

ANDHRA PRADESH HIGH COURT

Mohammed Abdul Rasheed Khan

Vs

State of Andhra Pradesh

(C Reddy, J.)

05.12.1967

ORDER

C Reddy, J.

1. It is now a matter of history that the erstwhile State of Hyderabad ceased to exist and a part of its territory, popularly known as Telangana was transferred to the State of Andhra to form the State of Andhra Pradesh from 1-11 56. Owing to reasons--social, economic, political and historical reasons, with which we are not now concerned it was thought desirable that the people of the Telangana region including the services, should have certain safeguards. Section 115 (5) and the proviso to Section 115 (7) and Section 117 of the State, lie-organization Act are three such provisions intended to protect the interests of the 'Telangana Service Personnel'. Section 115 (5) and (7) are as follows: --

"(5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to-

(a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representation made by such persons.

xx xx xx xx (7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chap. I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State: Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) or Sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

Section 117 runs:

"The Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this part and the State Government shall comply with such directions,"

2. Soon after the formation of the State of Andhra Pradesh a great many problems concerning the integration of services confronted the Government. One of the questions which the Central Government had to consider was which of the pre-existing conditions of service should be guaranteed to the Telangana personnel, and in respect of which of the conditions of service the State Government should have full freedom to make necessary changes. The Central Government after discussion with the representatives of the Governments of various States addressed a letter No. 5/6/57-SR(S) dated 27-3-1967, to the Chief Secretary, Government of Andhra Pradesh. This letter was later incorporated in a Memorandum of the Government of India (No. S.O. SRD I-I A.P.M 57) addressed to all State Governments. The substance of the two communications was that conditions of service relating to substantive pay of permanent employees, certain types of special pay, leave rules, pension, provident fund and clearness pay should be protected, but not conditions relating to travelling allowance, discipline, control, classification, appeal, conduct, probation and departmental promotion. The Central Government was apparently of the view that it would not be appropriate to provide for any protection in the matter of travelling allowance, discipline, control, classification, probation and departmental promotion. Therefore, the Central Government told the State Government that they might, if they so desire, change Service Rules regarding these matters. The Central Government thus gave its previous approval as contemplated by Section 115 (7) to any alteration of conditions of service in respect of these matters. This is the view taken by the Supreme Court in *Raghavendrarao v. Deputy Commr. (South Kanara)*, . The contrary view taken by the Andhra Pradesh High Court in W.P. Nos. 853/1962 and 753/1963 must be deemed to have been overruled by the Supreme Court to the extent that it is in conflict with it. The fact that the Government of India gave its previous approval to the State Government to alter the conditions of service relating to certain matters did not, however, mean that the State Government could not give protection to the Telangana employees in respect of these matters if the State Government thought fit to do so. The State Government had full freedom in the matter of extending protection to the Telangana personnel even in respect of such matters. This the State Government proceeded to do by issuing G.O. Ms. No. 497, dated 7-4-1960 guaranteeing that the Telangana employees would be governed by the Hyderabad Cadre and Recruitment Rules for promotion up to one stage. G.O. Ms No. 497 reads as follows : "The Government have examined the question of eligibility for promotion to next higher grade of employees of erstwhile Government of Hyderabad under the Statutory Hyderabad Cadre and the Recruitment Rules, in consultation with the officer deputed by the Government of India to advise the State Government on the problems relating to the integration

of services, etc., and direct that all employees of the erstwhile Government of Hyderabad will be governed by the Hyderabad Cadre and Recruitment Rules for promotion after 1-11-1956. Subsequent promotions after one stage of promotion will, however, be governed by the rules for the respective State and Subordinate Services in Andhra or the rules framed by the Government of Andhra Pradesh.

2. The above orders supersede to the extent necessary the orders contained in G.O. Ms. No. 151, General Administration (Services-A) dated 29-1-1957 (vide the orders on point (3) in para 1 of the G.O.). (By order and in the name of the Governor of Andhra Pradesh), BHARAT CHAND KHANNA, Deputy Secretary to Government.

