

Ravi Vs. The Secretary

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Court : Chennai

Decided On : Mar-10-2015

Judge : K.Kalyanasundaram

Appellant : Ravi

Respondent : The Secretary

Advocate for Pet/Ap. : Mr. V.Raghavachari

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:14.10.2009
CORAM THE HONOURABLE MR. JUSTICE K.VENKATARAMAN W.P. Nos.
35716, 36553, 33375, 37136 to 37141 of 2007, 15231, 8417, 3455, 8855, 3905,
10760, 2939 of 2008 & All Connected M.P's W.P.No.35716 of 2007
1.R.Thirunavukkarasu 2.M.Sundararajan 3.C.P.Chitrarasu ... Petitioners. vs. 1.The
State of Tamil Nadu, Rep. by its Secretary to Government, Home Department,
Secretariat, Chennai 9. 2.The Director General of Police, Chennai 4.

3. K.Palanisamy 4. R.Balan 5. A.V.Rajaraman & 25 others. ... Respondents. (R20
to R30 are impleaded parties) Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of a writ of Certiorarified Mandamus
calling for the records pertaining to the impugned G.O.Ms.No.1396 dated
03.10.2007 passed by the 1st respondent herein, quash the same consequently
direct the respondents 1 and 2 herein to promote the petitioners to the next

avenue of promotion on par with their seniority fixed in pursuance to the G.O.Ms.No.1252 dated 29.10.2004 issued by the 1st respondent herein in the place above the names of the respondents 3 to 19 herein. For petitioners : Mr. V.Raghavachari for N.Manoharan For Respondents : Mr. P.S.Raman, Advocate General Asst. By Mrs. Pushpa Menon for R1 and R2. Mr. G.Sankaran, for R8 to R13, R18 & R19 Mr. A.Uma Shankar for R20 to R30. C O M M O N

ORDER

The issue involved in these writ petitions are whether the police officials, who have been accorded one stage accelerated promotion by virtue of G.O.Ms.No.1252 dated 29.10.2004, for the service rendered by them in the elimination of sandal wood veerappan are eligible for further promotion, they being seniors to the promotional post, even though they were juniors to several persons in the original post which they were holding, before their accelerated promotion.

2. The short facts which led the petitioners to file the above referred writ petitions set out in the affidavit in support of the writ petitions, in nut shell are stated here under:- 2.1. The petitioners were police constables, Sub-Inspectors, Inspector of Police, Deputy Superintendent of Police etc., before the Government issued G.O.Ms.No.Home (Pol VIII) department 1252 dated 29.10.2004. By virtue of the said G.O, the petitioners were awarded accelerated promotion for the service rendered by them for the elimination of Sandal Wood Veerappan. One stage accelerated promotion was given to 748 Special Task Force personnel involved in the operation. 2.2. In G.O.Ms.No.468 dated 19.03.1996, certain guidelines have been issued for giving accelerated promotion to the police personnel in various ranks. In compliance with the said Government Order, another proceeding was issued to the Director General of Police, chennai in circular dated 27.01.1997, prescribing format for considering accelerated promotion. Thereafter, G.O.Ms.No.1252 dated 29.10.2004 was issued by the first respondent. Clause 5(e) of the said G.O dealt with the fixation of seniority. As per the said clause, the persons who have been accorded accelerated promotion will have to be placed at the bottom of the seniority list of the respective category existing on the date of their joining duty in the new post. 2.3. Later G.O.Ms.No.1396 Home department

dated 03.10.2007 was issued in and by which clause 5(e) of G.O.Ms.No.1252 Home department dated 29.10.2004 had been deleted and substituted by a new clause denying accelerated consequential seniority. Thus, challenging the said clause in G.O.Ms.No.1396 dated 03.10.2007 these writ petitions have been filed.

3. Counter affidavit was filed on behalf of the Government wherein the following facts have been set out:-

3.1. The Government in G.O.Ms.No.1252 Home department dated 29.10.2004 have granted accelerated promotion to 748 police personnel and also granted cash award of Rupees three lakhs and a house site to each of them vide G.O.Ms.No.1237 Home department dated 27.10.2004. The Government has also granted accelerated promotion to 159 Special Task Force police personnel and granted cash award of Rupees two lakhs each vide G.O.Ms.No.1346 Home department dated 06.12.2004, including petitioners herein. The Government created supernumerary post in the respective cadres at a huge cost to avoid stagnation of further promotion for the seniors of the accelerated promotees in the lower cadre.

3.2. The qualifications prescribed in the service rules have to be relaxed in favour of the personnel who were involved in the Special Task Force operation including the petitioners as a one time measure so as to accommodate them in the accelerated promotion list.

3.3. The police personnel who were regularly empanelled and seniors to the accelerated promotees in their lower cadre have protested by saying that the accelerated promotees should not get any higher seniority in view of such accelerated promotion. This was considered by the Government and the anomaly was set right by passing Government Order in G.O.Ms.No.1396 Home department dated 03.10.2007.

3.4. There is no special rule for giving consequential seniority to accelerated promotees among police personnel in the Tamil Nadu Police Service or in other statutory rules.

3.5. The seniority of service is fixed as per Rule 35 of the general rules in the Tamil Nadu State and Subordinate Services Rules. As per the said Rule, the seniority of a person shall, unless he is reduced to lower rank as punishment should be determined either by rank obtained by him in the list of approved candidates drawn by the Tamil Nadu Public Service Commission or state appointing authorities as the case may be or the date of appointment.

3.6. Giving consequential seniority to accelerated promotees may lead to a situation of reduction in rank of their seniors in the lower category, for no fault of them. The

executive orders will not prevail over statutory rules. There is no provision for giving accelerated consequential seniority in higher stages also. Thus the counter affidavit sought for the dismissal of the writ petition.

