

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI**

**WRIT PETITION NOs.9654, 9706, 26952, 27587, 33174,
33379, 33476, 33584, 33693, 35438 AND 37653 OF 2016**

C O M M O N O R D E R
(Per Hon'ble Sri Justice Sanjay Kumar)

Focus of these eleven writ petitions is essentially upon seniority in the cadre of Deputy Superintendents of Police (DSPs) and the seniority list published in this regard, *vide* G.O.Ms.No.108 dated 23.06.2014. They are therefore amenable to disposal by way of this common order.

The petitioner in W.P.No.9654 of 2016 is a direct recruit DSP of the year 2010. He filed O.A.No.929 of 2016 before the Andhra Pradesh Administrative Tribunal, Hyderabad (for brevity, the Tribunal), seeking a direction to the authorities not to proceed with allocations of DSPs between the newly formed States of Telangana and Andhra Pradesh, without revising the seniority list issued in G.O.Ms.No.108 dated 23.06.2014, pursuant to the Government Memo dated 19.05.2015. By order dated 16.03.2016, the Tribunal dismissed the O.A. On 31.03.2016, an interim order was granted in this writ petition not to make final allocations in the cadre of DSPs without furnishing the *inter se* seniority in the said cadre.

The petitioners in W.P.No.9706 of 2016 are also direct recruit DSPs of the year 2010. They filed O.A.No.1005 of 2016 seeking a direction to the authorities not to proceed with allocations without revising/reviewing the seniority list of DSPs issued in G.O.Ms.No.108 dated 23.06.2014, pursuant to the Memo dated 19.05.2015. By order dated 16.03.2016, the Tribunal dismissed the O.A. at the admission stage. A similar interim order was granted in this writ petition also.

In W.P.No.26952 of 2016, the petitioner is a direct recruit DSP of the year 2007. He filed O.A.No.1753 of 2016 before the Tribunal questioning the Notification dated 22.04.2016, whereby options were solicited by the authorities for allotment to one of the new States. By order dated 02.08.2016, the Tribunal dismissed the O.A.

The petitioner in W.P.No.27587 of 2016 is a promotee DSP of the year 2010. He challenged G.O.Rt.No.217 dated 09.02.2016 in so far as it related to his retirement from service and sought implementation of G.O.Rt.No.126 dated 26.02.2016, whereby the Government of Andhra Pradesh accorded permission for his inter-state deputation to the State of Andhra Pradesh. He also assailed the action of the authorities in not reviewing G.O.Ms.No.108 dated 23.06.2014, pursuant to the Memo dated 19.05.2015.

The petitioners in W.P.No.33174 of 2016 are promotee DSPs of 2010. Their grievance was that the authorities were making promotions to the posts of Superintendents of Police without revising G.O.Ms.No.108 dated 23.06.2014, pursuant to the Memo dated 19.05.2015.

The petitioner in W.P.No.33379 of 2016 is a promotee DSP of the year 2010. He challenged the action of the authorities in excluding his name from the tentative allocation list pursuant to the Notification dated 22.04.2016.

The petitioner in W.P.No.33476 of 2016 is a direct recruit DSP of the year 2007. He questioned the *ad hoc* promotion panel prepared by the Director General of Police, Telangana, *vide* proceedings dated 09.09.2016, on the basis of G.O.Ms.No.108 dated 23.06.2014, and sought a direction to the authorities not to make promotions based on the said G.O. and G.O.Ms.No.118 dated 19.07.2014.

The petitioners in W.P.No.33584 of 2016 are direct recruit DSPs of the year 2010 and 2012. They challenged G.O.Ms.No.108 dated 23.06.2014 and sought preparation of a fresh seniority list pursuant to the Memo dated 19.05.2015.

In W.P.No.33693 of 2016, the petitioners are direct recruit DSPs of the year 2012. Their grievance was that the authorities were not revising the seniority list issued in G.O.Ms.No.108 dated 23.06.2014, pursuant to the Memo dated 19.05.2015.

In W.P.No.35438 of 2016, the petitioner is a direct recruit DSP of the year 2010. He sought revision of G.O.Ms.No.108 dated 23.06.2014, pursuant to the Memo dated 19.05.2015.

In W.P.No.37653 of 2016, the petitioner is a direct recruit DSP of the year 2007. She also sought revision of the seniority list of DSPs, pursuant to the Memo dated 19.05.2015.

The core issue falling for consideration in this batch of cases is seniority in the cadre of Deputy Superintendents of Police (Civil) in the erstwhile State of Andhra Pradesh, which would have a cascading effect upon seniority in the said cadres in the newly formed State of Telangana and the residuary State of Andhra Pradesh, consequent upon the bifurcation of the erstwhile State of Andhra Pradesh with effect from 02.06.2014.

