

H. C. Sharma and Others

Vs

Municipal Corporation of Delhi and Others

Azhar Ali Khan and Others

Vs

Municipal Corporation of Delhi and Others

Writ Petitions Nos. 221 and 1194 of 1979

(V. D. Tulzapurkar, A. Varadarajan JJ)

13.07.1983

JUDGMENT

VARADARAJAN, J. –

1. The petitioners in these two petitions, filed under Art. 32 of the constitution, are Junior Engineers of the 1st respondent, Municipal Corporation of Delhi, W. P. No. 221 of 1979 has been filed by diploma-holders amongst the Junior Engineers for the issue of writ of mandamus or other appropriate writ to :

- (1) restrain respondent 1 from recruiting Assistant Engineers directly and filling up the posts of Assistant Engineers;
- (2) direct respondent 1 to give effect to the recommendations of the Third Pay Commission regarding the rules and policy of promotion etc.;
- (3) quash the seniority list (Annexure G) prepared by respondent 1;
- (4) direct respondent 1 to reckon the seniority of the petitioners with their length of service; and
- (5) direct respondent 1 not to affect in any manner all those holding ad hoc charge and current duty charge.

W. P. No. 1194 of 1979 has been filed by graduate Junior Engineers as well as graduate Junior Engineers selected for appointment directly as Assistant Engineers for the issue of writ of mandamus, certiorari or any other appropriate writ to :

- (1) direct respondent 1 to fill up eight posts of Assistant Engineers amongst those in the Select Panel;
- (2) quash Office Order dated 10th April, 1978 (Annexure I) entrusting Junior Engineers with current duty charge of the posts of Assistant Engineers and the

Officer Order dated 21st May, 1979 (Annexure M) promoting two Junior Engineers as Assistant Engineers on current duty charge on their own pay scale;

(3) direct respondent 1 to fill up the remaining posts of Assistant Engineers in the direct recruitment quota from amongst the empanelled petitioners who are graduate Junior Engineers;

(4) declare the petitioners, graduate Junior Engineers as a separate category and give them equal quota under the departmental promotee quota in the posts of Assistant Engineers;

(5) restrain respondent 1 from giving ad hoc promotions to current duty charge-holders amongst Junior Engineers;

(6) declare that the petitioners, graduate Junior Engineers, in the service of respondent 1 are entitled to be put on par with their counterparts in other government departments;

(7) direct respondent 1 to grant revised pay scales of Rs. 550-900 to the petitioners and other graduate Engineers in Class III service on other government departments with effect from the date it is made applicable in the Central Public Works Department in view of the decision in Ram Kumar v. Union of India; and

(8) direct respondent 1 to revise special pay from Rs. 40 to Rs. 75 per mensem to the petitioners and other graduate Junior Engineers entitled thereto from January 1, 1979.

2. The case of the petitioners in W. P. No. 221 of 1979 (diploma holders Junior Engineers) is that they are holding the posts of Junior Engineers in the service of respondent 1 for 16 to 18 years having joined service as Junior Engineers during 1967 to 1970 while respondents 3 to 46 are those who have been directly recruited as Assistant Engineers during 1974-78 in contravention of the declared policy of the Government barring direct recruitment. The next promotional posts to the petitioners are Assistant Engineers. The 1st respondent has been resorting to direct recruitment to the posts of Assistant Engineers to the extent of 50 per cent resulting in stagnation of the petitioners in the grade of Junior Engineers. It has been following the pattern of functioning current in the Central Public Works Department, hereinafter referred to as "CPWD", in all matters of recruitment, promotion and other conditions of service. The CPWD had decided to suspend direct recruitment to the Central Engineering Service because no promotional chances were available to the Central Engineering/Electrical Engineering Service (Class II). That decision taken in August 1975 became effective from April 1, 1972 (Annexure B). The 1st respondent has taken a decision by Resolutions Nos. 416 and 78 dated July 27, 1970 and February 21, 1971 a to the effect that all fundamental rules and supplementary rules including amendments and orders issued by the Central Government shall be treated as rules etc. of the 1st respondent Corporation. Similarly, the Central Services Conduct Rules as applicable to Central Government and the General Fundamental Rules including amendments and orders issued by the Central Government have been made applicable to the 1st respondent Corporation. As soon as the petitioners learned that there is suspension of direct recruitment in the CPWD the petitioners invited the attention of the 1st respondent to that fact in the November 1975 and requested for banning of direct recruitment of Assistant Engineers and were given an assurance that their rights will not be overlooked. The petitioners made several representations including the last one dated January 24, 1979 (Annexure E). Then the Commissioner

of the 1st respondent assured the petitioners orally that the practice adopted by the CPWD will be followed by the 1st respondent, but he, however, wrote to the petitioners saying that the matter was under consideration. The petitioners met the Deputy Commissioner of the 1st respondent on January 23, 1979 and protested against the advertisement made in the Press to fill eight posts of Assistant Engineers by direct recruitment, and as he accepted the suggestion of the petitioners they expected that the advertisement will be withdrawn. Respondent 1 is, however, bent upon going ahead with the direct recruitment though more than 272 out of 400 Junior Engineers are eligible for consideration. The Central Government has power of general superintendence over the 1st respondent and it has informed 1st responded by letter dated February 23, 1976 (Annexure F) that consequent on the recommendation of the Third Pay Commission the 1st respondent may ban direct recruitment as has been done by the CPWD. The Director in the office of the Director-General of Works, Government of India informed the Assistant Commissioner (Establishment) of the 1st respondent by letter dated February 16, 1978 (Annexure F-1) that direct recruitment to CES/CEES Group B was still under suspension. Though no specific reference has been made in the Third Pay Commission's Report to Junior Engineers of the 1st respondent Corporation, its recommendations have been followed by the 1st respondent, and its employees are treated in the same manner as employees of the Central Government are treated by the Government, their pay scales and service conditions being the same. The proposed direct recruitment to eight posts of Assistant Engineers is detrimental to the interests of the petitioners in the light of the Central Government's memorandum of the year 1959 relating to seniority. The 1st respondent should, therefore, be directed to follow the same policy as is being followed by the Engineer Department of the Central Government.

3. The details of the appointments of respondents 3 to 46 who have been directly recruited as Assistant Engineers during the years 1974-78, given in Annexure A-1, would show that the direct recruits of the year 1974 rank higher and above the petitioners who are recruited much earlier. Of the 400 Junior Engineers in the service of the respondent 1, 36 are holding currently duty charge as Assistant Engineers from 1978 and several others are holding charge as Assistant Engineers on ad hoc basis. Those Junior Engineers who are officiating as Assistant Engineers ought to be treated as regularly appointed Assistant Engineers. However, their names are not shown in the seniority list (Annexure G) circulated on September 2, 1978. That seniority list has been prepared on the basis of the memorandum issued by the Central Government in December 1978 which is similar to the seniority rule which has been struck down by this court in the case of *S. B. Patwardhan v. State of Maharashtra* (1977) 3 S. C. C. 399. Respondent 1 is drawing the seniority list without any authority of law by putting one promotee and one direct recruit thereafter and so on in accordance with the instructions of the Central Government, according to which those confirmed earlier would rank senior to those confirmed later. The conferment of artificial seniority by respondent 1 deprives the petitioners of their actual seniority and is destructive of the fundamental right to equality.

4. The 1st respondent-Corporation has filed counter-affidavit contending that the Corporation has to be guided by its own rules relating to its Engineering Service though the conditions of service under it could not be less attractive than those prevailing in the CPWD in order that it may attract proper engineering talents. All appointments in the Corporation carrying a minimum salary of less than Rs. 700 per mensem could be made by the Commissioner of the Corporation since January 10, 1975 in accordance with the recruitment rules which have been framed in consultation with the Union Public Service Commission though prior to that date consultation with Union Public Service Commission was essential in the matter of appointment to posts carrying a minimum salary of Rs. 350 and above per mensem. Apart from Executive Engineers and Superintending Engineers, the Engineering Service (Civil) in the 1st respondent Corporation consists of : (1) 450 Junior Engineers in the pay scale of Rs. 425-700, of which 80 per cent is filled direct recruitment with the minimum

qualification of diploma in Civil Engineering and 20 percent is filled by promotion from amongst Works Assistant already in the service of the Corporation with diploma in Civil Engineering and minimum experience of two years; (2) 13 Selection Grade Junior Engineers in the pay scale of Rs. 550-900 to be filled by promotion of Junior Engineers on completion of 12 years of service on the basis of the seniority and (3) 99 Assistant Engineers in the pay scale of Rs. 650-1200, of which 50 percent is to be filled by promotion and 50 percent by direct recruitment. A degree in Civil Engineering and two years of professional experience are essential for direct recruits while for promotees from the cadre of Junior Engineers a minimum experience of three years of service for degree-holders and five years for diploma-holders in the grade of Junior Engineers are essential. Higher posts of Executive Engineers and Superintending Engineers were primarily filled up by promotion of Assistant Engineers and Executive Engineers respectively. These higher posts require better qualifications and experience. For that purpose 50 per cent of posts of Assistant Engineers are reserved for direct recruitment for which a degree in Civil Engineering and two years of professional experience are essential qualifications.