4. I have heard at length the learned counsel Mr. V.Raghavachari and other counsels appearing for the petitioners and Mr. P.S.Raman, the learned Advocate General appearing for the Government, assisted by Mrs. Pushpa Menon and Mr.R.Muthukumarasamy, the learned Senior Counsel appearing for R3 to R19 in W.P.No.35716 of 2007. 4.1. The first and foremost submission that was made by the learned counsel appearing for the petitioners is (i) The accelerated promotion was granted strictly in compliance with G.O.Ms.No.468 dated 19.03.1996 by constituting board to assess the merit and ability. Further, the number of seniors to be overlooked in the event of grant of accelerated promotion was taken note of strictly as per Government letter dated 27.01.1997. Under such circumstances, it is highly unfair on the part of the first respondent to question the merit and ability, assessed by the committee formed by the first respondent herein at the time of the issuance of G.O.Ms.No.1252 dated 29.10.2004. (ii) However, the learned Advocate General submitted that G.O.Ms.No.468 dated 19.03.1996 and the Government letter dated 27.01.1997 contemplates a very detailed procedure to be followed in cases of granting accelerated promotion for outstanding performances either in the field of sports or other professional achievement. There is nothing on record to show that any such individual consideration of every member of Special Task Force team was done. Further, considering the fact that the then Hon'ble Chief Minister made a public announcement on 20.10.2004, granting certain rewards to the members of the Special Task Force including a one stage accelerated promotion and awarding a one stage accelerated promotion for 748 members of the Special Task Force, followed by G.O.Ms.No.1252 dated 29.10.2004, within 10 days of such announcement, will show that no individual appraisals of the case of bravery could have been possible, within the said short span of time. (iii) Before considering the rival contentions raised in this regard, it would be useful to extract G.O.Ms.No.468 (Home Police V) department dated 19.03.1996. " GOVERNMENT OF TAMIL NADU ABSTRACT Police Department Accelerated Promotion to Police Personnel Constitution of Board and Prescription of guidelines Orders Issued. - - - - - HOME (POLICE..V) DEPARTMENT

G.O.Ms.No.468 Dated:19.3.1996 Read:- From the Additional Director General of Police D.O.Lr.No.26846 /NGB.III(3)/94 dated 29.12.94 and C.No.7402 / NGB.III(3)/95 dated 4.5.95. -----

ORDER

:- The Tamil Nadu Administrative Tribunal, while disposing of Original Applications No.1052, 1053 and 1128/94 filed by Thiru. A.Gunasekaran and two others praying for accelerated promotion considering their outstanding performance in sports has ordered as follows: (i) there should be clear cut guidelines and procedure, so that such promotions are not made in an arbitrary manner based on adhoc consideration of some persons who make representations. (ii) there should be a clear system of identifying persons who have shown outstanding ability in sports. (iii) such performance in athletic event, not confined to the Tamil Nadu State Police, but on a wider basis, Regional or All India not only participation, but the level of performance should be taken into account. (iv) such promotion should be on an annual basis, and (v) should be considered by a properly constituted Board.

2. In pursuance of the observation of the Tribunal, the Director General of Police who was requested to send necessary proposal in this regard has sent the following proposal in his letter read above. A Board comprising of following officers may be constituted for considering the cases of accelerated promotions:-
DESIGNATION OF THE OFFICER POST1 Additional Director General of :
Chairman Police(Law and Order) 2. Additional Director General of : Member
Police(Personnel) 3. Additional Director General of : Member Police(Head-
quarters) 4. Inspector General of Police : Member. (Intelligence) The Board, on its
formation will examine the matter of awarding accelerated promotions to the Police
Personnel. The draft guidelines to be adopted for such elevation both for
professional achievement and for achievements in Sports are as follows:-
PROFESSIONAL ACHIEVEMENTS:

1. Performance of High Order and Exceptional Personal ability in achieving operational success at Great risk to Personal life.
2. Professional competency of a very high Order in detecting sensational murder, dacoity, robbery and other such cases having ramification in other parts of the

Country and its successful prosecution. SPORTS ACHIEVEMENTS:

3. Successful performance in the All India Police Duty Meet by securing First Rank in Scientific aids to investigation, Computers, Motor Transport and Revolver and Rifle Shooting.

4. Representing the Country in the International meets.

5. Securing Gold Medal in National/ All India Police meets.

6. Creating new National/ All India Police Meet Records. GENERAL:

7. In any case, the Police Personnel, must have blemish-free professional records.

3. The Director General of Police has also requested that the Board may be ordered to examine all such cases as and when the occasion arises and send their recommendations to the Director General of Police for approval and onward transmission to Government as desired. Further the Director General of Police, Madras may be empowered to consider the recommendations of the Board and to order for accelerated promotions in the following categories: i) Grade-II to Grade-I ii) Grade-I to Head Constable and iii) Head Constable/Havildar to Sub-Inspector/ Sub-Inspector(Armed Reserve)/Sub-Inspector Tamil Nadu Special Police. Beyond Sub-Inspector of Police, Government may retain their powers to order for the accelerated promotions.

4. The Government have carefully examined the proposal of the Director General of Police in the light of orders of Tamil Nadu Administrative Tribunal and pass the following orders. (I) A Board for accelerated promotion may be constituted with the following Officers; (1) The Secretary to Government, : Chairman Home Department Madras 9. (2) The Secretary to Government, : Member. Public Department Madras 9. (3) The Secretary to Government, : Member. Personnel and Administrative Reforms Department, Madras 9. (4) The Director General of Police, : Member. Madras 2. (5) The Deputy Secretary/ : Secretary to Joint Secretary/ Special Secretary the Board. to Government (Police Services) Home Department, Madras 9. (6) The Inspector General of Police, : Member. (Intelligence) (II) The draft guidelines for such elevation both for Professional achievements and for

achievements in sports are prescribed below:-

PROFESSIONAL ACHIEVEMENTS:- 1.Performance of High Order and Exceptional Personal ability in achieving Operational success at Great risk to personal life. 2.Professional competency of a very high order in detecting sensational murder, dacoity, robbery and other such cases having ramification in other parts of the county and its successful prosecution.