Heard Sri C.V.Mohan Reddy, learned senior counsel, Sri P.V.Krishnaiah, Sri J.Sudheer and Sri V.Ravi Chandran, learned counsel for the petitioners in these cases, Sri Natarajan, learned Additional Solicitor General for India and Sri B.Narayana Reddy, learned Assistant Solicitor General for India, along with Sri G.Vidyasagar, learned senior counsel appearing for the State of Telangana, and the learned Special Government Pleader representing

the learned Advocate General, State of Andhra Pradesh, and Sri M.Surender Rao and Sri M.V.S.Suresh Kumar, learned senior counsel appearing for the impleaded respondents/DSPs.

Some of the writ petitions in this batch arose out of orders passed by the Tribunal, while others were filed directly before this Court, in view of the abolition of the Tribunal with effect from 15.09.2016, in so far as the State of Telangana is concerned. Some of the writ petitioners sought consequential relief in the context of allocations between the two States, while others sought personal relief in the form of their candidature being considered for promotion as Additional Superintendents of Police. The petitioner in W.P.No.27587 of 2016 sought continuance in service till he attained the age of 60 years, in terms of the amendment made by the new State of Andhra Pradesh to the applicable law, whereby the age of superannuation was enhanced to sixty years.

Historically, recruitment to the post of DSP was governed by the police service rules framed by the Government under Article 309 of the Constitution. Rule 3 of the police service rules framed in G.O.Ms.No.2437, Home (Personnel-B) Department, dated 08.11.1966, provided for a ratio of 1:2 between direct recruit DSPs and promotee DSPs. Upto the year 1998, this rule mandated that for every direct recruitment made to the cadre of DSPs, two promotions from the feeder category of Inspectors of Police (Civil) were to be affected. Thereafter, the said rules were superseded and the Andhra Pradesh Police (Civil) Service Rules, 1998 (for brevity, 'the Rules of 1998'), were promulgated *vide* G.O.Ms.No.137, Home (Police-E), dated 01.06.1998. Rule 3 of the Rules of 1998 ordained that in every cycle of ten vacancies in the posts of DSPs, the first, fourth and seventh

vacancies should be filled by direct recruitment, while the rest were to be filled by promotion, bringing in a ratio of 7:3 between promotees and direct recruits in every cycle of ten vacancies. Under the Rules of 1998, an Inspector of Police had to put in a minimum service of six years to attain eligibility for promotion as a DSP.

It however appears that the aforesaid ratio of 7:3 between promotees and direct recruits in every cycle of 10 vacancies was not adhered to scrupulously by the authorities.

The erstwhile combined State of Andhra Pradesh finalized the *inter se* seniority list of DSPs, directly appointed and promoted from the feeder category between 11.03.1986 and 17.06.1996, *vide* G.O.Ms.No.261, Home (Police-E) Department, dated 12.09.1998. This seniority list was upheld by the Tribunal and thereafter, by this Court, and attained finality. Thereafter, the *inter se* seniority list of DSPs, directly appointed and promoted from the feeder category between 17.06.1996 and 04.10.2004, was prepared by the erstwhile combined State of Andhra Pradesh, *vide* G.O.Ms.No.111, Home Department, dated 31.05.2007.

Pursuant to the direct recruitment notification issued in the year 2003, appointments came to be made only in the year 2007. Some of the petitioners in this batch of cases are direct recruits of 2007. For making promotions from the feeder category of Inspectors of Police (Civil), seniority in that cadre played a crucial role. However, the erstwhile State of Andhra Pradesh did not maintain a proper seniority list in the feeder category. It was only in the year 2014, a little before the bifurcation of the erstwhile State of Andhra Pradesh, that G.O.Ms.No.54, Home (Ser-I) Department, dated 22.02.2014, came to be issued, notifying the State-wide final integrated seniority

list of Inspectors of Police. This was pursuant to the Order dated 09.10.2009 passed by the Supreme Court in Civil Appeal No.5141 of 2002, reported in ***P.V.RADHA KRISHNA V/s. STATE OF A.P.***¹.

In this context, it may be noted that Hyderabad city was treated as a separate unit upto 2001, by applying Para 14(f) of the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (for brevity, the Presidential Order, 1975). While so, by order dated 23.11.2001, a Full Bench of this Court held that Hyderabad city did not constitute a separate unit but formed part of Zone-VI in terms of the Presidential Order, 1975. In consequence, seniority of Inspectors of Police in Zone-VI was revised, treating Hyderabad as a part thereof. A State-wide seniority list also came to be prepared thereafter. This seniority list was the basis for promotion to the cadre of DSPs in 2010. While so, by its order in ***P.V.RADHA KRISHNA***¹, the Supreme Court set aside the order dated 23.11.2001 passed by the Full Bench of this Court and clarified that Hyderabad City and Hyderabad Range were separate entities. In effect, the Supreme Court held that Hyderabad City did not fall within Zone-VI and constituted a separate unit.