5. All posts to be filled by direct recruitment have to be advertised and the candidates have to be called for interviews and the selection made has to be approved by the Corporation. Even for promotion, a Departmental Promotion Committee with a member of the Union Public Service Commission has to be constituted and a list of eligible candidates has to be prepared and they had to be screened before the selection is made. All this takes time and the work of the Corporation cannot remain unattended in the meanwhile. Therefore, senior personnel from the immediate lower category of offices are drafted to the vacant posts on ad hoc basis with pay and other emoluments due to the posts held under current duty charge, but without any right to that post which has to be filled by either promotion or direct recruitment as per the rules. The recruitment to higher grades of Executive Engineers and Superintending Engineers being primarily by promotion from Assistant Engineers and Executive Engineers respectively, the only avenue to have engineers with better qualifications is by direct recruitment of Assistant Engineers to the extent of 50 per cent. If that avenue of direct recruitment is closed, there will be no source from which better qualified Engineers with higher degree qualifications will become available. The Corporation considered the question of suspending direct recruitment of Assistant Engineers on several occasions, but it came to the conclusion that it is neither feasible nor desirable to do so in the interests of the Engineering Department. The writ petition has not disclosed any violation of any right much less a fundamental right of the petitioners. The petitioner have no right to force the 1st respondent-Corporation, a statutory body, to exercise its discretion in particular manner which is against the rules.

6. The Municipal Corporation of Delhi is a statutory authority, which is no doubt controlled by the Central Government to the extent mentioned in section 487 of the Delhi Municipal Corporation Act, 1957. The Recruitment Regulations for the posts of the Assistant Engineers (Civil) were notified in the Official Gazette on June 27, 1970 (Annexure R-I). They provide for recruitment of Assistant Engineers to the extent or 50 percent by promotion of Junior Engineers and to the extent of 50 per cent by direct recruitment. The CPWD had decided to suspend direct recruitment to the Central Engineering Service Class II for seven years from 1972. The 1st respondent has resolved by Resolution No. 50 dated July 20, 1964 to adopt the CPWD pattern of work with regard to execution of works alone and other service matters. The Central Government rules are made applicable to the employees of respondent 1 only on their adoption and approval by the Corporation; otherwise its employees are governed by the rules and regulations framed by the Corporation itself under section 98 of the Delhi Municipal Corporation Act, 1957. The representation received from time to time for suspension of direct recruitment of Assistant Engineers were duly considered but it was found that there is of justification to comply with the request, and a decision in that regard was taken by the

Council of the Corporation on April 19, 1978 (Annexure R-2). Out of 401 Junior Engineers, one is unqualified, 343 are diploma-holders and only 57 are graduates in Civil Engineering. The decision to fill up eight posts of Assistant Engineers by direct recruitment was taken in view of the shortfall in the direct recruitment quota compared to the promotion quota in accordance with Recruitment Regulations which provide for filling up 50 per cent by promotion and 50 per cent by direct recruitment of Assistant Engineers amongst diploma-holders had become eligible for the posts of Assistant Engineers. The practice of suspending direct recruitment followed by other departments of the Central Government cannot, therefore, be followed by respondent 1. Section 487 of the Delhi Municipal Corporation Act, 1957 provides for direction being given by the Central Government. But the Central Government's letter dated February 23, 1976 to the effect that consequent on the recommendations of the Third Pay Commission, respondents 1 may ban direct recruitment as has been done by the CPWD was not written in accordance with power conferred by section 487 of the Delhi Municipal Corporation Act and it cannot therefore, be taken as a directive from the Central Government.

7. The relative seniority of direct recruitment and promotees has been determined in accordance with instructions contained in the Ministry of Home Affairs Office Memorandum No. 9/11/55-RPS dated December 22, 1959. Out of 401 Junior Engineers, 36 persons are holding the posts of the Assistant Engineers on ad hoc basis in the Junior Engineer's pay scale and they are liable to be reverted as Junior Engineers as and when posts are filled up on a regular basis in accordance with the Recruitment Regulations. The officers appointed on ad hoc basis and current charge basis cannot be treated as regular appointees in the absence of appointments in accordance with the Recruitment Regulations, and, therefore, their names have been rightly not included in the seniority list. The persons confirmed earlier are ranked as seniors to persons who are officiating in the grade in accordance with para 3 of the Home Ministry's Office Memorandum dated December 22, 1959 and there is no infringement of any fundamental right of the petitioners.

8. Respondents 3 to 10 and 12 to 15 have filed counter-affidavit contending that prayers (1), (2) and (4) in W. P. No. 221 of 1979 are in direct violation of the Recruitment Regulations relating to Assistant Engineers. Respondents 3 to 7 appeared before the Union Public Service Commission and were duly selected as Assistant Engineers on January 2, 1974 as mentioned in the Office Order dated June 4, 1975 of the Assistant Commissioner (Annexure RA-1). Respondents 8 to 18 of whom respondent 11 had died a few years ago also were appointed as Assistant Engineers with effect from January 2, 1974 in the direct recruitment quota. Respondents 19 to 46 also were appointed as Assistant Engineers on various dates after January 2, 1974 in the direct recruitment quota. Therefore, it is not open to the petitioners to question the seniority of respondents 3 to 46 fixed long ago in accordance with statutory rules. Respondents 3 to 10 and 12 to 17 were working as Executive Engineers on ad hoc basis for over four years.

9. The promotional policy of respondent 1 is in accordance with the statutory rules approved in 1970 in consultation with the Union Public Service Commission and are neither arbitrary nor without authority of law. There has been no ban on direct recruitment to 50 per cent of the posts of Assistant Engineers as per the Recruitment Regulations. Respondents 3 to 46 are graduates in Civil Engineering and more qualified than the petitioners who are only diploma-holders. The petitioners are eligible to promotion as Assistant Engineers in the 50 per cent promotion quota. The 1st respondent is not following the pattern of the current functioning of the CPWD in the matter of recruitment and other service conditions but has its own Recruitment Regulations which have been approved by the Union Public Service Commission and duly notified on June 27, 1970. The CPWD has suspended direct recruitment of Assistant Engineers in Class II temporarily for seven years from

April 1, 1972. Direct recruitment of Assistant Engineers is resorted to by respondent 1 for having highly qualified and talented Engineers and maintaining standards and efficiency. The petitioners cannot have any grievance against direct recruits of 1974 ranking in seniority in accordance with Recruitment Regulations. The final seniority list of Assistant Engineers circulated on January 30, 1975 (Annexure RA-III) was finalised after considering the objections and is in accordance with the Home Affairs Ministry's Office Memorandum dated December 22, 1959 which lays down that the relative seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota reserved in the Recruitment Regulations. It cannot be challenged after a long period of five years. The petitioners are, therefore, not entitled to any relief.

10. The petitioners in W. P. No. 1194 of 1979 are graduate Junior Engineers. Their case is that the 1st respondent has been denying for the last six or seven years to them and other graduate Junior Engineers, their rightful quota of appointment as Assistant Engineers in accordance with the Rules while following the pattern of the CPWD, even though a statutory duty cast on the 1st respondent to fill up the posts of Assistant Engineers on 50 : 50 basis. Consequently, 26 posts of Assistant Engineers in the direct recruitment quota are kept unfilled as is evident from the final seniority list of Assistant Engineers dated September 2, 1978 (Annexure G) though there are 50 graduate Junior Engineers who are eligible to compete for those posts. Though 26 posts of Assistant Engineers were available for being filled up as on December 20, 1978 only eight posts were advertised (Annexure H) and the names of petitioners 1 to 21 appeared in the duly prepared selection list. The 1st respondent has not filled up even those eight posts with the candidates in that selection list but has filled up six posts by putting up Junior Engineers with diploma as respondents 5 to 41 on current duty charge under the order dated April 10, 1978 forming Annexure I in violation of Rules and the petitioners' right guaranteed under Art. 16 of the Constitution of India. In all 37 posts of Assistant Engineers including some in the quota of direct recruits have been filled up by Junior Engineers holding only diplomas on current duty charge with the object of favouring diploma holders who have got great political influence by the office order dated June 21, 1979 (Annexure M). The Assistant Commissioner (Engineering) has taken an absolutely new stand in his reply (Annexure P) received on September 6, 1979 by saying that implementation of the approved panel was not feasible on account of ban imposed by the Commissioner on August 10, 1979 on new recruitment. The diploma-holders posted as Assistant Engineers on the current duty charge have been further promoted as ad hoc appointees by Office Order dated August 10 1979 (Annexure R). The effect of this ad hoc appointment is that the ad hoc appointees draw pay in the higher scale of Assistant Engineers while in the current duty charge they were entitled to draw only their pay in the lower grade of Junior Engineers. The petitioners have, therefore, prayed for quashing the Orders dated April 10, 1978 and June 21, 1979 (Annexure I and M).

