armed Reserve Platoons were transferred to Railway Police permanently after being retrenched in the district units with effect from 31-10-2010.

30. It appears that after the passing of G.O.Ms.No.536, dated 16-10-1982, there were two categories of persons working in the Railway Police viz., (i) those who were transferred on tenure basis and (ii) those who were transferred on permanent basis. Persons who were transferred on permanent basis found that they had lost their promotional chances in their parent units, while those transferred on tenure basis continued to get promotions in their parent units. This anomaly led to the issue of another order in G.O.Ms.No.537, Home (SPF) Department, dated 29-11-1985. It may be useful to extract this Government Order as follows:

“Home (Police.D) Department

G.O.Ms.No.577

Dated: 29-11-1985
Read the following:-

1. G.O.Ms.No.535, Home (Police.D) Department, dated: 16-10-1982.
2. G.O.Ms.No.536, Home (Police.D) Department, dated: 16-10-1982.
3. From the DG and IGP Lr.No.1778/E3/94, dated: 19-4-1985.

O R D E R:-

It has been reported that three Armed Platoons one each from CPL Amberpet, Vijayawada and Chittoor have been transferred permanently to the Railway Districts of Secunderabad, vijayawada and Guntakal as ordered in G.O.Ms.No.536. Those personnel who were transferred on permanent basis have lost their promotional chances in their respective parent units in contrast to the personnel transferred on tenure basis in order to meet the above attention, the Director General and Inspector General of Police has issued instructions to all the concerned to consider the cases for promotion of the above personnel permanently transferred to Railways also, in their respective units as they would not have chances of promotion in the Railways and requested Government to ratify his action to having issued the said instructions.

2. Government have examined the matter and considered that the instructions issued by the Director General and Inspector General of Police would be valid and correct only of the personnel are transferred to Railways on tenure basis, but not on permanent basis. Government have therefore decided to treat the transfers effected in pursuance of the G.O. 2nd read above has transfers on tenure basis and accordingly issue the following amendment with retrospective effect from 16-10-1982.

AMENDMENT

For the words "transferring permanently occurring in G.O.Ms. No.536, Home (Police.D) Department, dated: 16-10-1982, the words "transferring on tenure basis" shall be substituted."

31. Thus the transfers originally ordered on permanent basis under G.O.Ms. No.536 dated 16-10-1982, were declared post facto, by G.O.Ms.No. 577 dated 29-11-1985, as having been made on tenure basis. This created a confusion, which continued for some more time, until the Inspector General of Police, Railways, sent a communication in C.No.559/E/94-2000, dated 13-9-2000. It was pointed out by the Inspector General of Police in the said communication addressed to the Director General of Police that prior to the year 1976, the

Railway Police Districts of Secunderabad and Vijayawada were independent units for recruitment to the categories of Head Constables and Police Constables; that after the issue of the Presidential Order, 1975, this practice of direct recruitment to Railway Police was discontinued; that after the organization of the local cadres in the Police Department under G.O.Ms. No.795, dated 30-6-1976, the sanctioned strength of each Railway Police District was apportioned to the Police Districts within the jurisdiction of the respective Superintendents of Railway Police; that within 6 years of implementation of G.O.Ms.No.795, it was found that the procedure followed, caused a dent on the efficiency of the Railway Police; that therefore in the year 1982, a request was made for restoring the original procedure of direct recruitment of Police Constables in Railway Police Districts; that after protracted correspondence, the Government accepted the recommendations to declare Railway Police as Districts for which it was not practicable to form local cadre and that therefore it was advisable to absorb suitable men already working in the Railway Police on deputation.

32. The aforesaid letter of the Inspector General of Police, Railways, dated 13-9-2000, addressed to the Director General of Police, contains a lot of information that belies the stand taken by the government in the present writ petitions.

