

OFFICE OF THE ENGINEER-IN-CHIEF(R&B)
ANDHRA PRADESH : : HYDERABAD.

Circular Memo No.3939/Ser-I(3)/2015, dated 28-12-2015.

Sub:- Establishment (R&B) Department – Provisional integrated seniority list of Deputy Executive Engineer(R&B) from 01-01-1988 to the panel year 2001-2002 – Objections / modifications called for – Regarding.

- Ref:-**
1. Proceedings No.960/Ser-I(3)/2011, dated 04-08-2011.
 2. GO Ms No.314 T(R&B) Dept, dated 29-11-1994.
 3. Judgment of Hon'ble High Court in WP No.5834 of 1998
Dated 23-09-1999.
 4. Judgment of Hon'ble High Court in WP No.9077 of 2001
Dated 24-08-2001.
 5. GO Ms No.37 T(R&B)(Ser-II) Dept, dated 23-03-2002.
 6. GO Ms No.150 T(R&B)(Ser-II) Dept, dated 31-08-2002.
 7. GO Ms No.129 T(R&B)(Ser-II) Dept, dated 17-09-2004.
 8. Hon'ble APAT, Hyderabad judgment dated 11-12-2013 in
OA Nos.1614/2012, 2832/2012, 2797/2012, 5917/2012 and
OA No.7117/2012, OA No.4056 of 2012.
 9. Orders of Hon'ble APAT in OA No.3099 of 2012
dated 13-06-2014 and 11-07-2014.
 - 10.This office Circular Memo No.15552/Ser-III(1)/2014, dated
07-11-2014.
 - 11.GO Ms No.320 Fin(SMPC) Dept, dated 24-10-2005.
 - 12.Judgment of Hon'ble High Court in WP No.21316 of 2004
and WP No.1438 of 2005 dated 01-12-2014 and WPMP
No.49168 of 2014 in WP No.1438 of 2005 dated 29-12-14.
 - 13.Orders of Hon'ble High Court in CA No.1208 of 2015
in WP No.1438 of 2005 dated 11-08-2015.
 - 14.Circular Memo no.3939/Ser-I(3)/2015, dated 05-10-2015.

@ @ @

As per the orders of Hon'ble APAT vide reference 8th cited, the panels of Deputy Executive Engineers were revised with effect from 01-01-1988 onwards and accordingly, a zone-wise revised panels of Deputy Executive Engineers of Roads & Buildings Department with effect from 01-01-1988 to panel year 2001-02 were communicated vide reference 14th cited.

Further, the process of integration of all the zonal seniority lists of Deputy Executive Engineers for the period from 01-01-1988 to panel year 2001-02 is now commenced based on the following postulations and rule positions issued from time to time:

Direct Recruit 1993 Batch

It is informed that the Deputy Executive Engineer post in Roads & Buildings Department (the then Assistant Engineer) was incorporated under “Specified Gazetted Category” (as interpreted in Para-2(j)) against SI No.43 of Third Schedule enclosed to the GO Ms No.674 GA(SPF) Dept, dated 20-10-1975 which was renowned as “Presidential Order-1975” or “The AP Public Employment (Organization of local cadres and regulation of direct recruitment Order’1975”. Further, in Para-3(4) of above GO, it was formulated as “The posts belonging to each **specified gazetted category** in each Department in each Zone shall be organized into a *separate cadre*”. As such, as far as (R&B) Department is concerned, it is evident that inclusion of “Deputy Executive Engineer” as specified gazetted category declares it as a separate cadre.

Further, the Para-2 of GO Ms No.730 GA(Ser-A) Dept, dated 01-11-1975 states that “The Presidential Order requires that certain categories of posts shall be organised into appropriate local cadres. These include all non-Gazetted categories of posts **other than those exempted by virtue of the notification issued under para-3 (8) of the Order - vide Government of India, Ministry of Home Affairs, GSR 529 (E), dated 18-10-1975]** and **the posts belonging to the specified gazetted categories**”.