11. The chances of graduate Junior Engineers becoming Assistant Engineers are very bleak. Justice can be done to both diploma-holders and graduates amongst the Junior Engineers by providing a reasonable quota for both categories in the 50 per cent quota reserved for promotees in the matter of appointment of Assistant Engineers as is done in the Delhi Electric Supply Undertaking so that graduates and diploma-holders amongst the Junior Engineers may get equal chances of promotion.

12. The petitioners, who are graduate Junior Engineers, from a category with distinguishing features separate from Junior Engineers who are diploma-holders. The Supreme Court has held that separate category within the same category on the basis of educational qualifications is clearly permissible and not violative of Art. 14 of the Constitution of India. But the 1st respondent is treating the two categories as equal. The graduate Engineers suggested to the Deputy Commissioner (Engineering)

that a separate cadre of graduate Junior Engineers in the pay scale of Rs. 550-900 may be created and designated as Design Assistants. The Assistant Commissioner (Engineering) has replied by his letter dated March 27, 1979 (Annexure K) that the Municipal Chief Accountant has not accepted the suggestion. Under the Central Civil Service Rules, 1973 and on the basis of the Third Pay Commission's Report the petitioners who are graduate Junior Engineers are entitled to the pay scale of Rs. 550-900 which is the revised pay scale of graduate Junior Engineers in Class III service in other government departments. The petitioners are similarly circumstances with those other graduate Junior Engineers, and there is no just or valid reason to discriminate the petitioners qua the other graduate Junior Engineers qua the other graduate Junior Engineers in Class III service in other Government departments.

13. The 1st respondent Corporation has not revised the special pay (planning allowance) from the date from which the petitioners as graduate Junior Engineers are legally entitled thereto. The planning allowance has been revised in the CPWD from Rs. 40 to Rs. 75 per mensem with effect from January 1, 1979 (Annexure ZA). The Corporation has by Resolution NO. 184 dated June 21, 1971 sanctioned special pay to section Officers now known as Junior Engineers working in the Planning Circle at Rs. 40 per mensem in the case of diploma-holders with effect from April 1, 1971 on the pattern of the CPWD. The planning allowance has been increased from Rs. 40 to Rs. 75 per mensem in the CPWD with effect from January 1, 1979 by the letter No. 28017 (17) /78/EW-1 dated January 1, 1979 (Annexure ZA) of the Ministry of Works and Housing, Government of India. Though the Commissioner has recommended revision from Rs. 40 to Rs. 75 in his letter the revision has not been effected on the ground that the approval of Municipal Council is not forthcoming. The Delhi Administration's Notification dated September 19, 1972 circulated by respondent 1 on September 30, 1972 (Annexure ZC) shows that the General Financial Rules including amendments and orders issued by the Central Government are applicable to respondent in every manner, be it pay or general allowance. Therefore, the stand of the 1st respondent that revision of the planning allowance will be effective only from the date of approval by the Municipal Council is baseless, mala fide and illegal.

14. The petitioners have prayed for the aforesaid reliefs in these circumstances.

15. The 1st respondent has filed a counter-affidavit contending that the qualification prescribed in the Recruitment Regulations notified on June 27, 1970 is diploma in Civil Engineering or any higher qualification, and since all the Junior Engineers either with degree or with diploma are performing the same duties, no separate category can be allowed to graduate Junior Engineers. Those Recruitment Regulations provide for 50 per cent of posts of Assistant Engineers being filled by promotion amongst Junior Engineers and 50 per cent by direct recruitment. For direct recruitment a degree in Civil Engineering and two years of professional experience are the minimum qualifications required while for promotees five years of professional experience as Junior Engineers in the case of diploma-holders and three years of professional experience in the case of graduate Junior Engineers are the minimum qualifications required. The suggestion of the petitioners to treat the graduate Junior Engineers as a separate category is not acceptable to the 1st respondent.

16. The select list for direct recruitment to the posts of Assistant Engineers out of graduate Junior Engineers was approved by the competent authority on May 2, 1979 and the matter of appointment being still under consideration only two appointments on current duty basis were made out of the senior-most Junior Engineers by the Order dated May 21, 1979 (Annexure M). After the notification of the Recruitment Regulations in 1970, 36 Graduate Engineers in the direct recruitment quota and

10 promotees from amongst graduates were appointed as Assistant Engineers. The criteria for promotion of Junior Engineers as Assistant Engineers is selection-cum-seniority. The rules for promotion applicable to the 1st respondent-Corporation are quite different from those of the CPWD and it is not incumbent on the 1st respondent to follow the CPWD rules. The eligibility of the petitioners and their selection to the posts of Assistant Engineers are not denied by the 1st respondent. The petitioner's names appear in the select list which has been approved by the competent authority on May 2, 1979 and is pending final decision about the appointment of the direct recruits selected for the eight posts advertised in December, 1978. The current duty charge arrangement mentioned in Annexure M had to be made as a stop gap arrangement to meet the immediate requirements of the Department and not to favour any diploma-holders, and it does not amount to any violation of Art. 16 of the Constitution of India. It is not admitted that 26 vacancies of Assistant Engineers still exist for being filled by direct recruitment. The appointment under the promotion quota is not doubt in excess of the prescribed percentage as some of the promotees had been adjusted against short-term vacancies.

17. The demand of the graduate Junior Engineers' Union for the creation of a separate cadre in the pay scale of Rs. 550-900 for graduate Engineers was objected to by the Finance Department of the 1st respondent-Corporation and found to be not feasible in view of the financial implications involved.

18. The matter of revising planning allowance of Rs. 40 and Rs. 25 paid to graduate Junior Engineers and Junior Engineers holding diploma is under consideration.

19. The 27th respondent has filed a counter-affidavit in the petition for Stay filed in W. P. No. 1194 of 1979. Though he has sought leave in that counter-affidavit to file a detailed counter-affidavit in the main writ petition, no such counter-affidavit has been filed. In the course of arguments before us reference was made by the learned counsel for the parties to what is stated in the above counter-affidavit. Therefore, we would like to mention briefly the contentions put forward by the 27th respondent in that counter-affidavit.

20. The seniority list published on October 11, 1979 shows that the quota of promotee Assistant Engineers is deficient, in that 21 posts out of the quota for promotees are still unfilled whereas the entire quota for direct recruits has been filled up already. That seniority list has been issued with the approval of the Commissioner, vide Office Order No. 2(90)/ECI/ENGG/ESTT/1574 dated October 11, 1979, and shows that no post is available for being filled up by direct recruitment.

21. The Selection Board was not constituted as per the proper procedure. A minimum of two Deputy Commissioners are required to be on the Selection Board whereas in the case of the selection graduate Junior Engineers for appointment as Assistant Engineers there was not even a single Deputy Commissioner on the Selection Board. When this illegality in the constitution of the Selection Board was realised, the Corporation authorities, at the behest of interested person, had interpolated the name of the Deputy Commissioner (E) and obtained his signature sometime after the deliberations of the Selection Board had been completed and the minutes had already been signed by the members. Page 180C of the proceedings of the Selection Board (Annexure R-III to this counter-affidavit) shows that Har Mohinder Singh (Sl. No. 15) was absent for interview. Yet he has been awarded a total of 34 marks, including four marks at the interview and his name is sought to be placed at No. 14 in the Select Panel. The order communicating the constituting of the Selection Board shows that there were only four members including the Municipal Engineer who was designated as the Chairman. But the final minutes are signed by five members including the

Deputy Commissioner (E).

22. The Corporation was formed on April 7, 1958. Since then a total of 95 Assistant Engineers have been appointed by direct recruitment whereas amongst the Junior Engineers and lower categories only 78 have been appointed as Assistant Engineers. Thirty-six respondents who are holding current charge as Assistant Engineers since various dates falling between April 10, 1978 and June 21, 1979 had joined service as Junior Engineers about 18 to 20 years ago, i.e. between October 14, 1959 and August 24, 1961, and they have become eligible for promotion as Assistant Engineers on a regular basis according to the rules of the Corporation long ago. Therefore, there is nothing wrong in promoting them on current charge basis as Assistant Engineers.

23. The Recruitment Regulations deal with and apply expressly to only 60 posts of Assistant Engineers. The direct recruits are, therefore, entitled to only 30 posts on 50 : 50 basis, but they have been admittedly given 36 posts. Therefore, there is no further posts of Assistant Engineers to be given to them on any of the respondents holding current charge being reverted as Junior Engineers. According to the procedure and rules of the Corporation, current duty charge-holders are to be given ad hoc appointments as soon as possible, and as per the preamble to the Commissioner's letter No. 34C & C dated September 11, 1979 ad hoc status is required to be conferred with effect from the date of commencement of current duty charge.

24. The penal prepared by the Selection Board, which has not yet been issued, is supposed to contain 37 names. Though under the Rules for the eight posts of Assistant Engineers advertised to be filled by direct recruitment only eight plus 20 per cent thereof have to be selected it is interesting to note that the number of Junior Engineers holding current duty charge is also 37.