Hence, the entire letter dated 13-9-2000 issued by the Inspector General of Police is extracted as follows:

“Prior to the year 1976 the Railway Police Districts of Secunderabad and Vijayawada were independent units for recruitment to the categories of H.Cs and P.Cs. Consequent to the issue of the A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975, the practice of direct recruitment of P.Cs., by the Unit Officers of Railway Police districts was discontinued. Subsequently orders were issued organizing Local Cadres in the Police Department vide reference 2nd cited. As per these orders the sanctioned strength of each Railway Police district was apportioned to the Police Districts within the jurisdiction of the respective Superintendents of Railway Police.

Within six years of the implementation of this new procedure, it was found that this procedure was impracticable and worked against the efficiency of Railway Police. As far back as in 1982, the then Director General and Inspector General of Police, Andhra Pradesh, Hyderabad while addressing the Government to restore the procedure of direct recruitment of P.Cs., in the Railway Police districts vide reference 3rd cited stated the following:-

Quote:- “In this connection, I write to state that experience has shown that most of the personnel of the districts who are posted to the Railway Police districts on tenure basis are reluctant to join in the Railway Police Districts and in some cases they are approaching the Tribunal and getting stay orders from the A.P. Administrative Tribunal, Hyderabad, keeping the transfer orders to Railway Districts in abeyance. In one case of P.Cs., of Cuddapah District who was transferred to the Railway Police, Vijayawada in July, 1979 filed an RMP in the A.P. Administrative Tribunal against this transfer and the Tribunal set aside the order of the transfer. The area and the territorial limits of each Railway Police District cover the local area and jurisdiction of nearly 6 to 7 Local districts (District Cadres and Zones). A large number of posts of Police Constables in R.P. Districts cannot be kept vacant for longer periods as it affects the running of Administration in Railway Districts and it also adversely affects the bandobust and other Railway Train Escort duties. Hence, I have re-examined the issue again in detail and consider that the direct recruitment of P.Cs., in Railway Police districts has to be reviewed in the interest of Administration and proper

functioning of Railway Police. I therefore consider that Railway Police has to be deleted under the category 'Special Office or Establishment' and has to be categorized as one of the units declared as not practicable or expedient to form local cadres.

"I therefore, request the Government to accept my above recommendation and issue orders declaring 'Railway Police' as the Districts for which it is not practicable or expedient to form Local Cadre insofar it pertains to Police Executive Staff. I also request the Government to cancel para (8) of the scheme for organization of Local Cadres enclosed to G.O.Ms.No.795, Home (SPF) Department, dated 30-6-1976) insofar it relates to the Railway Police. UNQUOTE"

After the prolonged exchange of correspondence, the Government has accepted the recommendation of the Director General and Inspector General of Police, A.P., Hyderabad and deleted the clause under para (8)(2) of G.O.Ms.No.795, Home (SPF) Department, dated 30-6-1976 (reference 4th cited above). These Orders give affect and restore the original procedures of direct recruitment of P.Cs., in the RP Districts which existed till 1976 and were issued vide reference 4th cited.

Presently if the deputations are discontinued, there will be a large number of vacancies arising at one time and filling up of this large number of vacancies arising at on time and filling up of this large number of vacancies at one time will create grave discrepancies and disparation in the matters of promotions and career management. In order to obviate these problems and also to create a regular and permanent cadre for the Railways, it is advisable to absorb suitable men who are already working in the Railway Police on deputation. This is all the more important since devotion to duty in the Railway Police was found essentially among those who are permanently absorbed or originally recruited for Railways. The Superintendents of Police are the competent authorities to give the appointment orders for permanent absorptions as per the orders issued in G.O.Ms.No.374, Home (Police-C) Department, dated 14-12-1999. However such absorptions is to be permitted by the Director General and Inspector General of Police, A.P., Hyderabad as per the existing practice.

Since the proposals for absorption will now be in good numbers and several batches, it will be cumbersome to refer each and every case to Chief Office. It is therefore requested that the Inspector General of Police, Railways, A.P., Hyderabad may be delegated with the power of ordering such permanent absorption of the men into the concerned

Railway Police districts on behalf of the Director General and Inspector General of Police, A.P., Hyderabad.”