SPORTS ACHIEVEMENTS:- 3.Successful performance in the All India Police Duty meet by securing First Rank in scientific aids to investigation, computers, Motor Transport and Revolver and Rifle Shooting. 4.Representing the country in the International meets. 5.Securing Gold Medal in National/ All India Police Meets. 6.Creating new National/All India Police Meet Records.

GENERAL:

7. In any case, the Police Personnel must have blemish-free-professional record.

(III) The Accelerated promotion for sports Achievements shall be considered on an Annual basis and for professional Achievements cases shall be considered as and when occasion arises.

(IV) The Director General of Police, Madras 2. is requested to send necessary proposals to the Secretary of the Board(Deputy Secretary/ Joint Secretary/ Special Secretary to Government (Police Services) Home Department, Madras.9) and the Secretary of the Board shall submit them before the Board for its consideration and decision. "

(iv) Later as per Government letter dated 27.01.1997, the Government of Tamil Nadu addressed a communication to Director General of Police to send proposals for accelerated promotion in proforma setting out the details required with relevant records for examination of the Government. It would be useful to extract the said letter and the same is reproduced here under:- "I am directed to state that as per the orders issued in G.O.Ms.No.468, Home, dated 19.3.96 the Board of accelerated promotion will consider the cases for accelerated promotion for both professional achievements and for achievements in sports. For achievements in sports, the Board shall consider the cases on an annual basis and for professional achievements the cases shall be considered as and when occasion arises. As such, the cases for accelerated promotion for professional achievements have to be placed before the Board with full details for its consideration and decision. 2.) In this connection, I am to point out that as accelerated promotion cannot be treated as a routine affair, the proposals have to be placed before the Board with full details and justification. The

proposals received by the Government contain only the names of the Police Officers who were recommended for accelerated promotion and promotion from which rank to which higher rank. As such, I am to request you to send the proposals for accelerated promotion in a Proforma (standard format) containing the following details along with relevant records for examinations of the Government. i). Details regarding the incident/encounter/adventure/event, ii). The No.Of Police Personnel involved in the concerned Police team. iii). The role played by each individual duly indicating the performance of High Order and exceptional personal ability in achieving operational success at great risk to personal life done by the individual during the adventure/event. iv). Whether all the police personnel in the team should be given accelerated promotion. It should be based on one's role in the action and the nature of the risk taken by the individual. Being a mere member in the team will not give any right to the officer for accelerated promotion. v). Whether other incentives such as each reward or advance increments/advancing seniority will be sufficient. vi). The service record of the individual and defaulter sheet (as per the said instructions the Police personnel must have blemish free professional record). Vii). The relevant rules need to be relaxed in favour of the individual. Viii). Service particulars of the individual. ix). Justification for accelerated promotion. x). The No.Of seniors to be over looked if accelerated promotion is to be given to the individual. " (v) It is seen from G.O.Ms.No.1252 Home department dated 29.10.2004, that after the announcement made by the then Hon'ble Chief Minister in the press meet held on 19.10.2004, announcing among others that one stage accelerated promotion will be given to all the 752 Special Task Force personnel involved in the operation, the Director General of Police by his communication dated 22.10.2004 and 25.10.2004 has sent proposal for granting accelerated promotion to them. The proposal seems to have been placed before the accelerated promotion board as per the G.O.Ms.No.1252 in its meeting held on 25.10.2004. Thereafter, the Government after examining the proposal of the Director General of Police and the recommendation of the accelerated promotion board has accorded One stage accelerated promotion for Special Task Force personnel. The portion of the said Government G.O.Ms.No.1252 is usefully extracted here under:- " Home (Pol.VIII) Department G.O.(Ms.No.1252 Dated 29.10.2004 Read:

1. G.O.Ms.No.468 Home (Pol.V) Department dated 19.03.1996 2. From the Director General of Police, Chennai Letter Rc.No.22047/ NGB vii (2) / 2004, dated 22.10.2004 and 25.10.2004 3. G.O.Ms.No.1247, Home (Pol.V) Department dated 28.10.2004. -000-

ORDER

: In a daring and intrepid operation, the Special Task Force headed by Thiru.K.Vijayakumar, IPS, Additional Director General of Police has shot dead the Forest brigand, bandit, murderer and dacoit Veerappan along with his three gang members on 18.10.2004. This sterling achievement is the result of sustained efforts of Special Task Force officers and men who have indeed sacrificed their safety and the comfort of their home, spending years away from their families and leading dangerous life in the thick forest, braving hardship sickness and threat to their precious lives.

2. In recognition of their courage and heroic achievement the Honourable Chief Minister in the Press Meet held on 19.10.2004 has announced among others that "One Stage accelerated promotion" will be given to all the 752 Special Task Force personnel involved in the operation.

3. In pursuance to the above announcement the Director General of Police has sent proposal for granting accelerated promotion to the Special Task Force personnel.

4. In the G.O. first read above, Government have prescribed guidelines for granting accelerated promotion. Accordingly the proposal of granting accelerated promotion was placed before the Accelerated Promotion Board in its meeting held on 25.10.2004.