25. We have rearranged the order of the prayers in the writ petitions filed for the issue of writs of mandamus or other appropriate writs and would mention them here once again for the sake of convenient reference. They are :-

Writ Petition No. 221 of 1979 :

- (1) to restrain respondent 1 from recruiting Assistant Engineers directly and filling up the posts of Assistant Engineers;
- (2) to direct respondent 1 to give effect to the recommendations of the Third Pay Commission regarding the rules and policy of promotion etc.;
- (3) to quash the seniority list (Annexure G) prepared by respondent;
- (4) to direct respondent 1 to reckon the seniority of the petitioners with their length of service; and
- (5) to direct respondent 1 not to affect in any manner all Junior Engineers holding current duty charge and ad hoc appointments as Assistant Engineers.

Writ Petition No. 1194 of 1979 :-

- (1) to direct respondent 1 to fill up eight posts of Assistant Engineers by direct recruitment from amongst the graduate Junior Engineers in the Select Panel;

(2) to quash Office Order dated 10th April, 1978 (Annexure I) entrusting Junior Engineers with current duty charge of the posts of Assistant Engineers and the Officer Order dated 21st June, 1979 (Annexure M) promoting two Junior Engineers as Assistant Engineers on current duty charge;

(3) to direct respondent 1 to fill up the remaining posts of Assistant Engineers in the direct recruitment quota from amongst the empanelled petitioners who are graduate Junior Engineers;

(4) to declare the petitioners, graduate Junior Engineers as a separate category amongst Junior Engineers and give them equal quota like the diploma-holders Junior Engineers out of the departmental quota in the posts of Assistant Engineers;

(5) to restrain respondent 1 from giving ad hoc promotions to current duty charge-holders amongst Junior Engineers;

(6) to declare that the petitioners, graduate Junior Engineers, in the service of respondent 1 are entitled to be put on par with their counterparts in other government departments;

(7) to direct respondent 1 to grant revised pay scales of Rs. 550-900 to the petitioners and other graduate Junior Engineers as in the case of graduate Junior Engineers in Class III service on other government departments with effect from the date on which it is made applicable in the Central Public Works Department; and

(8) to direct respondent 1 to revise special pay from Rs. 40 to Rs. 75 per mensem to the petitioners and other graduate Junior Engineers entitled thereto from January 1, 1979.

26. We shall consider prayers (1) and (2) in a Writ Petition No. 221 of 1979 and prayer (1) in Writ Petition No. 1194 of 1979 all of which relate to direct recruitment to eight posts of Assistant Engineers. According to the counter-affidavit filed on behalf of the respondent 1, apart from Executive Engineers, Superintending Engineers and Municipal Engineer who is at the top, the Engineering Service (Civil) of respondent 1 consists of :

(1) 450 Junior Engineers in the pay scale of Rs. 425-700 of which 80 per cent is filled by direct recruitment with the minimum qualifications of diploma in Civil Engineering and 20 per cent is filled by promotion from amongst Works Assistants already in the service of respondent 1 with diploma in Civil Engineering and minimum experience of two years;

(2) 13 Selection Graduate Junior Engineers in the pay scale of Rs. 550-900 to be filled by promotion of Junior Engineers on completion of 12 years of service on the basis of seniority; and

(3) 99 Assistant Engineers in the pay scale of Rs. 650-1200 of which 50 per cent is to be filled by the promotion of Junior Engineers and 50 per cent is to be filled by direct recruitment. A degree in Civil Engineering and two years of professional experience are essential for direct recruitment as Assistant Engineers from the cadre of Junior Engineers a minimum of three years of service for degree-holders and five years of

service for diploma-holders in the grade of Junior Engineers are essential. All other higher posts of Executive Engineers, Superintending Engineers and Municipal Engineer are primarily filled by promotion of Assistant Engineers, Executive Engineers and Superintending Engineers respectively. All the appointments in the respondent 1 Corporation carrying a minimum salary of less than Rs. 700 per mensem could be made by the Commissioner of the Corporation since January 10, 1975 in accordance with the recruitment rules which are framed in consultation with the Union Public Service Commission though prior to that date consultation with the Union Public Service Commission was essential in the matter of appointment to posts carrying a minimum salary of Rs. 350 per mensem and above. Direct recruitment is to be made on the recommendation of the Selection Board to be constituted for the purpose from time to time. Similarly, promotions are to be made on the recommendations of the Departmental Promotion Committee to be constituted for the purpose from time to time. The quota of 50 per cent for promotees amongst Junior Engineers and 50 per cent for direct recruitment from amongst outsiders as well as graduate Junior Engineers for appointment to posts of Assistant Engineers which are selection posts was fixed by the Recruitment Regulations dated June 27, 1970 made by the 1st respondent under section 98 of the Delhi Municipal Corporation Act, 1957, vide Resolution No. 97 dated May 4, 1970 in connection with the recruitment for the posts of Assistant Engineers (Civil) and approved by the Lt. Governor, Delhi under section 480 (2) of the said Act read with the Government of India, Ministry of Home Affairs' Notification dated October 19, 1966. The cause of the graduate Junior Engineers is espoused by the graduate Junior Engineers' Union while the cause of the diploma-holders Junior Engineers is espoused by the Municipal Corporation of Delhi Assistant Engineers' (ORG) (regd.). There is no dispute about these facts except in regard to the quota of 50 per cent of promotee Junior Engineers and 50 per cent for directly recruited graduate Engineers including graduate Junior Engineers.

27. According to the petitioners in Writ Petition No. 221 of 1979 who are diploma-holders Junior Engineer respondent 1 has been following the pattern of functioning current in the CPWD in all matters of recruitment, promotion and other conditions of service. The CPWD has decided to suspend direct recruitment in the Central Engineering Service because no promotional chances were available to the Central Engineering Service/ Electrical Engineering Service Class II. The said decision taken in August 1975 became effective from April 1, 1972. The 1st respondent has taken a decision by Resolutions Nos. 416 and 78 dated October 27, 1970 and February 21, 1971 respectively to the effect that all fundamental rules and supplementary rules including amendments and orders issued by the Central Government shall be treated as rules etc. by respondent 1. The Central Services Conduct Rules and General Fundamental Rules including amendments and orders issued by the Central Government have been made applicable to respondent 1. As soon as the petitioners learnt that there is suspension of direct recruitment in the CPWD they invited the attention of respondent 1 to that fact in November, 1975 and requested for banning direct recruitment of Assistant Engineers and were given an assurance that their rights will not be overlooked. The petitioners made several representations including the last one dated January 24, 1979. The then Commissioner of respondent 1 gave an oral assurance to the petitioners that the practice adopted by the CPWD will be followed by respondent 1, and later wrote to the petitioners saying that the matter was under consideration. The petitioners met the Deputy Commissioner of respondent 1 on January 23, 1979 and protested against the notification made in the Press on

December 30, 1978 for filling up eight posts on Assistant Engineers by direct recruitment and they expected that the notification would be withdrawn as the Deputy Commissioner accepted their suggestion. But respondent 1 is, however, bent upon going ahead with the direct recruitment though more than 275 Junior Engineers out of 400 Junior Engineers aspiring for promotion as Assistant Engineers are eligible for consideration. The Central Government has power of general superintendence over the 1st respondent and it has informed the 1st respondent by letter dated March 22, 1976 that consequent on the recommendations of the Third Pay Commission direct recruitment may be banned by respondent 1 as has been done by the CPWD. The Director in the office of the Director-General of Works, Government of India has informed the 1st respondent's Assistant Commissioner (Establishment) by letter dated February 6, 1978 that direct recruitment to the Central Engineering Service and Central Electrical Engineering Service (Group B) was still under suspension. Though no specific reference has been made in the Third Pay Commission's Report to Junior Engineers of the 1st respondent its recommendations have been followed by the 1st respondent and its employees are treated in the same manner as the employees of the Central Government. The pay scales and service conditions of the employees of the 1st respondent and the Central Government are the same. The proposed direct recruitment to eight posts of Assistant Engineers is detrimental to the interest of the petitioners. The 1st respondent, therefore, be asked to follow the same policy as the one adopted by the CPWD and be restrained from appointing eight Assistant Engineers by direct recruitment. This is how the petitioners in Writ Petition No. 221 of 1979 seek the relief covered by the first prayer. This is also the stand as defence in regard to the first prayer in Writ petition No. 1194 of 1979 which is for a direction being given to respondent 1 to fill up the eight posts of Assistant Engineers by direct recruitment from amongst those in the select list.

28. The 27th respondent has contended in his counter-affidavit that since the formation of the 1st respondent-Corporation on April 7, 1958 as many as 95 Assistant Engineers have been as many as 95 Assistant Engineers have been appointed by direct recruitment whereas amongst Junior Engineers only 78 have been appointed as Assistant Engineers by way of promotion. There were only 60 posts of Civil Engineers when the Recruitment Regulations could apply only to 60 post of Assistant Engineers and direct recruits would be entitled to only 30 posts and they are not entitled to only 30 posts and they are not entitled to further posts by direct recruits would be entitled to only 30 posts and they are not entitled to further posts by direct recruitment now as they have already been given 36 posts. The 27th respondent has attacked the selection of the panel of 37 persons by the Selection Board constituted pursuant to the decision to fill up eight posts of Assistant Engineers by direct recruitment on the ground that the Selection Board had not been properly constituted and there are certain other irregularities. This is how the 27th respondent is challenging the decision to appoint eight Assistant Engineers by direct recruitment and the validity of the select panel prepared by the Selection Board.