Further, the Para-2(g) of above GO read with GO Ms No.635 GA(SPF.A) Dept, dated 30-11-1993 elucidates as “Posts belonging to specified gazetted categories other than Tahsildars, Junior Engineers and Civil Assistant Surgeons — **Recruitment may be made under the normal rules. There is no preference for local candidates in case of such posts. The persons recruited may be eventually adjusted against vacancies in different local cadres**”.

In this connection, It is informed that initially, in its judgment dated 24-02-1988 in civil appeal filed by Sri K.Siva Reddy & Others, the Hon’ble Supreme Court of India has directed that as on 31-12-1982, the exact substantive vacancies in the category of Deputy Executive Engineer(R&B) must be ascertained and on that basis, **the shortfall of 37½% of substantive vacancies were to be filled by direct recruitment within the limit of 37½% of the total substantive vacancies upto 31-12-1987** within four months from the date of judgment. Accordingly, the Government vide letter No.2082/S.II(1)/88-2, dated 22-10-1988 have furnished 60 vacancies for direct recruitment to the post of DEE and the same was published by the APPSC in Advertisement No.6/88 dated 01-12-1988.

The written examination for the above recruitment was conducted in between 18-02-1989 and 24-02-1989 and interviews were conducted from 31-10-1989 to 06-11-1989. The results of selected register numbers were published in News Paper vide “Telugu Samacharam/41/Advt1/90, Dt. __ 90, which clearly enunciates that the selection of candidates was made based on cut-off marks stipulated to either candidates pertaining to open competition or for each

appointment roster category. Further in the statement of the vacancy position of DEE posts in (R&B) Dept communicated to each selected candidate during interview for submitting his/her zonal preference, it was enunciated that “There is no reservation to local candidates. As far as possible, candidates will be allotted to their own zone. If not, they will be allotted to the Zones preferred by them, subject to availability of vacancies”. As such, it is accomplished that the selection criteria adopted by the APPSC was State-wide and all the selected DEEs were eventually allotted to their preferred zones.

Later, the list of direct DEEs selected by the APPSC were communicated to the Government vide letter No.4155/SA.2/88, dated 28-04-1993. Subsequently, the Government vide GO Ms No.113 T(R&B)(Ser-II.1) Dept, dated 08-06-1993 have issued orders in appointing all the selected candidates as Deputy Executive Engineers with a direction to report to duty within 45 days (2nd para).

As per Para-97 of Judgment of Hon’ble APAT, Hyderabad dated 11-12-2013, “If a lower rank holder reported to duty earlier than the better ranking candidate, the date of joining of the lower rank candidate should not be taken into consideration for the purpose of fixing the seniority” and **the date of appointment should be the criteria for fixing the seniority, but not the date of joining.** Further, it is a fact that for the entire direct recruit DEEs, the date of appointment is 08-06-1993.

Several pronouncements of Honourable Courts:

- a) At Para-97(7) of its judgment dated 11-12-2013, it was observed by Hon’ble APAT in OA No.1614/2012 as “better ranking persons should not be put to disadvantage by placing the lower ranking persons above them”.
- b) It is also informed that the main question considered by the hon’ble APAT in OA No.7490/1999 filed by Sri P.C.Ramesh Kumar was “**Whether the applicant who is more meritorious than the party respondent (both belonging to same reserved category i.e., BC-B) is entitled to his placement over and above the party respondent based on the marks obtained in the selection and higher in the merit**”. In its judgment dated 05-08-2005, hon’ble APAT has pronounced as “This rule (36(b) of AP State and Subordinate Service Rules) is crystal clear in as much as it states that the inter-se-seniority as determined in the merit list prepared by the selection authority cannot be altered. It does not contain any exception. Proviso Rule33(b), if read with the context of the judgment of the Supreme Court in case of ANURAG PATEL Vs UP PSC AND OTHERS reported in VII (2004) SLT 34 makes it further clear **that meritorious candidate cannot be pushed down below the less meritorious person, even though the less meritorious person is appointed against the roster point. The adhoc rule issued in GO Ms No.607 also in the sum and substance states what has been held by the supreme court in the above judgment.**”