5. Government after careful examination of the proposals of the Director General of Police and the recommendation of the Accelerated Promotion Board pass the following orders:- " CONCLUSION OVER THE FIRST POINT : (Vi) In G.O.Ms.No.1252 Home department dated 29.10.2004, there is a reference about G.O.Ms.No.468 Home department dated 19.03.1996 and letter of the Director General of Police dated 22.10.2004 and 25.10.2004. There is also reference about

promotion board meeting held on 25.10.2004 in the body of the said G.O.Ms.No.1252. Since, it is contended by the learned Advocate General that there is nothing on record to show any individual appraisals of the acts of bravery of each member of Special Task Force team was done and also it could not be possible for considering the same since there was only few days between the announcement made by the then Hon'ble Chief Minister for according accelerated promotion viz., 19.10.2004 and passing of G.O.Ms.No.1252 on 29.10.2004, records have been directed to be produced by the learned Advocate General. Records relating to the recommendation made by the Director General of Police dated 22.10.2004 and 25.10.2004 and as well as the minutes of the accelerated promotion board meeting held on 25.10.2004 were called for. The records have been produced and I have perused the same. From the letter of the Director General of Police dated 22.10.2004 and 25.10.2004 and the minutes of the accelerated promotion committee meeting held on 25.10.2004, it could be seen that there was no such individual appraisals of the acts of bravery was considered either by the Director General of Police or by the Board constituted for such purpose. The combined reading of G.O.Ms.No.468 and Government letter dated 27.01.1997 which was extracted above would reveal that accelerated promotion cannot be treated as routine affair and the same has to be placed before the Board with full details and justification. Proposal has to be sent for accelerated promotion containing the particulars which was extracted above. At the risk of repetition, the same is extracted again here under:- i). Details regarding the incident/encounter/adventure/event, ii). The No.Of Police Personnel involved in the concerned Police team. iii). The role played by each individual duly indicating the performance of High Order and exceptional personal ability in achieving operational success at great risk to personal life done by the individual during the adventure/event. iv). Whether all the police personnel in the team should be given accelerated promotion. It should be based on one's role in the action and the nature of the risk taken by the individual. Being a mere member in the team will not give any right to the officer for accelerated promotion. v). Whether other incentives such as each reward or advance increments/advancing seniority will be sufficient. vi). The service record of the individual and defaulter sheet (as per the said instructions the Police personnel must have blemish free professional record).

Vii). The relevant rules need to be relaxed in favour of the individual. Viii). Service particulars of the individual. ix). Justification for accelerated promotion. x). The No.Of seniors to be over looked if accelerated promotion is to be given to the individual. " (Vii) The above particulars were neither furnished by the Director General of Police nor have been considered by the Board while recommending for grant of accelerated promotion. Furthermore as rightly contended by the learned Advocate General, there was no possibility of such individual appraisal of the acts of bravery, while passing G.O.Ms.No.1252. The then Hon'ble Chief Minister had announced the grant of accelerated promotion on 19.10.2004 ; The Director General of Police recommended for accelerated promotion by his proceedings dated 22.10.2004 and 25.10.2004 ; The Board met on 25.10.2004 and the minutes had been drawn on the said date and the G.O was passed on 29.10.2004. Thus, hardly ten days time was available from the date of announcement of the then Hon'ble Chief Minister for granting accelerated promotion and the date of passing of the G.O.Ms.No.1252 according such promotion. (Viii) In view of the above facts and circumstances, I am of the considered view that as rightly contended by the Learned Advocate General no individual appraisal of the acts of bravery was done and considered before according accelerated promotion to the STF team and there was left with any reasonable time for the same as could be seen from the date of announcement for such promotion and the passing of G.O.Ms.No.1252 according such promotion. 5.1. The second contention of the learned counsel appearing for the petitioners is that the accelerated promotion granted to the petitioners and others as per G.O.Ms.No.1252 dated 29.10.2004 is in line with rules framed under Article 309 of the Constitution and is therefore statutory, whereas the impugned G.O is an executive order which cannot override the earlier G.O. 5.2. To the said contention, the learned Advocate General submitted that neither the G.O.Ms.No.468 nor G.O.Ms.No.1252 are statutory or they were framed under Article 309 of the Constitution. There are no rules available in the Tamil Nadu State and Subordinate Service Rules or in the Tamil Nadu Police Service Rules providing procedure for one stage accelerated promotion. Since G.O.Ms.No.468 and G.O.Ms.No.1252 are being executive orders, the impugned G.O.Ms.No.1396 cannot be quashed on the ground that it is superseded by statutory rules or order. CONCLUSION OVER THE SECOND POINT :

5. 3. I have considered the said submission made in this regard. As rightly pointed out by the learned Advocate General, neither G.O.Ms.No.468, Home department dated 19.03.1996 nor G.O.Ms.No.1252 dated 29.10.2004 are statutory and framed under Article 309 of the Constitution. Both G.O.Ms.No.468 and G.O.Ms.No.1252 are in the nature of executive orders. While so, it cannot be heard on the side of the petitioners that G.O.Ms.No.1396 has to be quashed on the ground that it is superseded by statutory Rules or orders. Further clause 5(d) of G.O.Ms.No.1252 reads that amendment to the relevant rules wherever necessary will be issued as one time measure separately. This will demonstrate that on the date of passing G.O.Ms.No.1252 dated 29.10.2004, rules have not been relaxed for according accelerated promotion to the petitioners and the similarly placed persons. Further, as rightly contended by the Learned Advocate General there are no rules available in the Tamil Nadu State and Subordinate Service Rules or in the Tamil Nadu Police Service Rules providing procedure for one stage accelerated promotion. Therefore, general rules will apply along with executive instructions to fill up the gaps. It is also to be noted that accelerated promotions have been made subject to certain conditions including need for relaxation of rules etc., which necessitates the consent of Public Service Commission which has not been obtained till date. In view of the reasons stated above, I am not inclined to accept the contentions raised by the learned counsel appearing for the petitioners that G.O.Ms.No.1252 granting accelerated promotion is in line with rules framed under Article 309 and is statutory whereas the impugned G.O.Ms.No.1396 is an executive order which cannot over ride the former.