29. The 1st respondent's contention is that the Delhi Municipal Corporation is a statutory authority which is no doubt controlled by the Central Government but only to the extent mentioned in S. 487 of the Delhi Municipal Corporation Act, 1957. The corporation has resolved by Resolution No. 50 dated July 20, 1964 to adopt the CPWD pattern with regard to the execution of works alone and not with regard to the mode of recruitment and other service matters. The Central Government Rules are made applicable to the employees of respondent 1 only on their adoption and approval by the Corporation, and otherwise its employees are governed by the Rules and Regulations framed by the Corporation itself under S. 98 of the said Act. The representations made from time to time for suspension of direct recruitment of Assistant Engineers were duly considered, but it was found that there was no justification to comply with that request and a decision to that effect was taken by the Council of the Corporation Act provides for directions being given to the Corporation by Central

Government, but the Central Government's letter dated February 23, 1976 to the effect that consequent on the Third Pay commissioner's recommendations respondent 1 may ban direct recruitment as has done by the CPWD is not a direction given under that section and is, therefore, not binding on respondent 1. The Recruitment Regulations dated June 27, 1970 framed under S. 98 of the Delhi Municipal Corporation Act provide for 50 per cent of the posts of Assistant Engineers being filled by direct recruitment and 50 per cent by promotion of Junior Engineers. The decision to fill up eight posts of Assistant Engineers by direct recruitment was taken in view of the shortfall in the direct recruitment quota compared to the promotion quota.

30. Respondents 3 to 10 and 12 to 15 in Writ Petition No. 221 of 1979 have contended in their counter-affidavit that the prayers (1), (2) and (4) in that writ petition are in direct violation of the Recruitment Regulations dated June 27, 1970. They have further contended that respondent 1 is not following the pattern of the current functioning of the CPWD in the matter of recruitment and other service conditions but is following its own Recruitment Regulations which have been approved by the Union Public Service Commission and duly notified on June 27, 1970. Commission and duly notified on June 27, 1970. The direct recruitment is resorted to by respondent 1 for having highly qualified and talented engineers and maintaining standards and efficiency.

31. The petitioners in Writ Petition No. 1194 of 1979 contended that a statutory duty is cast on respondent 1 to fill up the posts of Assistant Engineers on 50 : 50 basis. Though there were 26 posts of Assistant Engineers to be filled on that basis by direct recruitment, only eight posts were notified on December 30, 1978 to be filled by direct recruitment. The 1st respondent has however not filled up even those eight posts but has filled up some posts of Assistant Engineers thereafter on ad hoc basis with Junior Engineers even though the select list has been approved on May 2, 1979 pursuant to the interviews held on March 6 and 7, 1979 in connection with the decision to fill up eight posts of Assistant Engineers by direct recruitment.

32. The first respondent has contended in its counter-affidavit in Writ Petition No. 1194 of 1979 that the select list for direct recruitment to the posts of Assistant Engineers out of graduate Junior Engineers was approved by the competent authority on May 2, 1979 and the matter of appointment of eight Assistant Engineers is under consideration. The petitioner's names are in the select list and their eligibility and selection to the post of Assistant Engineers is not denied and their appointment as Assistant Engineers by direct recruitment is under consideration.

33. We may state here that Mr. U. R. Lalit, Senior Advocate, appearing for respondents 1 and 2 has stated before us on July 29, 1981 that the total number of vacancies of Assistant Engineers would be ascertained within 2.5 months and thereafter in another 2.5 months orders of appointment of Assistant Engineers by direct recruitment will be issued by respondent 1.

34. Mrs. Shyamla Pappu, Senior Advocate, appearing for the petitioners in Writ Petition No. 221 of 1979 drew our attention to certain documents and submitted that direct recruitment of Assistant Engineers should have been suspended by respondent 1 following the decision taken by the CPWD to suspend direct recruitment of Assistant Engineers for seven years from April 1, 1972. She also submitted that the 50 : 50 quota rule in the Recruitment Regulations approved on June 27, 1970 should not be followed. If her submission is that the quota rule should not be followed altogether it is not consistent with the stand taken by the 27th respondent in his counter-affidavit and also by Mr. S. C. Gupta, learned Counsel appearing for respondents 13, 25 and 27 in Writ Petition No. 1194 of 1979. The contention of the 27th respondent referred to above is that the quota rule can apply only to 60 posts of Assistant Engineers which were in existence on the date on which the Recruitment

Regulations were approved, viz. June 27, 1970 and since there 36 directly recruited Assistant Engineers when Writ Petition No. 1194 of 1979 was filed which was more than 50 per cent of the 60 posts there are no more posts of Assistant Engineers to be filled by direct recruitment. There can be no difficulty in holding that this contention of the 27th respondent is totally unacceptable. It is true that when the Recruitment Regulations were approved on June 27, 1970 there were only 60 posts of Assistant Engineers (Civil) in respondent 1-Corporation. The number was 99 when Writ Petition No. 1194 of 1979 was filed and 115 when it was heard in this Court. The contention that the 50 : 50 quota rule can apply only to 60 posts which were in existence when the Recruitment Regulations were approved and will not apply to posts which are in existence when the Recruitment Regulations were approved and will not apply to posts which are in excess of that number is totally unreasonable and unsustainable and consequently rejected.

35. We will refer to the documents relied upon by Mrs. Shyamla Pappu. The Under-Secretary, Government of India, Ministry of Works and housing, drew the attention of the Commissioner of respondent 1 by his letter dated February 23, 1976 to the CPWD banning recruitment of Class II Engineers for seven years from 1972 consequent on the recommendations of the Third Pay Commission in order to avoid stagnation in respect of promotion of Junior Engineers and stated that it will be appreciated if the Commissioner could consider the possibility of following that policy in the Corporation which will go a long way in reducing the stagnation in respect of promotion of Junior Engineers in the Corporation. Admittedly, there is no direct reference to Junior Engineers of respondent 1-Corporation in the Third Pay Commission's Report. The decision of the CPWD to suspend direct recruitment to CEC Class II for seven years w. e. f. April 1, 1972 is found at pages 20 and 21 of the CPWD Manual, Volume 1, 1975 Edition. The Delhi Municipal Corporation is a statutory authority governed by the Delhi Municipal Corporation Act, 1957. The Central Government can give directions to the Corporation only under S. 487 of that Act. According to that section the Central Government may direct the Corporation or the Municipal Authority concerned to make arrangements to its satisfaction for the proper performance of the duty or as the case may be to make financial provision to its satisfaction for the performance of the duty if, whether on receipt of any information or report obtained under S. 485 or S. 486 or otherwise the Central Government is of the opinion :

(a) that any duty imposed on the Corporation or any Municipal Authority by or under that Act has not been performed or has been performed in an imperfect, insufficient or unsuitable manner; or

(b) that adequate financial provision has not been made for the performance of any such duty.

36. Sub-s. (2) of S. 487 relates to directions to Municipal authorities in relation to the Delhi Electric Supply Undertaking or the Delhi Water Supply and Sewage Disposal Undertaking with which we are not concerned in these two writ petitions. As rightly contended by Mr. V. M. Tarkunde, Senior Advocate, appearing for the petitioners in Writ Petition No. 1194 of 1979 the letter dated February 23, 1976 referred to above does not contain any direction which could be issued by the Central Government under S. 487 of the Act and is not binding on respondent 1.

37. The President of the Delhi Municipal Corporation Assistant Engineers (ORG) (Regd.) has stated in his letter dated April 13, 1978 addressed to the Commissioner of respondent 1 that respondent 1 has agreed to adopt the practice of the CPWD for filling up posts of Assistant Engineers. No record has been produced to show what exactly are the terms of that agreement. It is now possible for us to

infer from this letter that the Commissioner has agreed to suspend direct recruitment of Assistant Engineers. The Secretary of the Delhi Municipal Corporation Assistant Engineers (ORG) (Regd.) has by his letter dated January 24, 1979 requested the Deputy Commissioner of respondent 1 to cancel the Notification published on December 30, 1978 for direct recruitment of Assistant Engineers. The commissioner of respondent 1 has stated in his letter No. 5504/C & C dated August 20, 1979 that the Corporation generally follows the pattern prevailing in the CPWD. The Standing Committee of the Corporation had resolved to recommend to the Corporation that "in view of the widespread stagnation amongst Junior Engineers (Civil) direct recruitment to posts of Assistant Engineers (Civil) direct recruitment to posts of Assistant Engineers (Civil) may be banned/suspended for a period of seven years under the civil body also in conformity with the recommendation of the Third Pay Commission as adopted by the civil body" and that "as recruitment to the posts of Assistant Engineers (Civil) has already been made by the Corporation in violation of the aforesaid ban of the Government of India during the period April 1, 1972 to December 31, 1978 the proposed suspension of recruitment to the said posts may be operative for seven years from January 1, 1979". But in his note dated April 19, 1978 against stopping direct recruitment of Assistant Engineers the Commissioner had stated that it would not be in the larger interests of the Corporation to stop direct recruitment and not to induct fresh Engineers with higher qualifications. In that note the Commissioner had directed the formation of panels for the promotional and direct recruitment quotas and the issue of notification in the Press for direct recruitment of Assistant Engineers. Regarding the proceedings of the appointment, promotion disciplinary an allied matters Committee dated April 5, 1978 in respect of a Municipal Counselor's notice of resolution about amendment of the existing recruitment and promotional rules for the posts of Assistant Engineers the commissioner of respondent 1 has stated thus in his note :