Thereafter, by final order dated 07.11.2012 passed in O.A.Nos.1787 of 2010, and 1182, 2421 and 863 of 2012, the Tribunal directed the authorities to re-draw the seniority list in the cadre of Inspectors of Police in respect of Hyderabad City and Hyderabad Range separately, as per ***P.V.RADHA KRISHNA***¹, ignoring the combined seniority list of Inspectors of Police for Hyderabad City and Hyderabad Range issued in G.O.Ms.No.361 dated 09.12.2003, and to issue an integrated State-wide seniority list of Inspectors of

¹ (2010) 1 SCC 11

Police. The authorities were further directed to effect promotions to the posts of DSPs from that State-wide integrated seniority list of Inspectors of Police. The authorities were also required to review the regular as well as *ad hoc* promotions made to the posts of DSPs, with reference to the State-wide seniority list that would be prepared in the manner indicated, within a time frame.

Under G.O.Ms.No.54 dated 22.02.2014, the Government of Andhra Pradesh accepted the proposal of the Director General of Police, Andhra Pradesh, and approved the State-wide integrated seniority list of Inspectors of Police up to the panel year 2005-06. In continuation thereof, G.O.Ms.No.115, Home (Ser-I) Department, dated 18.07.2014, was issued by the Government of Andhra Pradesh approving the final State-wide integrated seniority list of Inspectors of Police from the panel years 2006-07 to 2010-11.

Aggrieved by the first seniority list of Inspectors of Police, some Inspectors of Police (Civil) approached the Tribunal. By interim order dated 05.03.2014 in O.A.No.1613 of 2014, the Tribunal directed the erstwhile State of Andhra Pradesh not to operate the final integrated seniority list of Inspectors of Police (Civil), communicated *vide* G.O.Ms.No.54 dated 22.02.2014, till 07.03.2014. Thereafter, by interim order dated 21.04.2014 passed in O.A.Nos.1603, 435, 438 and 1613 of 2014, the Tribunal took note of the apprehension voiced by the applicants therein that the authorities were proceeding to effect promotions on the basis of G.O.Ms.No.54 dated 22.02.2014 and directed the authorities not to operate the final integrated seniority list of Inspectors, communicated *vide* G.O.Ms.No.54 dated 22.02.2014, for effecting promotions to the next higher category till

further orders, as the State-wide provisional integrated seniority list of Inspectors was not published.

The Government of the newly formed State of Andhra Pradesh then issued G.O.Ms.No.108, Home (Ser.I) Department, dated 23.06.2014, notifying the final combined seniority list of DSPs (Civil), i.e., direct recruits as well as promotees. This seniority list was prepared purportedly in pursuance of **P.V.RADHA KRISHNA¹** and the later order dated 13.01.2014 of the Supreme Court in Contempt Application No.382 of 2013 filed in Civil Appeal No.5141 of 2002 (**P.V.RADHA KRISHNA¹**). By Memo dated 20.05.2014, the Director General of Police, Andhra Pradesh, notified the provisional seniority list of DSPs, which was drawn up keeping in view the aforestated orders of the Supreme Court. Objections were invited from officers who were aggrieved by the said provisional seniority list. However, by order dated 28.05.2014 passed in O.A.Nos.3444, 3446, 3447, 3455 and 3353 of 2014, the Tribunal directed the authorities not to operate the said provisional seniority list dated 20.05.2014 issued by the Director General of Police, Andhra Pradesh. Despite the same, the Government of Andhra Pradesh came out with G.O.Ms.No.108 dated 23.06.2014, notifying the final seniority list of DSPs.

G.O.Ms.No.108 dated 23.06.2014 reads to this effect: Referring to G.O.Ms.No.54 dated 22.02.2014, whereby the Government of Andhra Pradesh had approved the State-wide integrated seniority list of Inspectors of Police (Civil) and the order of the Tribunal dated 07.03.2014 in O.A.Nos.435, 438, 1603 and 1613 of 2014 directing the authorities not to operate the said final integrated seniority list communicated *vide* G.O.Ms.No.54 dated 22.02.2014, the Government of Andhra Pradesh took note of the fact that the Supreme Court had

adjourned the contempt application filed in Civil Appeal No.5141 of 2002 for the appearance of the State officials and in view of the extreme urgency, the Director General of Police, Andhra Pradesh, was requested to take necessary action to review the panels of DSPs. A provisional seniority list of promotee DSPs was prepared and communicated, *vide* the Director General of Police's Memo dated 20.05.2014, and the seniority list was drawn up for the promotion panel years up to 2008-09 and for direct recruit DSPs up to year 2007. The Government accordingly approved the final combined seniority list of DSPs.

Basing on G.O.Ms.No.108 dated 23.06.2014, the Government of Andhra Pradesh also issued G.O.Ms.No.112, Home (Ser-I) Department, dated 14.07.2014, approving the provisional seniority list of DSPs fit for promotion as Additional Superintendents of Police.

Aggrieved by the seniority list in G.O.Ms.No.108 dated 23.06.2014, cases came to be filed before the Tribunal. By interim order dated 16.07.2014, passed in O.A.No.4286 of 2014, the Tribunal directed the authorities to modify the seniority list of DSPs (Civil) communicated *vide* G.O.Ms.No.108 dated 23.06.2014, by duly applying the cycle of rotation and the quota, stipulated in Rule 3 of the Rules of 1998, and then effect promotions to the posts of Superintendents of Police. The Tribunal further directed that till that exercise was completed, the applicants in the O.A. should be continued in their present status. Similar interim orders were passed in O.A.No.4287 of 2014.