3. The principle of this Government Order was reiterated in G.O. Ms. No. 319 dated 16-3-1961 and other subsequent G.O.Ms. culminating in G.O. Ms. No. 1374 dated 21-7-1965 by which Sub-rule (h) was added to Rule 42 of the Andhra Pradesh State and Subordinate Service Rules, Part II, General Rules. Rule 42 (h) (1) reads as follows:--

"(h) (1) Nothing in these rules or in the sub-rules shall disqualify or shall be deemed to have ever disqualified an employee of the erstwhile Government of Hyderabad who was allotted to the State of Andhra Pradesh under Section 115 of the States Reorganisation Act, 1956, for promotion or recruitment by transfer on or after the 1st November 1956, to a post one stage above that held by him prior to the said date, if in the opinion of the appointing authority such person would have been qualified for promotion or for appointment under the rules applicable thereto, had recruitment to such post been regulated by the last-mentioned rules." It is thus clear that the Government of Andhra Pradesh has guaranteed to the employees of the erstwhile Hyderabad Government that their promotions up to one stage would be regulated by the Hyderabad Cadre and Recruitment Rules and not by the rules in force in the Andhra State.

4. On 1-11-1956, the petitioners in all the writ petitions, all Telangana employees, were working as Tahsildars. The petitioner in W.P. No. 2082 of 1966 was temporarily promoted as a Deputy Collector on 8-12-1959 and was continued as such. By 1965 he was drawing the maximum pay of a Deputy Collector. On 19-8-1966 he was also placed in additional charge of the post of Special Collector. The petitioners in W.P. Nos. 2067 of 1966, 60 of 1967 and 244 of 1967 were promoted temporarily as Deputy Collectors on 1-10-1957, 12-13-1960 and 30-3-1960, respectively. Several other Tahsildars belonging to both the Andhra and Telangana Regions were similarly promoted temporarily. All promotions from 1-11-1956 appear to have been made on a temporary basis as the Government had not evolved any final formula for adjusting the respective claims of Andhra and Telangana personnel for promotion. Soon the problem of regularising the temporary promotions was also engaging the attention of the State Government. After consultation with the Government of India, the State Government ultimately decided to

adopt one of the suggestions made by the Government of India and issued G.O, Ms. No. 2084 dated 30-11-1961 This G.O has been the subject-matter of great controversy and debate before me and I am therefore extracting it in full:--

"GOVERNMENT Of ANDHRA PRADKSH Abstract.--Public Services -- State Services -- Andhra Pradesh Civil Service (Executive Branch) Recruitment by Transfer from among Tahsildars of both the regions and the Superintendents hi the offices of the Board of Revenue and Secretariat --Principles -- Orders issued.

REVENUE DEPARTMENT G.O. Ms. No. 20 dated 30th Nov. 1961. Read the following :--

- (1) From the Board of Revenue (D) 1969 / 60, dated 24-5-1960.
- (2) From the Board of Revenue (D) 1969/60 dated 24-6-1960.
- (3) From the Board of Revenue (D) 1969/60 dated 1-10-1960.
- (4) From the Government of India, Ministry of Home Affairs, Lr. No. 9/15/61-SR (S) dated 23-8-1961.

ORDER

1. The question relating to the adjustment of the respective claims of Tahsildars in Andhra and Telangana regions for promotion as Deputy Collectors has been engaging the attention of the Government since a long time. The various proposals mooted in this context were examined in consultation with the Government of India. The Government of India made the three following alternative suggestions and advised that the State Government may adopt any one of them and in particular recommend the second suggestion:--

- (i) A gradation list on the basis of continuous officiation in the post of Tahsildar in both the regions be prepared giving some weightage for the Andhra Tahsildars tot the period of service put in by them as Deputy Tahsildars;
- (ii) Separate lists of directly recruited Tahsildars and promotes Tahsildars be prepared providing for promotion in a ratio to be decided by the State Government for the two categories and
- (iii) As the posts of all Tahsildars are district posts though recruitment for these posts was at State level in Telanguna no gradation list be prepared, but only the Collectors could be asked to prepare a panel of names from among the Tahsildars whom they consider eligible for promotion as Deputy Collectors.