In the Municipal Corporation of Delhi it is only at the level of Assistant Engineers that direct recruitment of degree-holders is provided which too is limited to 50 per cent posts only. Since sufficient number of highly qualified engineers are not presently available with the Corporation and whereas all the higher posts right up to the post of Municipal Engineer have to be filled up from the cadre of Assistant Engineers the cadre must have sufficient number of officers of high caliber. It is, therefore, not considered in the interests of the Corporation to stop direct recruitment to the posts of the Assistant Engineers. Moreover, the amended Recruitment Regulations for the posts of Assistant Engineers (Civil/Electrical) have since been approved by the Corporation recently, vide their Resolution No. 348 dated July 10, 1978 wherein there is no change in the existing mode of recruitment, i.e., 50 per cent by direct recruitment. Obviously, there is no justification to stop direct recruitment against the allocation of 50 per cent posts earmarked for direct recruitment as per approved Recruitment Regulations framed in consultation with the UPSC.

38. It would appear from what has been stated above that the Municipal Corporation of Delhi which is a statutory authority is not automatically bound by any decision that may be taken by the CPWD in regard to direct recruitment of Assistant Engineers and that it is open to the Corporation to adopt any policy of the CPWD by a resolution when alone that policy will become binding on the Corporation. No provision in the Third Pay Commission's Report has been brought to our notice. Mrs. Shyamla Pappu has, on the other hand, admitted that there is no resolution of the Delhi Municipal Corporation banning or suspending direct recruitment of Assistant Engineers for seven years or any period from any dated whatsoever. The 50 : 50 quota fixed in the Recruitment Regulations approved on June 27, 1970 has not been altered but has been approved by the Corporation in its Resolution No. 348 dated July 10, 1978. Therefore, there is no substance in the connection of the petitioners in Writ Petition No. 221 of 1979 or the contesting private respondents in Writ Petition No. 1194 of 1979 that respondent 1 should have suspended the direct recruitment of

Assistant Engineers and that the quota rule laid down in the Recruitment Regulations should not be followed.

39. Coming now to the contention urged by Mr. S. C. Gupta, learned Counsel appearing for respondents 13, 25 and 27 in Writ Petition No. 1194 of 1979, regarding the quota fixed in the Recruitment Regulations we have already held that it cannot be restricted to only 60 posts of Assistant Engineers which were in existence on the date of their approval. The Recruitment Regulations themselves do not say that they are retrospective in operation from 1958. Prima facie those Regulations would apply to all future recruitment's and promotions. That is how they have been understood by the authorities of respondent 1-Corporation when they decided to have eight posts of Assistant Engineers filled up by direct recruitment though at that time there were 36 directly recruitment Assistant Engineers holding more than 50 per cent of 60 such posts.

40. Mr. S. C. Gupta invited our attention to the counter-affidavit of the 27th respondent where it is stated that the seniority list dated October 11, 1979 purporting to have been issued with the approval of the Commissioner of respondent 1 subject to ___ the final decision of the Delhi High Court in Writ Petition Nos. 327 of 1971 and 1631 of 1976 shows a large deficiency in the quota of promotes in the category of Assistant Engineers. But he admitted that that seniority list was withdrawn soon afterwards and that a subsequent seniority list prepared by respondent 1 was quashed by the Delhi High Court in Writ Petition No. 742 of 1971 on February 11, 1981 and the matter is pending in this Court in a special leave petition. The seniority list dated September 2, 1978 (Annexure G in Writ Petition No. 1194 of 1979) which was prepared after hearing all concerned does not appear to have been objected to before or after it was finalised except in Writ Petition No. 221 of 1979. In that seniority list 130 posts of Assistant Engineers are mentioned by placing one promote and one direct recruit alternatively according to their seniority. Thus we find that there is no merit in the contention of respondents 13, 25 and 27 in Writ Petition No. 1194 of 1979 as regards the decision to fill up eight posts of Assistant Engineers by direct recruitment and the quota fixed in the Recruitment Regulations, 1970.

41. Mr. S. C. Gupta did not advance any argument in regard to the plea of the 27th respondent about the constitution of the Selection Board and the alleged irregularity in the preparation of the select list for appointment of Assistant Engineers by direct recruitment. Our attention has not been drawn to any rule or provision requiring two Deputy Commissioners of respondent 1 to be present on the Selection Board. The 27th respondent has not produced any record to show that the name of the Deputy Commissioner (Establishment) has been interpolated in the records of the Selection Board at a later stage or that Mohinder Singh who is stated to have been marked as absent for the interview was really absent and the award of 34 marks to him including four marks at the interview is irregular. The 27th respondent has not substantiated any of the disputed questions of fact urged by him in his counter-affidavit in regard to the selection of the persons who are now in the select panel of Assistant Engineers.

42. Mr. V. M. Tarkunde submitted that in spite of the Commissioner having approved the selection made on March 6 and 7, 1979 by the Selection Board constituted for direct recruitment of Assistant Engineers the petitioners in Writ Petition No. 1194 of 1979 who have been selected for appointment as Assistant engineers have not been appointed and that on the other hand on June 21, 1979 under orders of the Deputy Commissioner dated June 19, 1979 two Junior Engineers have been posted as Assistant Engineers (Civil) on current charge basis with immediate effect and that by the order dated June 5, 1979 pursuant to the Commissioner's order dated June 2, 1979 Sukhbir Singh, one of the petitioners, against whom some departmental proceedings appear to have been pending, had been

promoted as Assistant Engineer (Civil) w. e. f. January 2, 1975 and ordered to continue in the post in which he was working on ad hoc basis though the final seniority list dated September 2, 1979 (Annexure G) shows that 26 posts of Assistant Engineers to be filled by direct recruitment are kept vacant right from 1971. The learned Counsel also pointed out that in the meeting of the Commissioner and other officers of respondent 1 on the one hand and the General Secretary of the graduate Junior Engineers' Union on the other, held on March 12, 1979 it was decided that the appointment/promotion to posts of Assistant Engineers (Civil) should be made strictly and truly as per the Recruitment Regulations and no diploma-holder should be promoted till the direct recruitment quota is filled up, and that the Deputy Commissioner stated in that meeting that appointments/promotions to the posts of Assistant Engineers (Civil) were being made only according to the Recruitment Rules. It was pointed out rightly by Mr. V. M. Tarkunde that the following particulars given in paragraph 14 of Writ Petition No. 1194 of 1979 showing that 33 appointments of Junior Engineers as Assistant Engineers have been made between 1972 and 1978 irregularly is admitted in the counter affidavit filed on behalf of respondents 1 and 2.

#Appointments made after the Recruitment Regulations, 1970 fixed 50per cent for promotees and 50 per cent for direct recruits :-----
 -----Promotees Direct Recruits-----
 -----1972 Regular 47 1974 Regular 18 1975 Regular 13 1976 Regular 31979 Regular 1 1977-78 Regular 13 Ad hoc 3 1978 Regular 2Current duty charge 39-----
 -----Total 103 Total 36-----
 -----###

43. In the counter-affidavit of respondents and 2 it is stated that appointment of Assistant Engineers in the promotion quota is of course in excess of the prescribed limited that the question of direct recruitment to posts of Assistant Engineers (Civil) is under consideration and the eligibility of the petitioners in Writ Petition No. 1194 of 1979 and their selection to the posts of Assistant Engineers by direct recruitment are not denied by respondents 1 and 2.

44. This court has observed in A. K. Subraman v. Union of India [1975-I L. L. J. 338 at p. 349, Para 28) Thus :

When recruitment is from two or several sources it should be observed that there is no inherent invalidity in introduction of quota system and to work it out by a rule of rotation. The existence of a quota and rotational rule, itself, will not violate Art. 14 or Art. 16 of the Constitution.....

45. For all the reasons stated above we find that there is nothing wrong in the respondent 1-Corporation proceeding to appoint Assistant Engineers (Civil) by direct recruitment as per the Recruitment Regulations or in fixing the 50 : 50 quota and working it out or in the selection of the petitioners in Writ Petition No. 1194 of 1979 as Assistant Engineers pursuant to the decision to appoint eight Assistant Engineers (Civil) by direct recruitment in the interviews held for that purpose on March 6 and 7, 1979 and that respondents 1 and 2 should issue orders of appointments to those posts to eight of the petitioners in Writ Petition No. 1194 of 1979 who are in the select list within six weeks from this date if not already issued as undertaken by Mr. U. R. Lalit on July 29, 1981 within five months from that date.