6.1. The THIRD contention of the learned counsel appearing for the petitioners are that all promotions have been made through substantive appointments and the impugned order cannot unilaterally withdraw the same thereby affecting their vested rights.

6.2. However, it is contended on behalf of the Government as well as the Respondents 3 to 19 that the promotions were not granted to the petitioners on substantive vacancy but supernumerary post were created in order to accommodate them in the promotional post.

6.3. Before deciding the said contention, it will be useful to extract Para 5(c) of G.O.Ms.No.1252 :- " (c) 748 (Seven hundred and forty eight) Supernumerary posts be created in order to accommodate those who are accorded accelerated promotion. These posts now sanctioned are person oriented and they shall lapse

whenever the incumbents vacate the post on retirement from service or otherwise.

" CONCLUSION OVER THE THIRD POINT :

6. 4. The above clause clearly demonstrates that only supernumerary posts were created in order to accommodate those persons who have been accorded accelerated promotion. The accelerated promotees are not promoted to any substantive vacancies or even temporary post but are promoted to supernumerary post which are personal to them and which will lapse whenever incumbent vacates the post on retirement or otherwise. 6.5. In view of the same, I am inclined to reject the contentions of the learned counsel appearing for the petitioners that all promotions have been made through substantive appointments and the same cannot be unilaterally withdrawn by the Government G.O namely the impugned G.O. 7.1. The FOURTH contention that was put forth by the learned counsels appearing for the petitioners are that the accelerated promotion granted to the petitioners was under Rule 36(b)(ii) of the General Rules. However, it is contended on behalf of the respondents 3 to 19 that the petitioners were not accorded accelerated promotion as per the said Rules. But, however the learned Advocate General has accepted that the petitioners were accorded accelerated promotion only under Rule 36(b)(ii)(2), SINCE NO OTHER RULE IS IN EXISTENCE. CONCLUSION OVER THE FOURTH POINT :

7. 2. In view of the stand taken by the Government through the learned Advocate General, I am unable to accept the contentions raised by Mr. R.Muthukumarasamy, the learned counsel appearing for the respondents that accelerated promotion were not granted to the petitioners as per the Rule 36(b)(ii)(2). 8.1. The FIFTH contention that has been put forth by the learned counsels appearing for the petitioners that deserves to be considered is when once promotion is accorded as per Rule 36(b)(ii)(2) of the General Rules, whether their subsequent promotion could be stalled by passing the impugned G.O. 8.2. It is stated on behalf of the Government, by the learned Advocate General that the Government received representation from the Police Force personnel, stating that by such accelerated promotion, they have been superseded in the promotional post and if the accelerated promotees carry their seniority from the date of appointment to such promoted post, all the seniors will permanently remain junior

to them and many of them will never get promotion for no fault of them and this would result in stagnation, frustration and loss of morale in the State Police Force. Thus, it is urged by the learned Advocate General, the necessity arose to pass impugned G.O and their seniority was fixed with reference to their seniority in the lower cadre. 8.3. Thus, the Government seems to have considered the persons who have been accorded accelerated promotion and as well as the persons who were seniors to them and who could not get accelerated promotion for no fault of them and fixed their seniority in the lower cadre. The Government which has to consider the overall position between the persons who have been accorded accelerated promotions and the persons who could not get the said chance, which resulted in the impugned G.O. The wisdom of the Government, taking into account the overall situation cannot be faulted. 8.4. The learned counsels appearing for the petitioners submitted that Para 5(e) of G.O in G.O.Ms.No.1252 provides for the seniority in the promoted category which is referable to Rules 35(a) of the general rules or in the alternative based on the settle principles that the seniority of a person in the category would have to be fixed with reference to the date of appointment to a category and it cannot depend on the seniority in the lower cadre. Therefore, the impugned order which alters the said seniority is contrary to the said Rules or settle principles of law. 8.5. Per contra, the learned Advocate General appearing for the State and Mr. R.Muthukumarasamy, the learned Senior Counsel appearing for the respondents 3 to 19 in W.P.No.35716 of 2007, contended that the seniority of a person who have been accorded accelerated promotion will be reckoned only as per proviso to Rule 35(aa), since promotees have jumped to the queue while seniors were still stationed in the feeder category. Therefore the impugned G.O merely enforces the proviso to Rule 35(aa). 8.6. Before considering the rival submissions made in this regard, it will be useful to extract certain rules in the Tamil Nadu State and Subordinate Service Rules. Rule 2(1) reads as follows:-

"2. Definitions In these rules unless there is anything repugnant in the subject or context. Appointed to a service (1) A person is said to be "appointed to a service" when in accordance with the rules applicable at the time, as the case may be, he discharges, for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for

members thereof. Rule 2(7) reads as follows:- Duty (7) A person is said to be "on duty" as a member of a service- (a) When he is performing the duties of a post borne on the cadre of such service or is undergoing the probation, instruction or training prescribed for such service; (b) When he is on joining time; or (c) When he is absent from duty during vacation or on authorised holidays or on casual leave take in accordance with the instructions regulating such leave issued by the State Government having been on duty immediately before and immediately after such absence; (d) When he has compulsorily to wait for orders of posting on return from leave. Rule 2(13) reads as follows:- Promotion (13) "Promotion" means the appointment of a member of any category or grade of service or class of service to a higher category or grade of such service or class; Rule 35(a) reads as follows:- 35(a) The seniority of a person in service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority. (aa) The seniority of a person in service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade; Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed: Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority: Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age. "