The Government accepted the specific recommendation of the Government of India in suggestion (ii) above and as regards the ratio of representation it was decided that promotion

between the two categories of directly recruited Tahsildars and promotee Tahsildars should correspond roughly every year to the actual number of the two categories. The Board of Revenue was accordingly requested to submit proposals for the preparation of a combined list of Tahsildars fit for promotion as Deputy Collectors following the above ratio of selection between the directly recruited Tahsildars and promotee-Tahsildars, to fill up the vacancies of Deputy Collectors that arose after 1-11-1956 on a regular basis.

2. The Board of Revenue in its reference dated 24-5-1960 has stated that if the regular list for 1956 for the Andhra region is treated as temporary and cases of persons already included are to be considered once again in the combined list from 1957-59, it would entail hardship to the persons regularly included in it, as many of them may not get selection at all, due to their lesser service in the category of Tahsildars, while some of them may completely get eliminated on account of their being within the statutory age-limit for the 1956 list only. It has further pointed out that they should not be made to suffer for no faults of theirs and for the delay in finalising the list and the correct criteria should be the year of the list in which they are selected and not the date of their actual appointment. The Board has, therefore, suggested that the appointment of those selected in the 1956 list may be treated as regular and that their services may be regularised from the dates of their first appointment as in the case of the five Telangana Tahsildars included in the list for 1956. The Board has also stated that the estimate of vacancies for the years 1957 to 1959 is 62 and, according to the ratio of 2 promotes Tahsildars to one directly recruited Tahsildar, the number of Telangana Tahsildars (both directly recruited and promotee Tahsildars) who will have to be promoted will be 55, and the number of Andhra Tahsildars who will have to be promoted will be.The Board has further pointed that if no such ratio is fixed, the number of candidates to be promoted will be 54 from Telangana area and 8 from Andhra area. The Board has expressed that if selections are to be made, on the above basis, the Andhra personnel will be hit hard and their chances for promotion will be restricted. It has therefore recommended that the number of Telangana Tahsildars to be included in the list in a year should not exceed 50 per cent of the estimated number of vacancies in that year.

3. The issues raised by the Board of Revenue were again examined carefully in great detail in consultation with the Government of India. In supersession of all the earlier decisions in this regard, the Government have decided-

(i) that a common gradation list of Andhra Tahsildars as on 1-11-1956, with reference to the dates of regularisation of their services and commencement of probation as Tahsildars, be prepared in the first instance and thereafter a common gradation list of Tahsildars of both the regions as on 1-11-1956 on the basis of the common gradation list of Andhra Tahsildars and the existing list of Telangana Tahsildars be prepared. The common gradation list so prepared should be circulated to the officers concerned, inviting their objections, if any.

(ii) That the services in the cadre of Deputy Collector of the Tahsildars already promoted temporarily during the period from 1-11-1956 to 31-12-1960 on the basis of the select lists of both the regions he regularised without their seniority position in the common gradation list, on selection basis (merit-cum-seniority) in consultation with the Andhra Pradesh Public Service Commission.

(iii) That the inter se seniority of the candidates mentioned in item (ii) above be determined with reference to the dates of their appointment as Deputy Collectors and continuous officiation in that cadre.

(iv) That the common gradation list referred to in item (i) above, excluding the candidates mentioned in item (ii) above, be followed for future appointments as Deputy Collectors.

4. Incidentally, the Government have also examined the basis on which representation should be given in the Deputy Collectors' cadre to the Superintendents in the offices of the Board of Revenue and Secretariat, who are eligible for appointment as Deputy Collectors. They have decided that 10 per cent of the total number of vacancies be reserved for appointment by transfer of Superintendents in the Board of Revenue and the Secretariat and that out of each cycle of ten vacancies of Deputy Collectors, the last vacancy should be filled up by a Superintendent in the offices of the Board of Revenue or Secretariat. Necessary steps are being taken to make a suitable provision in the integrated rules for the Andhra Pradesh Civil Service (Executive Branch).