33. It appears that the recommendation made by the Inspector General of Police in his letter dated 13-9-2000 (extracted above) was accepted under Chief Office Memo No.Rc.2231/E2/2000, dated 10-10-2000. Therefore, the Inspector General of Police sent another letter in C.No.559/E/99-2000, dated 13-12-2000, forwarding the undertakings given by 61 Police Constables of the Railway Police District of Secunderabad, 46 Police Constables of the Railway Police District of Guntakal and 23 Police Constables of the Railway Police District of Vijayawada relinquishing their lien in their parent unit.

34. It is in response to the recommendation dated 13-9-2000 made by the Inspector General of Police and the communication dated 13-12-2000, that the Director General of Police issued a Memo dated 22-12-2000, permitting the absorption of those Police Constables in the Railway Police, who relinquished their lien in their parent unit as per F.R. 14(b). This Memo of the Director General of Police dated 27-12-2000 reads as follows:

“In the circumstances stated by the Inspector General of Police, Railways, Hyderabad in his letter cited, he is hereby permitted to absorb PCs in Railway Police, who relinquished their lien in their parent unit, as per FR 14(b).

He is requested to take further action under intimation to the Unit Officers concerned and report compliance.”

35. Pursuant to the said Memo of the Director General of Police, the Superintendent of Police, Government Railway Police, Vijayawada, issued Memo dated 14-01-2001, absorbing permanently 23 Police Constables working on tenure basis who relinquished their lien in the parent unit. Similarly, the orders of absorption were passed in respect of 87 Police Constables by the Superintendent of Police, Government Railway Police, Secunderabad.

36. But unfortunately without reference to the above, requests were also made by the Chief Office viz., the office of the Director General of Police for revising the proportion in which personnel were drawn from various units/districts to special establishments such as CID, Intelligence, Railways etc. Acceding to such requests, the Government issued G.O.Ms.No.84, Home, dated 28-3-2002, modifying the share of the posts in the special establishments such as CID, Intelligence, Railways etc., for different units. Paragraphs-2 and 3 of G.O.Ms.No.84, dated 28-3-2002, read as follows:

“2. The Director General and Inspector General of Police, Andhra Pradesh, Hyderabad in the letters second to fourth read above, has reported inter-alia that the strength of police personnel in Districts, Commissionerates as well as in the specialized units have been considerably increased due to sanction of new posts from time to time after Presidential Order and therefore requested for re-apportionment of civil police personnel from the rank of Police Constable to Inspector from the District/Local Cadres to the specialized State Level Organisations viz., Criminal Investigation Department, Intelligence, Railways, Police Training Colleges/State Crime Records Bureau for sending the above

category personnel on deputation to said specialized units duly revising the existing Annexures IV, V, XII, XIII of G.O.Ms.No.795, Home (SPF) Department, dated 30-6-1976 for which there will be no additional financial commitment to the departments concerned.

3. Government after careful examination of the matter, have accepted the above proposal of the Director General and Inspector General of Police, Andhra Pradesh, Hyderabad subject to without any change in the cadres as localized in the G.O. first read above and additional financial commitment to the government. The provision under para 11(i) and (ii) of G.O.Ms.No.728, General Administration (SPF.A) Department, dated 01-11-1975 shall be followed while making deputations of police personnel to specialized units viz., CID, Intelligence, Railways, Police Training Colleges/State Crime Records Bureau etc. Consequent on the above re-apportionment there shall not be any proposals for creation/sanction of new posts. Accordingly the following amendment is issued to G.O.Ms.No.795, Home (SPF) Department, dated 30-6-1976.

AMENDMENT

In the said order for the Annexures IV, V, XII, XIII the Annexures appended to this order shall be substituted.”

37. Despite the issue of G.O.Ms.No.84, dated 28-3-2002, all Police personnel absorbed in the respective Railway units at Vijayawada and Secunderabad by the proceedings dated 14-01-2001 and 27-8-2001, continued in the Railway Police, as persons who had been permanently absorbed therein and whose lien in the district units had been severed.