8.7. Thus, Rule 2(1) of the said rules speaks of a person appointed to a service. Rule 2(7) speaks of a person said to be on duty as a member of a service, when

he is performing duties of a post borne on the cadre of such service or is undergoing probation, instruction or training prescribed for such service. Rule 2(13) defines promotion. Promotion means appointment of member of any category or grade or service or class of service of higher category or grade of such category or class. 8.8. Rule 35(a) of the said rules deals with seniority of person in a service, class or category or grade. It reads that seniority shall be determined by the rank obtained by him in the list of approved candidates drawn by the Tamil Nadu Public Service Commission or other appointing authority. Rule 35(aa) reads that seniority of the persons where normal method of recruitment to service etc., is by more than one method of recruitment shall be determined with reference to date on which he is appointed to service, class, category or grade. 8.9. Proviso to Rule 35(aa) clearly states that, if a junior appointed by a particular method or recruitment to service, class, category or grade earlier than the seniors appointed by the same method of recruitment, seniors shall deemed to have been appointed to the service, class etc., on the same day on which the junior was so appointed. The second proviso to Section 35(aa) reads that the benefit of proviso 35(aa) shall be available to the seniors for the purpose of fixing inter-se-seniority. Thus, the first proviso to Rule 35(aa) will squarely be applicable to the case on hand since the promotees, the petitioners herein have jumped to the queue by getting accelerated promotion while their seniors are still in the feeder category. The impugned G.O therefore seeks to enforce the first proviso of Section 35(aa) of the Rules referred to above. In other words, accelerated one stage promotion does not confer accelerated consequential seniority. 8.10. Further more, Rule 35(a) applies to the case, where the seniority of a person in a service etc., is determined by the rank obtained by him in the list of approved candidates drawn by the Tamil Nadu Public Service Commission or any other appointing authority as the case may be unless he has been reduced to a lower rank as punishment and subject to rule of reservation. However, Rule 35(aa) applies to the case where there are more than one ways of recruitment namely, Direct recruitment or by Promotion. The first proviso to Rule 35(aa), as stated already will squarely apply in the present case on hand. CONCLUSION OVER THE FIFTH POINT :

8. 11. In view of the above discussion made, the contention of the learned counsels appearing for the petitioners that seniority to the post is reckoned from

the date on which the incumbent starts discharging his duties and it cannot be relegated to a later date, now done, through the impugned G.O, cannot be accepted.

9. The SIXTH contention on the side of the petitioners was on Rule 36. 9.1. Rule 36 reads as follows:-

"36. (a) Promotion-No member of a service or class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that category. Provided that a member of a service or class of a service who, having satisfactorily completed his probation in the category in which he was appointed to the Service, has been promoted to the next higher category shall, notwithstanding that he has not been declared to have satisfactorily completed his probation in such higher category be eligible for promotion from such higher category : Provided further that if scales of pay of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay in descending order in other feeder categories shall be considered. (b) (i) Promotions to selection category or grade-- Promotions in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability, seniority, being considered only where merit and ability are approximately equal. The inter-se-seniority among the persons found suitable for such promotion shall be with reference to the inter-se-seniority of such persons in the lower post. (ii) Promotion according to seniority All other promotions shall, be made in accordance with seniority unless- (1) the promotion of a Member has been withheld as a penalty, or (2) a Member is given special promotion for conspicuous merit and ability. " 9.2. Thus Rule 36 deals with promotion. Rule 36(b)(ii)(2) deals with promotion to selection category and how they are made. Rule 36(b)(ii) further states that all promotions shall be made in accordance with the seniority, unless otherwise he has been with held due to penalty imposed on him and if a special promotion is given to a member because of his merit and ability. CONCLUSION OVER THE SIXTH POINT :

9. 3. The post in question being selection post, requires consideration of eligible and qualified persons. The accelerated promotion were granted to a chosen individuals without considering their eligibility and that whether they are qualified for the same. 9.4. Further more, whether accelerated promotion were made under Rule 36(b)(ii)(2) or whether it was accorded as a reward for some act under the accelerated promotion scheme, once the promotion is given effect to, the seniority of the person will be reckoned only under Rule 35. The first proviso to Rule 35(aa) which was discussed earlier, will apply to the case of the petitioners who have superseded their seniors in the feeder category. In effect, it can be said that the impugned G.O enforces first proviso to Rule 35(aa). 10.1. Yet another contention that has been put forth by the learned Advocate General and the learned Senior Counsel appearing for the respondents 3 to 19 in W.P.No.35716 of 2007, which deserves consideration is that the choice of joining STF was not given to all. Here and there, few persons have been picked up not because of their ability or they are meritorious persons and have been given assignment in STF. CONCLUSION OVER THAT POINT :

10. 2. This contention of the learned Advocate General has to be accepted, since it is not even the case of the petitioners that because of their merit and ability they have been allowed to join STF for the purpose of nabbing the dacoit, forest brigand Veerappan.

11. Yet another submission that was made on behalf of the learned Advocate General was that if the seniors from the feeder category are subsequently promoted they will rank seniors to the accelerated promotees in the promoted post. However, when the accelerated promotees have been given further promotion from the promoted post he will not be reverted at a later date when his seniors catch up. It is further elaborated that the accelerated promotees need not wait indefinitely in the promoted post for all his seniors to catch up on their promotion. If substantive vacancies for further promotion arises and if the accelerated promotee is otherwise eligible he will continue to get his further promotion so long as his seniors have not caught up with him from the feeder category. This submissions made by the learned Advocate General will clearly demonstrate that the fear expressed by the petitioners, through their counsels, that

the petitioners have to wait indefinitely till all their seniors are promoted is baseless.

12. Furthermore, the accelerated promotion given to them will not give accelerated consequential seniority, since the G.O makes it very clear that only one stage of promotion is accorded to the petitioners.