It appears that after the aforestated interim orders were passed by the Tribunal and basing upon the representations/appeals submitted by direct recruits of 2007, the Director General of Police,

Andhra Pradesh, addressed letter dated 29.04.2015 to the Principal Secretary, Home (Ser.I) Department, State of Andhra Pradesh, informing him that upon re-examination of the entire issue of appointments, calculation of vacancies and *inter se* seniority between direct recruit DSPs and promotee DSPs, lapses were observed in the context of the quota and rota which had to be given effect to as per the applicable rules and as a result, more number of promotees were promoted to higher ranks and more number of promotional vacancies arose, resulting in a situation where there were excess officers in the rank of DSPs and above. He therefore requested the Government to re-examine the entire matter with regard to fixation of seniority of DSPs (Civil) issued *vide* G.O.Ms.No.108 dated 22.02.2014, so as to address the grievances of direct recruit DSPs.

Thereupon, the Home (Services-I) Department, Government of Andhra Pradesh, issued Memo dated 07.05.2015 to the Director General of Police, Andhra Pradesh, adverting to his request to re-examine the entire matter with regard to fixation of seniority of DSPs (Civil), issued *vide* G.O.Ms.No.108 dated 23.06.2014, and requesting him to furnish his report on the cadre strength particulars in the category of DSPs, Additional Superintendents of Police and Superintendents of Police (non-cadre) from 1975 till the available year with breakup position so that necessary action could be taken. The letter dated 29.04.2015 of the Director General of Police, Andhra Pradesh, was also forwarded to the Director General of Police, Telangana, under Memo dated 07.05.2015 of the Government of Andhra Pradesh. Thereupon, the Director General of Police, Telangana, addressed letter dated 03.06.2015 to the Principal Secretary, Home Department, State of Telangana, informing him that

as the Director General of Police, Andhra Pradesh, had admitted lapses in fixation of seniority of DSPs (Civil), *vide* G.O.Ms.No.108 dated 23.06.2014, the same would have to be re-examined to address the grievances of direct recruit DSPs. He pointed out that the Government of Andhra Pradesh was the cadre controlling authority for the cadre of DSPs and revision of G.O.Ms.No.108 dated 23.06.2014 would have to be done by them. The Director General of Police, Telangana, also addressed letter dated 03.06.2015 to the Principal Secretary, Home Department, Government of Andhra Pradesh, requesting that the Government of Andhra Pradesh may look into the issue of seniority in the cadre of DSPs (Civil) and resolve the same. He adverted to various pending cases and the objections raised with regard to such seniority and requested the Government of Andhra Pradesh to keep the same in mind while dealing with the issue. By Memo dated 19.05.2015, the Government of Andhra Pradesh, through its Home (Service-I) Department, requested the Director General of Police, Andhra Pradesh, to review the year-wise panels from 1978-79 to 2008-09 and to re-examine the entire matter with regard to fixation of seniority in the category of DSPs (Civil) and the feeder category also, for taking necessary action in the matter. The following points were directed to be taken into account:

- i) Year-wise cadre strength with supporting G.Os. Panels for a particular year should be prepared based on the cadre strength of IOP/DSPs/Addl.SPs/SPs.
- ii) Names of deceased retired officers find place in the seniority list of DSPs issued in G.O.Ms.No.108 dated 23.06.2014, and they have to be deleted.
- iii) Defaulter sheet in respect of every officer has to be taken.
- iv) Apportionment of vacancies of Inspector of Police and Deputy Superintendents of Police shall be done as per rules in vogue.

v)Till 1998, the ratio between Direct Recruit Deputy Superintendents of Police and Promotee Deputy Superintendents of Police was 33 1/3 % and 66 2/3 %. After amendment of the Rules of 1998, the ratio was changed to 30% for direct recruits and 70% for promotees. *Vide* G.O.Ms.No.137 dated 01.06.1998, the position of direct recruit DSPs and promotee DSPs was fixed by roster points, viz., for direct recruit DSPs 1, 4 & 7 and the remaining were for promotee DSPs in a cycle of 10. This position was to be followed while apportioning the posts between direct recruits and promotees.

vi)The direction of the Tribunal in O.A.Nos.4286/2014 and 4287/14 filed by direct recruits shall be followed.

The Director General of Police, Andhra Pradesh, then addressed letter dated 18.06.2015 to the Director General of Police, Telangana, informing him that in view of the instructions given by the Government of Andhra Pradesh, seniority of DSPs (Civil) would have to be revised for the past 31 years, i.e. 1978-2009, and a special cell would be formed to complete the exercise on a war-footing basis. He therefore asked for the consent of the Director General of Police, Telangana, for forming a special cell with the members proposed by him, so as to examine the entire matter of fixation of seniority in the cadre of DSPs (Civil) and in the feeder cadre, for taking further necessary action in the matter.