46. Prayer (3) in Writ Petition No. 1194 of 1979 is to direct respondent 1 to fill up the remaining posts of Assistant Engineers in the direct recruitment quota from amongst the empanelled

petitioners who are graduate Junior Engineers. no further discussion is necessary to record a finding on this question after what has been stated above in regard to prayers (1) and (2) in Writ Petition No. 221 of 1979 and prayed (1) and writ petition No. 1194 of 1979. Respondent 1 is admittedly bound by the Recruitment Regulations made with the approval of the Central Government as required by S. 480(2) of the Act and it shall fill the remaining posts of Assistant Engineers in the direct recruitment quota which are kept vacant in the seniority list dated September 2, 1978 (Annexure G in Writ Petition No. 1194 of 1979) and any further posts which might have become available thereafter or become available in view of our decisions in these two writ petitions or otherwise in accordance with those Recruitment Regulations within six months from today or from the date on which further vacancy to the posts of Assistant Engineers in the direct recruitment quota arises, as the case may be, if permissible from out of the select list approved on May 2, 1979.

47. Next we will consider prayers (2) and (5) in Writ Petition No. 221 of 1979 and prayers 92) in Writ Petition No. 1194 of 1979 which relate to current duty charge appointment and ad hoc appointment of Junior Engineers as Assistant Engineers. As stated earlier, the allegation in paragraph 14 of Writ Petition No. 1194 of 1979 that there are 39 Junior Engineers working as Assistant on ad hoc basis is admitted in the counter-affidavit filed on behalf of respondents 1 and 2. The 27th respondent has admitted in his counter-affidavit that there are 37 Junior Engineers holding current duty charge as Assistant Engineers. In another portion of Writ Petition No. 1194 of 1979 it is alleged that in all 37 posts of Assistant Engineers including some in the quota of direct recruits have been filled up by Junior Engineers holding only diplomas on current duty charge including two appointed by the Officer Order dated June 21, 1979 (Annexure M) with the object of favouring diploma-holders without appointing eight graduate Junior Engineers as Assistant Engineers though their selection has been approved by the competent authority on May 2, 1979 and that earlier six posts of Assistant Engineers have been filled up by putting Junior Engineers have been filled up by putting Junior Engineers with diplomas on current duty charge by the Office Order dated April 10, 1979 (Annexure 1) in violation of the rules and the petitioner's rights guaranteed under Art. 16 of the Constitution. It is further alleged in the writ petition that the effect of ad hoc appointments is that the ad hoc appointees draw the higher scale of pay of Assistant Engineers though when they hold current duty charge they are entitled to draw only their own pay in the lower grade of Junior Engineers. The petitioners have, therefore, prayed for quashing those two Office Orders dated April 10, 1978 and June 21, 1979.

48. The defence of respondent 1 in the counter-affidavit is that the current duty charge arrangement made in the Office Order dated June 21, 1979 had to be made as a stop gap arrangement in order to meet the minimum requirements in order to meet the minimum requirements of the department and not to favour any diploma-holder and that it does not amount to violation of Art. 16 of the Constitution. The 27th respondent has contended that according to the procedure and rules of the Corporation current duty charge-holders are to be given ad hoc appointments as soon as possible and that according to the preamble to the Commissioner's letter No. 346/C&C dated September 11, 1979 ad hoc status is required to be conferred with effect from the date of commencement of the current duty charge. The petitioners in Writ Petition No. 221 of 1979 contend that 26 Junior Engineers out of the total number of Junior Engineers in the service of respondent 1 are holding current duty charge from 1978 and several others are holding charge as Assistant Engineers who are officiating as Assistant Engineers are to be treated as regularly appointed Assistant Engineers. In the counter-affidavit filed in Writ Petition No. 221 of 1979 respondent 1 has contended that all posts to be filled by direct recruitment have to be advertised and the candidates have to be called for interview and the selection made has to be approved by the Corporation and that even for promotion a Departmental Promotion Committee with a member of the Union Public Service Commission on

it has to be constituted and a list of eligibility candidates has to be prepared and they have to be screened before the selection is made. It is further contended that all these procedures take time and the work of the Corporation cannot remain unattended and, therefore, senior personnel from the immediate lower category of officers are drafted to fill up the vacant posts of Assistant Engineers on ad hoc basis without any right to those posts which have to be filled by either promotion or direct recruitment as per the rules.

49. Mrs. Shyamla Pappu appearing for the petitioners in Writ Petition No. 221 of 1979, Mr. G. L. Sanghi, Senior Advocate appearing for respondents 3,4,6,10,12,20,38 and 44 and Mr. R. P. Sharma, Advocate appearing for respondents 9 to 13 and 28 in that petition and Mr. S. C. Gupta appearing for respondents 13, 25 and 27 in Writ Petition No. 1194 of 1979 did not advance any argument regarding the current duty charge and ad hoc appointment of Junior Engineers as Assistant Engineers which is impugned in Writ Petition No. 1194 of 1979. Mr. V. M. Tarkunde submitted that there is no specific provision for respondent 1 making ad hoc appointments as Assistant Engineers and he pointed out that the revised seniority list dated September 2, 1978 (Annexure G in Writ Petition No. 1194 of 1979) shows that ad hoc appointments are being made from June 22, 1962 though according to the Office Memorandum No. 22011/6/75 Estt. (D) dated December 30, 1976 of the Government of India, Cabinet Secretariat, Department of Personnel and Administrative Reforms, in exceptional circumstances and under exigencies of public service it may be necessary to make ad hoc appointments without following the prescribed procedure and such appointments should be subject to the following instructions, viz :

(a) Purely short-term vacancies caused by leave, short-term deputation, training etc. may be filled by ad hoc appointments if the posting of the person next in the panel will be administratively difficult or if he is not interested in such short-term promotion. Such appointment can be made also when the panel is exhausted or has expired and if there is no time to convene a Departmental Promotion Committee meeting and prepare a fresh panel. Ad hoc appointments made to fill in short-term vacancies should be only by promotion of departmental candidates and not by direct recruitment.

(b) In the case of regular vacancies due to death, retirement, resignation, promotion and deputation for period exceeding one year the vacancies should be filled by regular method and not by ad hoc appointment. However, if the panel is exhausted and delay is anticipated in preparing a fresh panel and if the exigencies of public interest required the filling of the vacancy immediately ad hoc appointment can be made without following the prescribed procedure.

50. But regarding current duty charge appointments there is a Circular dated December 14, 1973 of respondent 1 and it lays down the following norms for making current duty charge appointments for higher posts, viz :

(1) Current duty charge appointments should be made only in the order of seniority subject to the condition that the officer is otherwise fit with reference to service, character fit with reference to service, character rolls and clearance reports from the DOV/DOI;

(2) Current charge arrangements should not be made if otherwise suitable person senior to the incumbent is available except where the current charge arrangement is

for such a short period that it will not be in administrative interest to disturb the eligible person from this existing assignments;

(3) Current charge arrangement should cease forthwith when an officer becomes eligible for ad hoc/regular appointment to the post. Cases of ad hoc/regular appointments are to be initiated simultaneously with making current charge arrangements.

51. The Commissioner of respondent 1 has issued an Officer Order dated August 10, 1979 approving the ad hoc arrangement to the post of Assistant Engineers (Electrical) in the pay scale of Rs. 650-1200 plus the usual allowances in respect of five Assistant Engineers (Electrical) who were presently working on current duty charge from the dates of their taking over charge or entrustment of current duty charge as noted against their names for the period ending February 29, 1980 or until the posts are filled on a regular basis. Out of these five persons one each was on current duty charge from 1974 and 1976 and three were on current duty charge from 1978. Thus it is seen that on the electrical side respondent 1 has been keeping persons on current duty charge from 1974, 1976 and 1978 until February 29, 1980 though as per the Circular dated December 14, 1973 mentioned above cases for ad hoc/regular appointments should be initiated simultaneously while making current charge arrangements.

52. Mr. V. M. Tarkunde pointed out that in all 55 current charge appointments have been made from June 15, 1970 inclusive of two made on June 15, 1970, 22 made in 1978, 15 made in 1979, six made in 1980 and 10 made in 1981 and that they were all continuing even on July 22, 1981. It is not disputed that Junior Engineers working on current duty charge receive emoluments based only on their own pay scale as Junior Engineers and that on their ad hoc appointment as Assistant Engineers they receive emolument on the higher pay scale right from the date on which they were put on current duty charge.

53. All that Mr. U. R. Lalit did before us in connection with this question was to invite our attention to the aforesaid Circular dated December 14, 1973 and to a Memorandum presented to respondent 1 by the graduate Junior Engineer's Union where the following decision taken by the Establishment Board on August 17, 1974 is extracted, viz :

In the meeting of the Establishment Board held on August 17, 1974 it is explained and recommended by the M. E. (Municipal Engineer) that under the direct recruitment quota only qualified persons having degree in Engineering are eligible. It was, therefore, decided that selection be made out of the departmental Junior Engineers having degrees in Engineering after looking into their CRS and after assessing their merits by the Establishment Board. They will be appointed on current duty charge/ad hoc basis in the first instance and will be replaced as soon as the persons selected by UPSC are available.