38. But suddenly the Government woke up to this position, when the Police Constables, who were sent on deputation subsequent to the first two orders of absorption of the earlier batches, also staked a claim for permanent absorption. These persons, seem to have filed a batch of

applications in O.A.Nos.9599/2001, 3490/2002 and 6530/2004 on the file of the A.P. Administrative Tribunal. The Tribunal passed orders on 23-12-2004 permitting the applicants therein to make representations to the Government and directed the Government to consider and pass orders. It is only thereafter that the Government issued a Memo No.14704/Leg.1/A1/2004, dated 07-10-2006. In the said Memo, the Government did not take note of the proposal made by the Inspector General of Police, Railways on 13-9-2000, the acceptance of the proposal by the Director General of Police by the Memo dated 10-10-2000, the issue of the options by the Inspector General of Police, Railways on 13-12-2000, the permission accorded by the Director General of Police by Memo dated 27-12-2000 and the orders of absorption passed by the respective Railway Police units in January, 2001.

39. Without reference to the developments that took place in 2000 and 2001, the Government, in their Memo dated 07-10-2006 merely referred to what happened in G.O.Ms.No.536, dated 16-10-1982 and rejected the claim of those who went before Tribunal after the year 2001, for permanent absorption. Paragraphs-3 to 5 of the Government Memo dated 07-10-2006 read as follows:

“3. The Superintendent of Police (Railways) in his letter 6th cited has furnished a copy of fair counter affidavit filed by him before the Hon^{ble} Tribunal in O.A.No.1672 of 2006. In the said counter, the S.P

(Railways) has informed that orders issued in G.O.Ms. No.536, Home (Pol.b) Dept., dated 16-10-1982 in which Armed Reserve personnel who were transferred to Railways on “permanent basis” was later amended as “on tenure basis”. As such the A.R. Personnel transferred to the Railway Police (including the Railway Police District also) shall have to work only on tenure basis but not on permanent basis.

4. Further the personnel should be drawn on deputation since Railways is a specialized branch and does not have its own cadre strength (executive level). If the request of the individuals for their permanent absorption is conceded, the other personnel who are working on deputation in different specialized branches may come up with a similar request, which will be difficult to resist and even may create legal complications in future.

5. In view of the above, the request of Railway Police Constables, who have filed O.A.No.9599/2001 and batch cases for permanent absorption in Railway Police Department is not feasible of acceptance and therefore the same is hereby rejected.”

40. After passing orders dated 07-10-2006, rejecting the claims of all those who went to the Tribunal claiming absorption, by the Memo dated 07-10-2006, the Government also issued another Memo dated 26-7-2007 cancelling the orders of absorption passed in favour of the first batch on 14-01-2001 and 27-8-2001. This compelled the first batch of Police Constables to go before the Tribunal challenging the Memo dated 26-7-2007, whereby their orders of absorption were sought to be cancelled after 6 years. It is these applications in O.A.Nos.4696, 4367, 4324 and 4311 of 2007 that were allowed by the A.P. Administrative Tribunal forcing the State to come up with the above four writ petitions of the year 2010.

41. The sequence of events narrated above from the date of issue of the Presidential Order of the year 1975, up to the date of issue of the Memo of the Government dated 26-7-2007 cancelling the orders of absorption, would show there were two groups of Police Constables. One group of Police Constables are those who initially went on deputation during the period 1991, 1993, 1994, 1997 etc., and whose services were absorbed in January, 2001. The other group of Police Constables are those who made claims for absorption only in the years 2001, 2002 and 2004, who went before the Tribunal and got orders directing the Government to consider their representations seeking absorption.

42. Fortunately the Police Constables forming the second group, who approached the Tribunal in the years 2001, 2002 and 2004 seeking absorption, but whose requests were turned down by the Government Memo dated 07-10-2006, are not before us. It is only those in whose favour, orders of absorption were passed way back in January, 2001 and which were sought to be cancelled by the Memo dated 26-7-2007, that are before us, defending the orders passed by the Tribunal, setting aside the cancellation of their absorption.