In response, the Director General of Police, Telangana, addressed letter dated 23.06.2016 to the Director General of Police, Andhra Pradesh, drawing his attention to various objections/ litigations raised by officers in the context of the combined seniority list of Inspectors of Police (Civil), issued G.O.Ms.No.54 dated 22.02.2014. He pointed out that seniority of Inspectors of Police (Civil) would have to be revised first and only after finalization of the same, further action could be taken for revision of G.O.Ms.No.108

dated 23.06.2014. He also referred to the apprehensions expressed by promotee DSPs and requested the Director General of Police, Andhra Pradesh, and the Government of Andhra Pradesh, who were the cadre controlling authorities for the DSP cadre, to consider all the points and grievances and take the necessary view on the subject.

O.A.Nos.2582 and 2583 of 2015 were filed before the Tribunal challenging the Memo dated 19.05.2015 issued by the Government of Andhra Pradesh. The applicants therein did not want re-examination of the seniority list notified *vide* G.O.Ms.No.108 dated 23.06.2014, as contemplated under the impugned Memo dated 19.05.2015. However, by final order dated 23.06.2015, the Tribunal took note of the interim orders dated 16.07.2014 passed in O.A.Nos.4286 and 4287 of 2014, directing modification of the seniority list of DSPs (Civil) communicated *vide* G.O.Ms.No.108 dated 23.06.2014, duly applying the cyclic of rotation and the quota stipulated in Rule 3 of the Rules of 1998, and opined that the impugned Memo dated 19.05.2015 was issued in compliance with the said interim orders. As the said Memo only directed re-examination of the year-wise panels in the context of *inter se* seniority of direct recruit DSPs and promotee DSPs and the issue was still at the stage of such re-examination, the Tribunal opined that the impugned Memo could not be said to be illegal or arbitrary. However, taking into account the apprehensions voiced by the aggrieved applicants in the O.As., the Tribunal directed the authorities to give adequate opportunity to them and others who were likely to be affected before passing any orders. The O.As. were disposed of accordingly.

O.A.No.4547 of 2015 was filed before the Tribunal by one officer seeking a direction to the authorities to take necessary action

pursuant to the Memo dated 19.05.2015 and the consequential Memo dated 03.06.2015 issued by the Director General of Police, Telangana, for revising the seniority in the cadre of DSPs (Civil). By interim order dated 20.08.2015 passed therein, the Tribunal directed the authorities to complete the exercise pursuant to the Memo dated 19.05.2015 and only then undertake preparation of panels to fill up vacancies in the promotion quota of I.P.S. cadre.

Various defects were pointed out in G.O.Ms.No.108 dated 23.06.2014. Names of officers who found mention in G.O.Ms.No.261 dated 24.09.1998 were altogether omitted. Though it has been contended that a writ of mandamus would not lie to the State to act upon an internal communication viz., the Memo dated 19.05.2014, the fact remains that those aggrieved by this Memo approached the Tribunal but emerged unsuccessful and the Tribunal itself directed undertaking of the exercise as contemplated by the Memo dated 19.05.2014, while safeguarding the interest of aggrieved officers by directing the authorities to give an opportunity of hearing not only to them but also to others affected by the decision taken.

By a separate interim order dated 30.06.2014 passed in O.A.Nos.3989, 3447, 3444 and 3446 of 2014, the Tribunal directed the authorities not to revert the applicants in those O.As. to the lower cadre of Inspectors of Police, pursuant to G.O.Ms.No.108 dated 23.06.2014. Despite these directions, the Director General of Police, Telangana, issued proceedings dated 11.07.2014, effecting reversions on the basis of G.O.Ms.No.108 dated 23.06.2014. It appears that after the reversions under proceedings dated 11.07.2014, those reverted were re-promoted on 17.07.2014 by creating supernumerary posts of DSPs.

In the context of allocation between the two new States, reference is made to G.O.Ms.No.312, General Administration (SR) Department, dated 30.10.2014, issued by the Government of Andhra Pradesh, notifying the approved guidelines for final allocation of State cadre employees under the Andhra Pradesh Reorganisation Act, 2014, communicated by the Government of India, and it is contended on behalf of the petitioners that Clause 18(f) thereof states that the allocation shall be done in order of seniority as available on June 01, 2014, and those who have opted for the State in relation to which they are local candidates shall, in order of their seniority, be considered for allocation first. Even as per Clause 18(c), allocable employees shall be considered for allotment between the successor States on the basis of the seniority list, as available on June, 01, 2014. It is pointed out that the seniority drawn up in the year 2014, *vide* G.O.Ms.No.108 dated 23.06.2014, did not take into account those who were substantively working as DSPs as on 01.06.2014.

It is contended that the guidelines identify seniority as one of the essential criteria on the basis of which officers would be allocated to one or the other of the newly formed States and that unless seniority in the cadre of DSPs is properly drawn up, proper allocation of officers belonging to this cadre would not be possible. It is submitted that as per the relevant guidelines and as bifurcation of the erstwhile State of Andhra Pradesh took place on 02.06.2014, the seniority list of DSPs, as on 01.06.2014, would be the basis for determining their allocation. It is pointed out that the seniority list drawn up *vide* G.O.Ms.No.108 dated 23.06.2014, after bifurcation of the erstwhile combined State, is admittedly fraught with defects and lapses and it is asserted that it cannot be the basis for allocation.