13. The learned counsel appearing for the petitioners relied on very number of decisions to support their case which are considered herein after. 13.1. The first judgement that was relied on by the learned counsel appearing for the petitioner is reported in 1993 Supp (3) Supreme Court Cases 202, State of U.P. Vs. Onkar Nath Tandon. The facts of the case before the Supreme Court was that the third respondent therein was not originally considered for the promotional post vice Section Officer and the respondents 1 and 2 alone were considered for appointment in the said post. The third respondent made an appeal to the Government. At the instance of the Government the post reserved for the Scheduled Caste was converted into General Category and the third respondent was promoted. He claimed seniority against the respondents 1 and 2 but the same was rejected by the Government. He filed Writ petition challenging the said order. The claim was upheld and the writ petition was allowed. When the matter came before the Hon'ble Apex Court on an appeal filed by the State of Uttar Pradesh, the Hon'ble Apex Court held that since the third respondent was considered and not found fit earlier, reversed the judgement of the High Court. 13.2. It would be useful to extract Para 4 and 5 of the judgement of the Hon'ble Apex Court which is extracted here under:- "4. The respondent 3 made representations to the Government that his juniors were promoted as Section Officers. On the basis of these representations the Government wrote to the PSC to convert the vacant post reserved for Scheduled Caste candidates into a general category post. After initial hesitation the PSC agreed and the said post was converted into a general category post. The respondent 3 was appointed as Section Officer on the said post by Notification dated January 8, 1983 with effect from January 2, 1982. Respondent 3 then represented that he was senior to respondent 1 and 2 Onkar Nath and Krishna Das Rastogi. This representation was rejected by the order of June 17, 1984. Thereupon, respondent 3 filed a writ petition in the High Court

challenging that order. The High Court allowed the writ petition on two grounds, namely, (1) that respondent 3 was left out and was not selected while his two juniors were duly selected by the PSC; and (ii) that even otherwise after the appointment of respondent 3 as Section Officer the injustice done to him was remedied and, therefore, under the settled law he was entitled to be considered senior to his juniors who were promoted earlier in point of time. We are afraid that the High Court went wrong on both the factual as well as the legal aspects. In the first place it is necessary to note that respondent 3 was considered along with others but was found unfit for the post of Section Officer. He was, therefore, left out and his juniors who were found fit were appointed on that post. Out of the seven posts which were vacant one belonged to the reserved category but since no suitable Scheduled Caste candidate was available that post was kept vacant. Taking advantage of that fact respondent 3 made representations on the basis of which the PSC was persuaded to convert the reserved category post to a general category post. It was only thereafter that respondent 3 was appointed on that post. In the circumstances, it cannot be said that respondent 3 could be treated on a par with candidates who had been selected by the PSC. In fact respondent 3 was not found to be fit and it was on that account that he was left out. He thereafter entered the cadre of Section Officers by getting the Scheduled Caste seat deserved and without going through a competitive selection process. He cannot, therefore, be permitted to disturb the seniority of selected candidates. He can only rank below them. Therefore the decision of the authorities to treat him as junior to the other two candidates cannot be assailed. It appears from the High Court judgement that he gave the impression that his claim was overlooked when the PSC selected six candidates for the six general category seats. That is why the High Court observes in the judgement that he was 'left out from the consideration and not selected by the PSC'. This is not a case of candidate having been inadvertently omitted from consideration. He was considered and not found fit for being selected for the post of Section Officer. The High Court, therefore, proceeded on a wrong assumption that he was inadvertently left out from consideration by the PSC when it selected candidates for filling the six general category seats. The High Court then proceeds to observe: "It has been a settled rule of law and practice in Government Departments that whenever on a post a

person is promoted from which he was earlier superseded, he would regain his seniority from the date he was superseded."

5. We are afraid that this broad statement of law is not accurate because if a junior supersedes a senior on merit basis his senior cannot claim seniority in the higher cadre on his being promoted at a subsequent date unless it is shown that he was left out from consideration on the earlier occasion when he ought to have been considered. The High Court perhaps made this broad statement on the factual premise that he was left out of consideration and, therefore, not selected by the PSC. This factual premise is not correct."

13.3. In fact, the Hon'ble Apex Court has held in the said decision that if the seniors in a category is considered and not selected but inducted subsequently is not entitled to seniority over those selected on the ground that he was senior to them in the feeder post. There cannot be any quarrel over the said proposition / principle. However, in the case on hand, the respondents were not overlooked but in fact there was no consideration of the claims of the respondents at all. Further more, selective accelerated promotion have been given to certain individuals without considering eligible candidates as that of the respondents.

14. Yet another decision cited on the side of the petitioners is reported in (2003) 5 Supreme Court Cases 511, Santosh Kumar Vs. State of A.P.. That is the case where some of the Head Constables were appointed temporarily as Sub-Inspectors out of seniority. Subsequently direct recruitment were made for the said post. The Government of Andhra Pradesh had regularised their service by relaxing the Rules. The same was challenged by the direct recruits before the Andhra Pradesh Administrative Tribunal. The Tribunal had held that the Government had power to relax the recruitment rules retrospectively, however held that the persons who were temporarily appointed as Sub-Inspectors cannot claim seniority since their appointment were not made as per Rules. When the matter came before the High Court, Andhra Pradesh, the same was set aside, holding that their initial appointment was not made following the recruitment Rules. They had continued in the said post for several years till their regularisation. The said judgement of the Andhra Pradesh High Court was confirmed by the Hon'ble Apex Court, after

extracting the conclusion arrived at by the Constitutional Bench in Direct Recruit Class II Engg. Officers Assn. Case where it was held " The respondent and others were appointed as Sub-Inspectors out of seniority looking to the outstanding merit and record prior to the direct recruits like the appellant. Their services were admittedly regularised by relaxing the Service Rules in exercise of power available under Rule 47 of the General Rules. The appellant did not challenge the validity of Rule 47 and no mala fides were established against the authorities in exercise of powers of relaxation under the said Rule. The Tribunal has recorded a finding that the Rule relating to the method of recruitment was not relaxed but only the conditions which had to be fulfilled for the purpose of promotion to the category of Sub-Inspector were relaxed; this finding is not disturbed by the High Court; there was no relaxation as to the basic qualification; the State Government regularised the services of the respondent and others with retrospective effect from the date they were temporarily appointed as Sub-Inspectors (OSSIs). It is also not disputed that they continued in service uninterruptedly for about 12-13 years till their services were regularised with retrospective effect. This being the factual position it could not be said that the corollary to para 47(A) of the aforementioned Constitution Bench judgement applies to the facts of the present case. Once their services were regularised it cannot be contended that their initial appointment was only an ad hoc basis and not according to the rules and made as a stopgap arrangement. On the other hand para 47(B) supports the case of the respondent. "