54. Mr. U. R. Lalit did not dispute the facts mentioned by Mr. V. M. Tarkunde about the current duty charge appointments having been made from 1974 to 1981 of which two were made by the impugned order dated June 21, 1979 even after the select list of 37 persons prepared for appointment to eight posts of Assistant Engineers by direct recruitment was approved by the competent authority on May 2, 1979. Mr. U. R. Lalit did not dispute the factual statement made by Mr. Tarkunde that only Junior Engineers holding diploma have been put on current duty charge and appointed on ad hoc basis as Assistant Engineers and that not even a single degree-holder Junior Engineer has been chosen for such appointment notwithstanding the above decision taken by the

Establishment Board in the meeting held on August 17, 1974 to choose only suitable Junior Engineers with degree qualification for such appointments. Continuing current duty charge and ad hoc appointments for such a long period exceeding the period of one year mentioned in the said Memorandum dated December 30, 1976 of the Government of India is irregular though that Memorandum could not be stated to be automatically binding on respondent 1. What is totally wrong is that appointment of Junior Engineers on current duty charge as Assistant Engineers has been made by the impugned order dated June 21, 1979 even after the approval of the select list prepared for the appointment of eight Assistant Engineers without issuing orders for appointment even to eight out of those persons who are in the select list. In these circumstances we hold that the appointment of six diploma-holders Junior Engineers by the order dated April 10, 1978 (Annexure 1) and of two such Junior Engineers by the order dated June 21, 1979 (Annexure M) as Junior Engineers on current duty charge for periods which are proved to be too long is irregular and we quash the same.

55. Respondent 1 shall issue orders of appointment to eight degree-holders Junior Engineering out of those in the select list approved on May 2, 1979 within one month from this date and complete the appointment of Assistant Engineers for the remaining posts on regular basis in accordance with the quota fixed in the Recruitment Regulations within six months from this date until which time the current duty charge-holders and ad hoc appointees according to seniority will continue to man the remaining posts. Respondent 1 shall not make current duty charge/ad hoc appointments and promotions except strictly and truly in accordance with the instructions and Regulations referred to above and other instructions, if any, issued in that regard.

56. The only other prayer about which Mr. V. M. Tarkunde advanced argument is prayer (8) in Writ Petition No. 1194 of 1979 which is to revise the special pay or planning allowance of Rs. 40 per mensem to Rs. 75 per mensem from January 1, 1979 to graduate Junior Engineers working in the planning circle. The planning allowance has been revised in the CPWD from Rs. 40 to Rs. 75 per mensem in the case of graduate Junior Engineers w. e. f. January 1, 1979 pursuant to the letter No. 28017(17)-EWI dated January 1, 1979 of the Ministry of Works and Housing (Works Division) addressed to the Director-General of Works, CPWD (Annexure Z-A). The Commissioner of respondent 1 has stated in his letter dated August 20, 1979 (Annexure Z-B) that the Corporation has resolved on June 21, 1971 to sanction special pay to Junior Engineers working in the planning circle at Rs. 40 per mensem in the case of degree-holders and Rs. 25 per mensem in the case of diploma-holders w. e. f. April 1, 1971 and that he had recommended it may be increased from Rs. 40 to Rs. 75 per mensem as had been done by the CPWD w. e. f. January 1, 1979, observing that the Corporation generally follows the pattern prevailing in the CPWD and the original planning allowance itself was sanctioned following that pattern. In Writ Petition No. 1194 of 1979 it is alleged that arbitrary and illegal treatment is meted out to graduate Junior Engineers by respondent 1 as borne out by the fact that the planning allowance is not revised from the date from which the graduate junior Engineers are entitled to enhancement. In the counter-affidavit respondent 1 has stated that the issue regarding revision of the planning allowance to Junior Engineers is still under consideration. Mr. V. M. Tarkunde admitted before us that the revision has since been effected w. e. f. May 19, 1980 whereas the claim of the petitioners in Writ Petition No. 1194 of 1979 is that it should be revised w. e. f. January 1, 1979. The petitioners in Writ Petition No. 1194 of 1979 cannot be allowed to blow hot and cold. In regard to the policy of suspension of direct recruitment of Assistant Engineers for seven years w. e. f. April 1, 1972 their contention is that the policy of the CPWD cannot apply automatically to the Corporation until it is adopted by a resolution. Now in regard to the planning allowance they cannot be heard to say that the revision should be made automatically from January 1, 1979 following the CPWD pattern. Evidently, the Corporation has

resolved to grant the upward revision only from May 19, 1980. The petitioners are not entitled to claim the revision from January 1, 1979 itself and they have to be satisfied with the revision effected from May 19, 1980.

57. We shall next consider prayers (3) and (4) in Writ Petition No. 221 of 1979 which are to quash the seniority list dated September 2, 1978 (Annexure G in Writ Petition No. 1194 of 1979) and to direct respondent 1 to reckon the seniority of the petitioners with the length of their services. Mrs. Shyamla Pappu stated that the names of the petitioners in Writ Petition No. 221 of 1979 are not found in that seniority list and that the question of their seniority may be left open. This request was opposed by Mr. G. L. Sanghi who stated that the question itself does not arise for consideration in Writ petition No. 221 of 1979. The contention of respondent 1 in its counter-affidavit is that the names of Junior Engineers working as Assistant Engineers on current duty charge and ad hoc basis are not mentioned in that seniority list as they are only Junior Engineers who have not been regularly appointed as Assistant Engineers. This contention is correct and has to be upheld. The petitioners in Writ Petition No. 221 of 1979 are only Junior Engineers whereas the seniority list dated September 2, 1978 relates to Assistant Engineers. It is not the case of the petitioners in Writ Petition No. 221 of 1979 that their seniority as Junior Engineers has not been fixed properly. They are only Junior Engineers and consequently they cannot question the correctness of the seniority list dated September 2, 1978 relating to Assistant Engineers. It is not the case of the petitioners in Writ Petition No. 221 of 1979 that their seniority as Junior Engineer has not been fixed properly. They are only Junior Engineers and consequently they cannot question the correctness of the seniority list dated September 2, 1978 relating to Assistant Engineers. As they have not yet been regularly appointed or promoted as Assistant Engineers they cannot ave any grievance about their names not being mentioned in that seniority list. Therefore, there is no need to quash the seniority list dated September 2, 1978 or to give any direction to respondent 1 as prayed for by the petitioners in Writ Petition No. 221 of 1979 in regard to seniority.

58. Now we are left only with prayers (4), (6) and (7) in Writ Petition No. 1194 of 1979 about which rightly no argument was advanced by Mr. V. M. Tarkunde. Prayer (4) is to declare the petitioners graduate Engineers as a separate category amongst Junior Engineers and give them equal quota like the diploma-holders Junior Engineers out of the 50 per cent quota for promotion as Assistant Engineers. This cannot be done except by carving out two classes in the same category of Junior Engineers on the basis merely of their qualification which is not permissible in law though the creation of selection grade in the same category on the basis of merit and or seniority is well known and permissible. The Junior Engineers do the same kind of work and bear the same responsibilities whatever their qualification, whether they are degree-holders or diploma-holders. In this connection it will be useful to note what this court has observed in *S. B. Patwardhan v. State of Maharashtra*, (supra).

Though drawn from two different sources, the direct recruits and promotees constitute in the instant case a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in the respective assignments. And yet clause (iii) of Rule 8 provides that probationers recruited during any year shall in a bunch be treated as senior to the promotees confirmed in that year.... This formula gives to the direct recruit even the benefit of his one year's period of training and another year's period of probation for the purposes of seniority and denies to promotees the benefits of their long and valuable experience. If there was some intelligible ground for this differentiation bearing nexus with efficiency in public services, it might perhaps have been possible to sustain such a classification....

59. We think that the ratio of this observation applies to the facts of this case in regard to prayer (4) and that the petitioners in Writ Petition No. 1194 of 1979 are not entitled to be treated as a separate class of Junior Engineers.

60. Prayer (6) is to declare that the petitioners graduate Junior Engineers in the service of respondent 1 are entitled to be put on par with their counterpart in other government departments, and prayer (7) is to direct respondent 1 to grant revised pay scale of Rs. 550-900 to the petitioners in Writ Petition No. 1194 of 1979 and other graduate Junior Engineers as in the case of graduate Junior Engineers in Class III service in other government departments. This scale of Rs. 550-900 is of the selection grade of Junior Engineers. There are 13 selection grade posts in the Engineering Service (Civil) of respondent 1. We think that the petitioners are not entitled to these two reliefs also.

61. The result is that Writ Petition No. 221 of 1979 fails and is dismissed with costs of the contesting private respondents and Writ Petition No. 1194 of 1979 is allowed in part in regard to prayers (1), (2), (3) and (5) as indicated above and is otherwise dismissed. The contesting respondents in Writ Petition. No. 1194 of 1979 shall pay the petitioners costs. There will be one set of advocates fees in both the writ petitions.

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