Be it noted at this stage, O.A.Nos.929 of 2016 and 1005 of 2016 were filed by certain DSPs questioning the process of final allocation of officers in the cadre of DSPs to the successor States of Andhra Pradesh and Telangana after bifurcation of the composite State of Andhra Pradesh. By common order dated 16.03.2016, the Tribunal dismissed both O.As., categorizing them as an attempt to stop the allocation process between the two States. However, as stated *supra*, by interim order dated 31.03.2016 passed in W.P.M.P.No.12197 of 2016 in W.P.No.9654 of 2016, one of the cases in this batch, this Court granted an interim direction not to make final allocations in the cadre of DSPs, without furnishing the *inter se* seniority in the said cadre, with the further observation that the said interim order would not preclude the authorities from making final allocations after finalizing the *inter se* seniority in the cadre of DSPs. When the State called for options from DSPs for their allocation to one or the other of the two new States, contempt proceedings were initiated. By order dated 29.07.2016 passed in C.C.No.779 of 2016, arising out of the interim order dated 31.01.2016 passed in W.P.M.P.No.12197 of 2016 in W.P.No.9654 of 2016, a Division Bench of this Court opined that the action of the authorities in calling for options for allocation did not violate the interim order not to make final allocations. It was observed that without effecting actual final allocations, the authorities were free to take all other intermediary steps which would lead to such final allocations and therefore, they could not be held guilty of contempt.

It is on the strength of this order that tentative allocations were made by the Government of Andhra Pradesh vide Notification dated 25.07.2016. Thereunder, State-wide cadre employees, viz., DSPs,

Additional Superintendents of Police and Superintendents of Police were tentatively allocated between the successor States of Telangana and Andhra Pradesh.

Further, after considering representations received from Inspectors of Police and other rank officers of all ranges, raising objections to certain lapses in the seniority finalized under G.O.Ms.No.54 dated 22.02.2014 and G.O.Ms.No.115 dated 18.07.2014, the Commissioner of Police, Hyderabad City, issued Memorandum dated 21.11.2016 rectifying the provisional seniority list of Inspectors of Police, Hyderabad, for the panel years 1972-73 to 2010-11, calling for objections, if any, as to the placements made therein. Thereafter, by Memo dated 13.12.2016, the Deputy Inspector General of Police, Hyderabad Range, communicated the rectified final seniority list of Inspectors of Police of Hyderabad Range for the panel years 1972-73 to 2010-11.

Though it has been contended by some of the learned counsel appearing for the petitioners that the judgment of the Supreme Court in **P.V.RADHA KRISHNA¹** did not have relevance to the exercise undertaken by the erstwhile State of Andhra Pradesh, which resulted in G.O.Ms.No.108 dated 23.06.2014, the said contention does not merit acceptance. By virtue of the aforestated judgment, in terms of Hyderabad city not being a part of Zone-VI, seniority of the officers necessarily had to be revised. Whether such limited revision required a complete overhauling of the seniority from 1978 onwards is a different matter. However, in its wisdom, the State wanted to undertake this exercise. Having done so in a short span of time, obviously because of the impending appearance of State officials in the contempt proceedings before the Supreme Court, the State chose

to act in haste and repent in leisure, as the Director General of Police, Andhra Pradesh, thereafter found merit in the representations and appeals made to him by affected officers and wrote to the Government on 29.04.2015 informing it that there were various lapses and errors in the final seniority list of DSPs drawn up *vide* G.O.Ms.No.108 dated 23.06.2014. This resulted in the Memo dated 19.05.2015 of the Government of Andhra Pradesh requiring the Director General of Police, Andhra Pradesh, to re-examine the matter. Having consulted the Director General of Police, Telangana, the Director General of Police, Andhra Pradesh, constituted a special cell to examine this issue. Being the cadre controlling authorities, the Government of Andhra Pradesh and the Director General of Police, Andhra Pradesh, necessarily have to take up this exercise as they found that there were errors in the final seniority list drawn up *vide* G.O.Ms.No.108 dated 23.06.2014.

This being one aspect of the matter, the irrefutable fact remains that, in terms of the guidelines framed by the Union of India for allocation of State cadre employees to the successor States of Telangana and Andhra Pradesh, upon bifurcation of the erstwhile combined State of Andhra Pradesh, seniority as on 01.06.2014 is utmost relevant. The posts of DSPs, being State cadre posts, their allocation would be subject to this guideline. All DSPs holding office as on 01.06.2014 would therefore have to be allocated basing on their options and considering their seniority in the said cadre. Admittedly, no seniority list of DSPs working substantively as on 01.06.2014 in the erstwhile combined State of Andhra Pradesh is available even as on date. Under G.O.Ms.No.108 dated 23.06.2014, seniority of DSPs was undertaken up to the year 2008-09 in so far as promotee DSPs

were concerned and up to the year 2007, for direct recruit DSPs. Several promotions and also direct recruitments were made thereafter and before 01.06.2014, which do not find reflection in this G.O. Notwithstanding violation over a period of time of the 'rota-quota' rule prescribed under Rule 3 of the Rules of 1998, it is incumbent upon the authorities to deal with the same as per law and draw up the seniority list as on 01.06.2014, so that proper allocation can be effected in accordance with the prescribed guidelines.