CONTENTION No.1:

43. Once the above sequence of events is understood clearly, it will be easy to deal with the first contention raised

by the Government in these writ petitions. As we have stated earlier, the first contention raised by the State in their four writ petitions is that Railway Police is a special establishment, to which the provisions of the Presidential Order, 1975 do not apply and that there is no permanent sanctioned cadre for the Railway Police, on account of which deputation from different local cadres in a particular proportion is made from time to time. Therefore, it is claimed that there was no question of permanent absorption in an establishment for which there was no permanent cadre.

44. We have no difficulty in accepting the fact that the Police Establishment was created as a special establishment and kept out of the purview of the Presidential Order, 1975. The reason for the Government doing so could be understood easily from G.O.Ms.No.95, Home (SPF) Department, dated 30-6-1976. In the said order, the regular Police Establishment to which Presidential Order would apply, was divided into 6 Police Ranges. In respect of the posts of Constables and Head Constables, the unit of appointment was declared as the District and the Superintendent of Police was declared as the Appointing Authority under paragraph-8. Insofar as the Railway Police is concerned, there were only two units, one at Vijayawada and one at Secunderabad, both of which were independent units. But in the second part of paragraph-8 of G.O.Ms.No.795, Home (SPF) Department,

dated 30-6-1976, which we have already extracted, it was stated that the Railway Police Offices at Vijayawada and Secunderabad were independent units at that time, for recruitment to the categories of Head Constables and Police Constables.

45. If everything had been stopped with G.O.Ms.No.795, dated 30-6-1976, it may be possible for us to believe that there is no permanent cadre strength for the Railway Police. But after 6 years of the issue of G.O.Ms.No.795, the Government issued one more order in G.O.Ms.No.536, Home, dated 16-10-1982, sanctioning the transfer of 3 Armed Reserve Platoons permanently, to the Railway Police. We have extracted the substantial portion of G.O.Ms.No.536 and the instructions issued by the Director General of Police on 20-10-1982 pursuant to the said Government Order. In paragraph-2 of the Director General of Police Instructions dated 20-10-1982, which we have extracted earlier, it was made clear that the personnel of those Police Platoons, will be deemed to be retrenched in the concerned Districts. The Government Order G.O.Ms.No.536, dated 16-10-1982, was passed presumably with the object of strengthening the Railway Police as seen from the heading given to the Government Order.

46. After 3 years of the issue of G.O.Ms.NO.536, dated 16-10-1982, an amendment was issued thereto under

G.O.Ms.No.577, Home, dated 29-11-1985, substituting the words “transferring on tenure basis”, for the words “transferring permanently”. But this Government Order also took note of two sets of personnel, one transferred on permanent basis, on account of which they lost their promotional chances in their respective parent units and another, transferred on tenure basis, on account of which they retained the chances of promotion in their parent units.

47. If there had been no permanent cadre strength, there would not have been a possibility of permanent transfer in the first instance under G.O.Ms.No.536. Even though the Government contends that G.O.Ms.No.536 stood amended by G.O.Ms.No.577, a careful look at G.O.Ms.No.577 would show that the need of amendment arose, not because of the non-existence of a permanent cadre strength in the Railway Police, but because of two groups of people, one who came on permanent basis and the other who came on temporary basis, leading to the claims for promotion in the parent units.

48. It is long after the issue of G.O.Ms.No.577, dated 29-11-1985, that the Inspector General of Police made his recommendations on 13-9-2000 for regular absorption of persons who came on deputation. This was accepted by the Director General of Police.

49. There are two things that stare at the stand now taken by the Government. The first is that after the

permanent transfer of 3 Armed Police Platoons and after the recognition of the existence of two sets of persons, one sent on permanent basis and another sent on tenure basis, it is not possible for the Government to argue that there was no permanent cadre strength in the Railway Police.