5. The Board of Revenue is, therefore, requested to take necessary action immediately to draw up a common gradation list of the Tahsildars in the State and submit the provisional gradation list of Tahsildars to the Government for approval.

(By order and in the name of the

Governor of Andhra Pradesh),

C. SESHAGIRI RAO

Secretary to Government."

5. In pursuance of G.O.Ms. No. 2084 the State Government prepared a common gradation list of Tahsildars in the State of Andhra Pradesh as on 1-11-1956 and the Andhra Pradesh Public Service Commission was consulted in the matter of regularising the services of those who had been temporarily promoted as Deputy Collectors. Out of 69 names submitted to the Public Service Commission, originally as many as 35 were rejected by the Commission as not suitable

for regular appointment as Deputy Collectors. However, after further discussions with the Government the names of all except the present four petitioners were approved. The Government after fully examining the views of the Public Service Commission finally issued orders by G.O. Ms. No. 1082 dated 16-9-1966 regularising services of all except eight persons including the four petitioners and directing that their names should be included in the approved list of Deputy Collectors for the years mentioned against their names in the Annexure to the Government Order. The four petitioners and the other four persons were, however, found unsuitable for inclusion in the approved panel of Deputy Collectors and they were, therefore, reverted as Tahsildars. The petitioners have invoiced the jurisdiction of this Court under Article 226 to quash the order of the Government refusing to include their names in the approved panel of Deputy Collectors and for a direction that their names should be included in that panel.

6. Mr. Jaleel Ahmed, who addressed the principal arguments on behalf of the petitioners claims that the petitioners are governed entirely by the Hyderabad Cadre and Recruitment Rules, that those rules do not contemplate promotion on a temporary basis, that, therefore, the petitioners must be deemed to have been promoted regularly in accordance with the Hyderabad Rules and that, therefore, they cannot be reverted. He also argues that they were in fact promoted on a selection basis and not on temporary basis. He emphasises the use of the words "select lists" in G.O. Ms. No. 2084. He further argues that the Hyderabad Rules do not provide for consultation with the Public Service Commission and that the Government's action in consulting the Service Commission in the matter of their promotions is illegal. According to Mr. Jaleel Ahmed, the provisions of Article 311 of the Constitution as well as Section 115 (7) of the States Reorganisation Act have been contravened. The learned Advocate-General appearing for the Government argues that the promotions were temporary, that there was never any process of selection at the time when the petitioners were temporarily promoted, that the Public Service Commission was consulted as directed by the Central Government and that the action of the Government cannot be challenged on any ground.

7. The first and foremost question, therefore, is whether the petitioners were promoted 'temporarily' so as not to give them any right to the posts. In all the orders issued to the petitioners promoting them it is mentioned that they are being promoted 'temporarily'. The learned advocate-General has placed before me G.O. Ms. No. 1146 dated 12-7-1957 which sanctioned these promotions. Paragraph 2 of this G.O. reads as follows:--

"2. Pending the preparation of a regular list of Deputy Collectors common to both Andhra and Telangana areas, the Government accept the recommendations of the Board of Revenue and approve the names of the following Tahsildars of Telangana for promotion as Deputy Collectors on a temporary basis only subject to the understanding that their appointments will not serve to prejudice the claims of others who have not been so appointed, for regular selection:--

- 1) Sri Syed Abbas Husain Naqvi.
- 2) Sri Syed Mohd. Askari Baqri.
- 3) Sri Mohd. Hadi Baqri.
- (4) Sri Mohd. Mohiuddin Khan.
- (5) Sri Gopal Kishen Rao.
- (6) Sri Tej Navayana.
- (7) Sri Rahimuddin Kamal.
- (8) Sri Mahmud Ali Khan.
- (9) Sri S. R. Naitdu.
- (10) Sri Md. Mahbuh Ali.
- (11) Sri Abdul Waheed.
- (12) G. Hanumantha Reddy.
- (13) Sri Mir Liaqut Ali Khan.
- (14) Sri K. Narasimha Rao.
- (15) Sri Abdul Wahab."