A further ground which has been vociferously urged by the authorities and the unofficial respondents is that there is no power of review conferred upon the authorities to undertake revision of the seniority list *suo motu*. It is pointed out that Rule 24 of the Andhra Pradesh State and Subordinate Service Rules, 1996, confers the right of seeking a revision to the aggrieved party within a time frame while the power of review under Rule 25 thereof is with the Government. In the light of the specific appellate remedy provided against seniority or other conditions of service under Rule 26, it is contended that the power of review under Rule 25 of the said Rules ought not to be exercised. This argument however loses sight of the fact that when the authorities themselves admitted lapses having occurred in the exercise which resulted in the final seniority list in G.O.Ms.No.108 dated 23.06.2014, it is not necessary for them to wait for an appeal to set right their own wrong. Exercise of the power of review is not only befitting in such a case but is also necessary so as to safeguard the interest of employees.

It is brought to the notice of this Court that all the DSPs, who are petitioners presently, were allocated to the States of their choice. That may be so, but it is not the panacea for the evil that still afflicts

the system. In all fairness and with great sagacity, the authorities have acknowledged that there are various irregularities which were committed and incorporated in G.O.Ms.No.108 dated 23.06.2014, which therefore requires re-examination and rectification. The Memo dated 19.05.2014 and the later official missives embody the collective decision to do something in this regard. Acting thereupon, by Memo dated 13.12.2016, the Deputy Inspector General of Police, Hyderabad Range, already finalized the seniority of Inspectors of Police of Hyderabad Range for the panel years 1972-73 to 2010-11.

Though an abundance of case law was cited by both sides, this Court does not propose to adjudicate on rival claims between the contesting parties at this stage. As this Court is now informed that the State of Telangana has already completed the exercise of finalizing the seniority of Inspectors of Police from 1972 till date for Hyderabad Range and the same would be the basis for drawing up the integrated seniority list of DSPs in Hyderabad Range, by including the direct recruit DSPs appointed to the cadre over the years, it is the State of Andhra Pradesh that has to complete the exercise in the context of the officers appointed and promoted to this cadre on a substantive basis in the erstwhile combined State of Andhra Pradesh upto 01.06.2014 so that allocations may be effected between the two new States in terms of the guidelines framed by the Union of India. It is only after completion of this exercise by the cadre controlling authorities, the Government of Andhra Pradesh and the Director General of Police, Andhra Pradesh, that there could be proper final division of the cadre between the two new States in terms of the said guidelines. Needless to state, it would be necessary in the course of this exercise for the cadre controlling authorities to revise

the seniority in the feeder category of Inspectors of Police by reviewing the relevant G.O.s and only thereafter undertake the consequential exercise of revising seniority in the cadre of DSPs up to 01.06.2014.

Coming to the petitioner in W.P.No.27587 of 2016, his prayer stands on a slightly different footing. Not only did he seek review of G.O.Ms.No.108 dated 23.06.2014 pursuant to the Memo dated 19.05.2015, in the context of allotments to be made under Section 77 of the Andhra Pradesh Reorganisation Act, 2014, but he also assailed the action of the State of Telangana in retiring him from service upon his attaining the age of 58 years. It is his claim that under G.O.Rt.No.126 dated 26.02.2016, the Government of Andhra Pradesh agreed to his deputation from the State of Telangana to the State of Andhra Pradesh against one V.Chandra Prabhu, D.S.P. (CID), Andhra Pradesh, who wished to come to the State of Telangana. However, this G.O. was not acted upon and in the meanwhile, he attained the age of superannuation of 58 years prevailing in the State of Telangana, and by G.O.Rt.No.217 dated 09.02.2016, the Government of Telangana notified that he would retire from service on 31.07.2016. He was, in fact, retired from service on the said date. Sri P.V.Krishnaiah, learned counsel for this petitioner, would contend that as his client opted for the State of Andhra Pradesh and the State of Andhra Pradesh had also agreed to his deputation there in the place of one V.Chandra Prabhu, who was willing to come to the State of Telangana, he ought not to have been denied the benefit of the amendment made by the State of Andhra Pradesh to the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 *vide* Act No.4 of 2014, whereby the age of superannuation

was enhanced to 60 years in the State of Andhra Pradesh. In the alternative, he would submit that as the petitioner was working in Hyderabad City, which is the common capital of both the newly formed States, and in terms of Sections 5 and 8 of the Andhra Pradesh Reorganisation Act, 2014, the amended law of Andhra Pradesh should be made applicable to him as he was stationed in its capital. Learned counsel would therefore assert that his client is entitled to continue in service up to the age of 60 years.