- c) The opinion given by the Additional Advocate General vide No.24 of 2012 dated 16-06-2012 in regard to fixation of inter-se-seniority of Assistant Audit Officers based on the request of the Director, State Audit, Hyderabad dated 02-06-12 as “the Department is required to prepare the seniority list of Assistant Audit Officers who are direct recruits, strictly based on the merit list communicated by the Public Service Commission without tampering or tinkering with the same” in OA No.5174 of 2013 further articulates that the inter-se-seniority list of direct recruit DEEs has to be fixed based on the merit obtained by them.
- d) Further the following points pronounced in common judgment given by the hon’ble APAT in OA No.8473 of 2011 with VMA No.1652/2012 & CA No.1936/2013 and OA No.6202/2013 on 23-04-2015 and judgment of hon’ble High Court of AP in WP No.13052 of 2010 & Batch dated 24-01-2014 further makes it copiously clear that the marks/merit obtained by the candidates shall only be the criterion for fixing the inter-se-seniority of direct recruits.
- a. As observed in the preceding paragraphs, the power of the appointing authority in this behalf virtually stands taken away, or would totally guided by the proviso. In other words, the appointing authority has virtually no role to play, in the matter of fixation of seniority, once the appointments are made on the basis of the recommendation of a selection committee or selecting agency.
 - b. Seniority is, thus, not to be fixed in terms of roster points. If that is done, the rule of affirmative action would be extended, which would strictly not be in consonance of the Constitution schemes. We are of the opinion that the decision in PS Ghalaut (1995) 5 SCC 625 does not lay down a good law.
 - c. In the case before us also, there is no rule, which mandates that the seniority must be determined on the basis of the points in the roster of reservation
 - d. The purpose of reservation stands served, once it is ensured that adequate representation is provided for. Beyond that, the rule of reservation has no purpose to serve.
 - e. The absurdities of this nature of various degrees would ensue, if the roster is to be treated as the basis for fixation of seniority.

As far as rules prescribed in general rules are concerned, it is informed that an ad-hoc rule was issued by the Government vide GO Ms No.607 GAD(Ser-A) Dept, dated 06-11-1992 based on the Supreme Court judgments in Sri K.Siva Reddy Vs State of AP and Sri M.Gangadharam Vs State of AP that “the quota/rota, if any prescribed in the said special rules / adhoc rules shall apply only for determining the

number of vacancies earmarked for recruitment by promotion and appointment by transfer and for direct recruitment and appointment by transfer and **not for determining their inter-se-seniority. Their inter-se-seniority shall be determined in accordance with general rule-33(a) and (b) of State and Subordinate Service Rules**".

When the above ad-hoc rule was challenged before APAT in OA No.22/1993, OA No.7642/1992 & Batch cases and based on the subsequent developments which led this issue upto hon'ble Supreme Court of India, hon'ble APAT have issued final orders on 01-12-1998 and upheld the validity of GO Ms No.607 dated 06-11-1992. Taking the assertions of Hon'ble APAT into consideration, the Government vide Circular Memo No.16/Ser-A/93-99, dated 21-04-1999, have issued clarificatory orders to GO Ms No.607 dated 6-11-92 and relevant issues are as follows:

- a) At Para-14(d) it was ordered as "the inter-se-seniority of direct recruits shall be as per the ranking assigned to them by the recruiting agency irrespective of their date of joining", provided they all joined within the time allowed for them to join....
- b) At Para-14(e) it was also directed as "**the seniority lists already finalized by the various authorities based upon the courts judgments in individual cases which have become final shall not be disturbed. If any such cases are not finalized, they may be settled now as per these instructions**".