8. Nothing can be clearer than this Government Order that the promotions were temporary. Syed Abbas Hussain Naqui, No. 1 in this list, is the petitioner in W.P. No 2067 of 1967. Government Notifications Nos. 123 dated 8-12-1959, 28 dated 30-3-1960 and 125 dated 12-12-1960 by which the other petitioners were promoted also expressly mention that the promotions were temporary. From the beginning and at every turn, whenever a promotion was made and whenever there was an occasion, the Government was always reiterating the position that all promotions made after 1-11-1956 were temporary. Nor is there any room for thinking that the persons promoted thought otherwise. Until after the impugned Government Order was passed, there was never any question in any one's mind that the promotions were not temporary". That the Government intended the promotions to be temporary and that the persons promoted also understood the promotions to be temporary cannot be seriously doubted whatever claims may be made now.

9. The petitioners urge that the Hyderabad Cadre and Recruitment Rules do not contemplate 'temporary' promotion and, therefore, even if the Government intended to promote them

temporarily, they must be deemed to have been promoted regularly. It is quite true that Hyderabad Service Rules and Regulations do not contain any express provisions for appointing or promoting persons temporarily in the sense in which Rules 10 (a) and 37 make such provision in the Andhra State and Subordinate Service Rules. But that can hardly conclude the matter. In my opinion, a power to appoint regularly or temporarily or for a period, definite or indefinite, is implicit in every power to appoint and has not to be expressly and separately conferred. If power to appoint is given, the appointing authority need not be vested with power to appoint temporarily because such a power is necessarily implied; a power to appoint temporarily is inherent in a power to appoint. That is why the Hyderabad Rules do not make any express provision for such appointments and promotions, though, as I shall presently point out, they do contemplate 'temporary appointments and promotions. Though Rules 10 (a) and 37 of the Andhra Rules do appear to make express provision, if closely examined. It can be seen that they are meant to regulate the power to appoint and promote 'temporarily' rather than to confer such power.

In exercise of the powers conferred under Article 309 of the Constitution, the Government of Hyderabad had made certain rules called 'Seniority Rules and Probationary Service Rules'. Rule 1 is as follows:--

"1. Subject to the provisions hereinafter contained, the seniority of a person in a service of a class of post shall be determined by the date of his first appointment in the service of the class of post provided his service therein is continuous and the appointment was made after due consideration of the claims, if any, of all persons senior to him both in the temporary or the permanent establishment and was not made on a provisional basis; provided further that for the purpose of promotion, from a particular cadre or service or class of posts -

(a) a confirmed person will ordinarily be given preference to a person appointed on sub pro tem basis and a person appointed on sub pro tem basis will ordinarily be given preference to a person officiating in the same cadre of service or class of post; and

(b) a person stopped at an efficiency bar or a qualification bar shall be considered as a junior to person who being in the same cadre or service or class of post have crossed the bar before that person." I have underlined (here into) the words 'provisional and 'officiating' and in my opinion these words indicate that the Hyderabad Service Rules do recognise appointments and promotions of the nature contemplated by Rules 10 (a) and 37 of the Andhra Rules, whether they are designated as 'temporary' or not. It is presumably with reference to this rule that the Government dealing with regularisation of services, stated in G.O. Ms No. 906 dated 21-7-1961: "Though the, word "regular' is not found in any of the Hyderabad Cadres Recruitment Rules, the conception of a 'regular' appointment is there, and a difference is made between temporary

appointments and appointments made on merit after considering claims of all eligible candidates. Stop-gap and emergency promotions should, therefore, be specifically described as 'temporary' and other promotions should for clarity be described as on 'regular' basis."

10. There has been some confusion because the word 'temporary' used in the Andhra State and Subordinate Service Rules and used by the Andhra Pradesh Government in its various orders does not have the same meaning which is given to it in the Hyderabad Civil Service Regulations relating to Salary, Leave, Pension and Travelling Allowances. Perhaps the use of the word 'provisional' might have avoided the confusion.