Contesting this claim, Sri G.Vidya Sagar, learned senior counsel, would contend that the amendment effected by the State of Andhra Pradesh to the age of retirement in that State would have no application in the State of Telangana. As the petitioner was stationed in the State of Telangana as on the date of the bifurcation, he had to be treated as an employee of the State of Telangana under Section 79 of the Andhra Pradesh Reorganisation Act, 2014, till his final allocation, but in the interregnum, as he attained the age of superannuation prevailing and applicable in the State of Telangana, he was duly retired from service. Dealing with the alternate argument, the learned senior counsel stated that Hyderabad is the common capital of both the new States only for limited purposes and merely because it is a common capital, the laws applicable in the State of Andhra Pradesh could not be extended to Hyderabad City or its denizens.

This Court finds merit in the submission of Sri G.Vidya Sagar, learned senior counsel. Final allocation is to be made under Section 77 of the Andhra Pradesh Reorganisation Act, 2014. Section 79 of the said Act ordains to the effect that those who working in the territories of one State would be deemed to be serving under the said State only.

As the petitioner was working in the territories of the newly formed State of Telangana and as he was not allocated finally to the State of Andhra Pradesh by the date he attained the age of superannuation, he cannot rest his claim upon his option for the State of Andhra Pradesh and contend that he should be given the benefit of the extended age of retirement applicable in the said State though he remained an employee of the State of Telangana as on the date of his retirement and was governed by the applicable law of the State of Telangana. Merely because the Government of Andhra Pradesh agreed to the deputation that he sought, the same would not be binding on the Government of Telangana. As the said G.O. was never accepted and acted upon by the Government of Telangana and in the meanwhile, the petitioner retired from service as per the law prevailing in the State of Telangana, the question of directing implementation of the deputation G.O. at this late stage does not arise. His contention that the amended law of the State of Andhra Pradesh should be made applicable to him as he was working in Hyderabad City, the common capital, does not merit acceptance. Merely because Hyderabad is the common capital of both the States for a limited period of time, it does not have the effect of making it part of both States for all purposes. In the light of the statutory scheme of the Andhra Pradesh Reorganisation Act, 2014, Hyderabad City is a common capital but control over the law and order etc., in terms of Section 8 of the Andhra Pradesh Reorganisation Act, 2014, lies with the State of Telangana, which would alone be consulted by the Governor. This Court therefore finds no merit in the submission of Sri P.V.Krishnaiah, learned counsel, that the petitioner should be extended the benefit of the enhanced age of retirement applicable in

the State of Andhra Pradesh. The prayer of the petitioner in this regard is therefore devoid of merit and is accordingly rejected.

Though it has been suggested that the authorities should be permitted to proceed with final allocations in as much as the Central Government reserved to itself the power of reviewing allocations even at a later point of time, acceptance of the argument that subsequent events can be taken note of in individual cases, would mean that bifurcation of the cadre would never become final or at least would not become final for years together - a state of affairs which the Court and the Executive must avoid as far as possible (see **INDRADEO PASWAN V/s. UNION OF INDIA**²). It is one thing to say that, notwithstanding finalization of the seniority and allocations being made based thereon, individual grievances would continue to crop up before the Courts, keeping the process alive and ongoing for years together, but when the seniority list is admittedly full of lapses and defects, allowing such a seniority list to be the basis for final allocation of DSPs between the two newly formed States would be disastrous as it would only be asking for unnecessary and manifold litigation, as the entire exercise would be flawed in its very inception, beseeching judicial intervention. It would therefore not only be in the interest of the officers themselves but also both the States to ensure that the exercise of properly finalizing the seniority in the cadre is undertaken before the process of final allocation is taken up.

On the above analysis, this Court finds merit in the claim of the petitioners that no final allocations, in terms of the guidelines framed by the Union of India, can be made without first finalizing the seniority list of DSPs, substantively holding charge as such, as on

² (2007) 7 SCC 250

01.06.2014. Even otherwise, finalization of such seniority is essential so as to make further promotions. Merely because lapses have occurred in implementation of the applicable rules, it is not open to the authorities to sleep over such an essential exercise for years together and continue with *ad hoc* arrangements to the detriment of the officers. The State of Andhra Pradesh and the Director General of Police, Andhra Pradesh, being the cadre controlling authorities, would necessarily have to undertake this exercise, unpalatable and confounding though it may be, and rectify the defects in drawing up the seniority in the feeder category of Inspectors of Police (Civil) as notified under G.O.Ms.No.54 dated 22.02.2014 and G.O.Ms.No.115 dated 18.07.2014, and thereafter undertake the consequential exercise of finalizing the seniority of DSPs (Civil), by including direct recruit DSPs also, up to 01.06.2014. Only after completion of this exercise, final allocations can be made. In the meanwhile, as tentative allocations have already been effected, the same shall continue to operate pending the exercise of finalization of seniority. This exercise shall be completed expeditiously and preferably, within six months from the date of receipt of a copy of this order.

The writ petitions are disposed of accordingly. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

N.BALAYOGI, J

19th SEPTEMBER, 2017

PGS