In this regard, it is submitted that the seniority of 1993 direct recruit Deputy Executive Engineers was never finalized before issue of said circular memo dated 21-04-1999. As such, the Ad-hoc rules issued vide GO Ms No.607 dated 06-11-1992 and subsequent clarifications will become basis for preparation of inter-se-seniority of Direct Recruit 1993 DEE batch. However, the following rule position in general rules, as well as instructions issued in this regard from time to time enunciates that the order of merit shall be the basis for inter-se-seniority of direct recruits:-

- a) Further, as per Rule-33(b), "**order of merit or order of preference** indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed inter-se with reference to the candidates position in such list or panel while determining the seniority".
- b) As far as the role of appointing authority in fixing the inter-se-seniority of direct recruit DEEs of 1993 batch is concerned, it was enunciated by the Hon'ble High Court in its judgment dated 21-1-2014 (supra) that such power virtually stands taken away, or would totally guided by the proviso Rule-33(b) and the appointing authority has **virtually no role to play, in the matter of fixation of seniority**, once the appointments are made on the basis of the recommendation of a selection committee or selecting agency.

- c) Further while preparing integrated seniority list of DEEs for purpose promotion to the post of Executive Engineers in terms of Rule-34 of AP State and Subordinate Service Rules which prescribes as “such an integrated or common seniority list shall be prepared with reference to the provision of sub-rule (a) of rule 33, **provided that the seniority list of the persons inter-se belonging to the same units shall not be disturbed**”.

In this connection, it is further informed that, as and when, the direct recruits of 1993 batch were allotted to different Zones as explained supra, displacements were taken place in each and every Zone as shown below and no promotees DEEs were available for interspersation with the Direct Recruit DEE batch.

| | Zone-1 | Zone-2 | Zone-3 | Zone-4 | Zone-5 | Zone-6 | City Cadre |
|-------------------------------|--------|---------------------------------------|--|--------|--------|--------|------------|
| No of DR DEEs joined | 6 | 7 | 8 | 6 | 8 | 8 | 5 |
| No of promotee DEEs displaced | 6 | 9 (due to decrease in cadre strength) | 10 (due to decrease in cadre strength) | 5 | 3 | 6 | 5 |

As such, in absence of any of such rotation of vacancies between promotees / Direct Recruits / Transferees in (R&B) Engineering Service Rules and in absence of any of such interspersation of either promotees / transferees with Direct Recruits, the Direct Recruit 1993 DEE batch was placed en bloc in the panel year 1993-1994 and no promotee or transferee are available in that panel year.

Hence, if Rule-34 read with Rule-33(a) along with Rule-36(i) of AP State and Subordinate Service Rules, which prevails over Rule-33(a) by all means, and Para-14(d) of Circular memo dated 21-04-1999, to fulfill the basic principles that (i) a Better ranking persons should not be put to disadvantage by placing the lower ranking persons above them (ii) the date of appointment should be the criteria for fixing the seniority, but not the date of joining as per judgment of Hon'ble APAT dated 11-12-2013 in OA No.1614 of 2012 & Batch, the inter-se-seniority of the 1993 Direct Recruit DEE batch in the integrated seniority list, is fixed strictly as per marks obtained by the individuals in the qualifying examination held in 1989, as communicated by the APPSC.

Further, while preparing the revised panels of DEEs from 01-01-1988 to 2001-02, the notional date of commencement of probation of each promotee DEE was taken as basis for integration in terms of Rule-34 read with Rule-36(ii), 36(iii) of AP State and Subordinate Service Rules.

As such, while making modifications to the zone-wise seniority lists dated 05-10-2015 to the extent necessary, an integrated seniority list of Deputy Executive Engineers is prepared with effect from 01-01-1988 to the panel year 2001-

2002 and appended herewith. All the concerned staff members are directed to submit objections or modifications, if any, on the above panels within 15 days from the date of notification of this circular memo.

Encl:- As above.

**M.GANGADHARAM
ENGINEER-IN-CHIEF(R&B) ADMN & SR, RSW,BLDGS.**

To
The parties concerned.