11. Rule 78 of the Hyderabad Civil Service Regulations relating to Salary, Leave, Pension and Travelling Allowances is as follows; --

"78. 'A temporary appointment' is an appointment carrying a definite rate of pay auctioned for a definite period or for a specified duty on completion of which the incumbent thereof will be discharged unless previous sanction of the competent authority is obtained in time for an extension in the period of the appointment."

12. It is interesting to note that Rule 1 of the Regulations expressly states:

"1. These Regulations are intended to define the conditions under which salaries, leave, pension and other allowances are earned by service in the civil departments and in what manner they are calculated. They do not deal otherwise than indirectly and incidentally with matters relating to recruitment, promotion, official duties, discipline, or the like."

Rule 9 (30) of the Fundamental Rules of the Government of Andhra Pradesh defines a 'temporary post' thus:

"Temporary post means a post carrying a definite rate of pay sanctioned for a limited time."

It will be noticed that the definition has nothing to do with the temporary appointments and promotions contemplated by Rules 10 (a) and 37 of the Andhra Pradesh State and Subordinate Service Rules. It is a special definition for the purposes of the Fundamental Rules, that is, for calculating the salary, leave, etc., of the servant concerned. It is equally clear that the definition of 'temporary appointment' in Rule 78 of the Hyderabad Regulations, is a special definition corresponding to the definition of 'temporary post' in Rule 9(30) of the Andhra Fundamental Rules and is concerned only with the salary leave, etc., of a particular type of post. The definition has nothing to do with and does not in any manner circumscribe the right of the Government to appoint or promote its servants provisionally, that is to say 'temporarily', as understood in the Andhra Rules. In fact, Rule 1 of the Regulations extracted by me earlier expressly states that the Regulations do not deal with matters relating to recruitment and promotion except indirectly and

incidentally. It is, not possible to accept the argument of the petitioners that except as mentioned in Rule 78, a person could not be appointed or promoted temporarily under the Hyderabad Service Rules. The petitioners have relied upon a judgment of My Lord the Chief Justice and Ananta Narayana Aiyar, J., in *State of Andhra Pradesh v. Mohd. Kutubddin*, in that case the plaintiff had been appointed 'sub pro tempore' to the post of a District Collector and the question arose whether such appointment gave him any right to the post. On a construction of the relevant rules it was held that it did. The question whether provisional appointments akin to the 'temporary' appointments and promotion under the Andhra Service Rules could be made did not directly arise for consideration. The observations of the learned Chief Justice that 'there are no other rules in the Hyderabad Civil Service Regulations similar to those in the Andhra Service Rules for appointment of persons temporarily in permanent posts' are undoubtedly correct. The further question whether notwithstanding the lack of any express provision the Government had any inherent right to make temporary appointments was neither raised nor considered,

13. Assuming that the petitioners are right in their submission that a person could not be appointed or promoted temporarily under the Hyderabad Service Rules, does it necessarily follow that a person so promoted must be deemed to have been promoted regularly? I do not see how an avowedly 'temporary' promotion can be deemed to be a 'regular' promotion merely because there cannot be a temporary promotion under the rules or because the conditions do not exist. They may be quite good grounds for holding the temporary promotion illegal but that is a long way from being compelled to treat a 'temporary' promotion as a regular promotion. Of course, if it is established that the promotion was made in the manner prescribed for regular promotions and that the conditions necessary for making regular promotions existed, it may be possible to hold that the promotion was regular, though labelled as 'temporary'. This, at once, takes us to the next question, whether the promotions of the petitioners could be said to have been made regularly.