50. The second difficulty for the Government is that the Inspector General of Police, Railways and the Director General of Police cannot be presumed to be totally ignorant of the fact that there was no permanent cadre strength in the Railway Police and that therefore there could not have been an absorption. In fact we have extracted the proposal of the Inspector General of Police, Railways, dated 13-9-2000 in entirety and the acceptance of the proposals by the Director General of Police in December, 2000. It is too big a pill to swallow that the Head of Department (Director General of Police) and the Head of a Special Establishment (Inspector General of Police, Railway Police) did not know the most fundamental aspect of the Department that the Railway Police did not have a permanent cadre strength.

51. Moreover, the Government woke up only in the year 2006, after nearly 5 years of the orders of absorption, only when a new batch of persons sent on deputation went before the Tribunal in the years 2001, 2002 and 2004. In order to tackle the problem created by a new set of deputationists, it is not fair to cancel the orders of absorption passed 5 years

earlier, by taking a plea that there was no permanent cadre strength. Therefore, we are of the considered view that the first contention of the State, for assailing the order of the Tribunal, cannot be accepted.

CONTENTION No.2:

52. The second contention of the learned Special Government Pleader, for questioning the order of the Tribunal is that even if absorption was possible (without conceding the same), the power to order absorption of a person working in the local cadre, to an establishment not covered by the Presidential Order vested only with the Government under paragraph-5(2)(a) of the Presidential Order. Therefore, the learned Special Government Pleader contends that the Director General of Police could not have ordered the absorption, as he had no power under the Presidential Order, 1975.

53. We have carefully considered the above submissions.

54. We have already extracted paragraph-5 of the Presidential Order, 1975. Paragraph-5(2) of the Presidential Order, 1975, contains the words “the Government may make provision”. It does not say “the Government may order”, nor does it say “the Government alone is competent”.

55. Paragraph-5(2)(a) of the Presidential Order, 1975, states that nothing contained in paragraph-5(1) would

prevent the Government from making a provision for the allotment of a person working in the local cadre, to an establishment not covered by the Presidential Order, 1975. Therefore, it is clear that it is not necessary that the Government should pass orders. The Government is competent to make a provision. Para 5(2)(a) is only an enabling provision.

56. Though Government have not made such a provision, the Head of the Department has certain powers, which are presumed to exist in him. Today, the Government cannot question in the year 2006, the power exercised by the Director General of Police in the year 2001. Therefore, the second contention is unacceptable.

57. To put in simple terms, the Government did not take exception to the absorption of the respondents herein way back in January, 2001, until a new group of persons went to the Tribunal in year years 2001, 2002 and 2004 seeking absorption. For the purpose of turning down their claim for absorption, the Government ought not to have cancelled the orders of absorption passed in favour of the respondents.

58. In fine, we find no reasons to interfere with the order of the Tribunal. Hence, the writ petitions filed by the Government in W.P.Nos.31555, 31556, 31696 and 31700 of 2010 are dismissed.

59. Consequently, the writ petitions filed by the individuals in W.P.Nos.3261 and 3286 of 2017 are allowed, the order of the Tribunal is set aside and the original applications filed by the respondents in O.A.Nos.2013/2012 and 8739/2011 shall stand allowed, directing the Government and the Head of the Department to send the respondents, for training for promotion to the post of Head Constables, subject to their fulfilling the eligibility criteria and suitability.

60. We make it clear that the benefit of this order may not per se be applicable to those who went before the Tribunal in the years 2001, 2002 and 2004 seeking a direction for absorption. Their cases may have to be dealt with independently, if and when they come up.

61. In the result, W.P.Nos.31555, 31556, 31696 and 31700 of 2010 are dismissed. W.P.Nos.3261 and 3286 of 2017 filed by the employees are allowed with the aforesaid directions. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

M.GANGA RAO, J.

14th November, 2017.
Ksn/Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition Nos.31555, 31556,
31696 and 31700 of 2010
and
3261 and 3286 of 2017
(per VRS, J.)



14th November, 2017.
(Ak)