14. The Cadre and Recruitment Rules of the Hyderabad Administrative Service prescribe that all Class I (Junior Scale) posts, which include the posts of Deputy Collectors, have to be filled only by promotion by selection from Class II officers'. Rule 1 of the Hyderabad Seniority Rules, extracted by me earlier, emphasises the position that a regular promotion can only be made by 'selection'. Promotion by 'selection' means promotion on grounds of merit and ability and not merely on the basis of 'seniority'. The learned Advocate General, for the Government, asserts that the promotion of the petitioners was not on a 'selection' basis and that no process of selection was involved in the promotion of the petitioners. On the other hand, Mr. Jaleel Ahmed, for the petitioners, contends that lists of Tahsildars elected for promotion were being prepared every year and that his clients were promoted because they had been 'selected' for promotion and included in those lists. He bases his argument mainly on the words "select lists" found in G.O. Ms. No. 2084

dated 30-11-1961 and the words 'approved lists' found in G.O. Ms. No. 1082 dated 16-9-1966 (impugned G.O.). The learned Advocate-General explains the reference to 'approved lists in G.O. Ms. No. 1082 by saying that the reference is not to 'approved lists' which were already in existence because no such lists were in existence, but to 'approved lists' which had to be prepared in pursuance of G.O. Ms. No. 1082. The explanation appears to be correct since, if these persons directed to be included in the approved lists by this G.O. were already included in the 'approved lists' for those years as they must be if the contention of the petitioners is correct. There can be no question of including them again in the 'approved list. The direction would be meaningless. I do not think that any serious argument can be built upon the words 'approved lists' found in G.O. 1082. With regard to the 'select lists' mentioned in G.O. 2084, an additional affidavit has been filed on behalf of the Government that the 'select lists' were not any lists prepared after selection but merely two lists of Tahsildars temporarily promoted as Deputy Collectors, one list of Andhra Tahsildars and the other of Telangana Tahsildars. It is pointed out that the word 'select' is used without any significance. It has been used as a convenient abbreviation, the words 'select lists' being meant to convey lists or Tahsildars temporarily promoted as Deputy Collectors and awaiting regularisation. Convenient or not, the word is certainly inappropriate and misleading. However, in view of the additional affidavit filed on behalf of the Government, I am satisfied that the 'select lists mentioned in G.O. 2084 do not refer to any lists based on 'selection'. I am also satisfied that when the petitioners were promoted, they were not promoted on any 'selection' basis.

15. The last point strenuously urged for the petitioners is that the Government acted illegally in consulting the Public Service Commission. It is true that under the Hyderabad Rules it is not necessary to consult the Public Service Commission in the matter of promoting Tahsildars as Deputy Collectors. But it does not follow that the Government is prohibited from consulting the Commission or that it acts illegally if it consults the Commission. Under Article 320 of the Constitution of India, it shall be the duty of the Public Service Commission to advise on any other matter which the Governor of the State may refer to them. G.O. Ms. No. 2084 which prescribed consultation with the Public Service Commission was passed on the advice and with the concurrence of the Government of India. The direction nor the advice of the Government of India had to be obeyed by the State Government by reason of Section 11 of the States Reorganisation Act. I am also unable to understand how a grievance can be made of the fact that the Government consulted the Commission though one can understand a grievance that the Commission had not been consulted when it should have been. Further, it is not as if the Government surrendered its discretion and blindly accepted the advice of the Commission. After obtaining the views of the Public Service Commission, the Government examined the matter carefully, so it is stated in the G.O. itself and in the counter-affidavit, and then only passed orders. I do not think that the orders of the Government can be challenged on the ground that it

consulted the Public Service Commission when it need not have.

16. In W.P. No. 2067 an additional point has been raised that the Service Commission had been previously consulted in his case and they had advised the Government that he may be considered for promotion if he earned three continuous good annual reports' from 1954 onwards. The petitioner in W.P. No. 2067 had been promoted by the Hyderabad Government and was reverted for consistent bad record of service. The advice of the Service Commission was that he should be debarred from promotion unless he earned three continuous good annual reports. This advice of the Commission can hardly be a point in his favour or clothe him with any right; nor can it prevent the Government from consulting the Commission once more.

17. In the light of my foregoing discussion, no question of any contravention of Article 311 of the Constitution or Section 115 (7) of the States Reorganisation Act arises. The writ petitions are, therefore, dismissed with costs. Advocate's fees Rs. 100 in each case.

Petitions dismissed