14.1. Thus controversy therein was between temporary appointees for the post of Sub-Inspector's and the later direct appointees to the said post, but in the present case on hand, the person who have got accelerated promotion are claiming seniority against the persons who were seniors to them in the feeder category. Hence the said decision may not also have any relevance to the facts on hand.

15. The other decision that was cited by Mr. V.Raghavachari, the learned counsel appearing for the petitioner is reported in 1993 Supp (2) Supreme Court Cases 415, Himachal Pradesh State Electricity Board Vs. Somdutt Uppal. That is the case where promotions were made to the post of Superintendent in the Electricity Board of Himachal Pradesh. The question that was raised was whether seniority was to be fixed on the basis of the seniority in the feeder cadre or from the date of promotion after passing the required examination. The said post was open only to

those person who have passed SAS examination. The examination was in turn open to Upper Division Clerks etc., who had rendered minimum four years service in the said grade. In those circumstances, the Hon'ble Apex Court held that the seniority has to depend upon the date on which he entered that cadre after satisfying two conditions vice, (i) Must have passed SAS examination. (ii) Must have rendered four years service. Seniority in the lower cadre is irrelevant. 15.1. However, in the case before us, the petitioners were not promoted pursuant to the competitive examination that was conducted and they have got through any such examination, there by their seniority is sought to be overlooked. Hence, the judgement cited above may not have any relevance for the purpose of deciding the matter in issue. Thus the above said decision and as well as other decisions relied on by the learned counsel appearing for the petitioners reported in 1991 S.C1602 (1991) 2 SCC708 AIR2002S.C488 wherein it has been held that seniority has to be reckoned from the date of first appointment to the post or category, since in all the above said cases regular appointments were made in a substantive posts according to the Rules. Hence, these judgements may not have any relevance for the case on hand.

16. The other decision that has been cited by Mr. V.Raghavachari, the learned counsel appearing for the petitioner is reported in AIR 1975 SUPREME COURT984 Amarjit Singh Vs. State of Punjab. (a) The question that arose in the said matter was whether the State Government could issue the order dated 4th December, 1967 providing the seniority of the respondents Nos. 3 to 19, shall be reckoned from the date of issue of their order of appointment, namely, 8th April, 1964 irrespective as to when they assumed charge of the higher posts, and such order was in contravention of the principle of seniority laid down in clause (2) (ii) of the memorandum dated 25th October, 1965. (b) The argument on behalf of the State Government was that it was competent to fix an assumed date on which the continuous service of respondents Nos. 3 to 19 should be deemed to have commenced for the purpose of determining their seniority in the integrated service, and the order dated 4th December, 1967 was, therefore, not beyond its power. (c) However, it was held that the said argument is not well founded. It had been held that Clause (2) (ii) of the memorandum dated 25th October, 1965 provided that the seniority of the officers in the integrated service shall be determined by reference

to the length of continuous service from the date of appointment in the group within their respective service. What was, therefore, required to be taken into account was the actual length of continuous service from the date of appointment and not the length of continuous service reckoned from an artificial date given by the State Government. It is true that clause (2) (ii) of the memorandum dated 25th October, 1965 was in the nature of administrative instruction, not having the force of law, but the State Government could not at its own sweet will depart from it without rational justification and fix an artificial date for commencing the length of continuous service in the case of some individual officers only for the purpose of giving them seniority in contravention of that clause. That would be clearly violative of Articles 14 and 16 of the Constitution. The sweep of Articles 14 and 16 is wide and pervasive. These two articles embody the principle of rationality and they are intended to strike against arbitrary and discriminatory action taken by the 'State'. Where the State Government departs from a principle of seniority laid down by it, albeit by administrative instructions, and the departure is without reason and arbitrary, it would directly infringe the guarantee of equality under Articles 14 and 16. However, the facts of the present case is entirely different. Further more the petitioners were promoted by an Administrative order and the same is sought to be modified by another Government G.O. Hence, the judgement cited by the learned counsel appearing for the petitioners may not be applicable to the present case on hand.

17. Mr. V.Raghavachari, the learned counsel appearing for the petitioner in one of the writ petitions relied on yet another decision reported in (1997) 2 Supreme Court Cases 150, Major Yogendra Narain Yadav Vs. Bindeshwar Prasad. By relying on the said decision the learned counsel submitted that substantive appointment to the permanent post gives right to a substantive status in the post on permanent basis. Further, he has contended that due weightage however be given only to merit and where merit and ability are approximately equal, seniority also could be considered. That is the case where respondents entered into service much earlier to the entry into service by the appellant but, however the appellant in view of his merit and ability and that he was a Class I Officer and had held three ranks was considered as an Executive Engineer for promotion to the post of Superintending Engineer. The Hon'ble Apex Court has held that though the

respondents are senior to the appellant had set aside the judgement of the High Court and held that the appellant is entitled to seniority and other benefits. 17.1. Para 9, 10 and 12 is extracted here under to show that the petitioners does not stand in the same footing as that of the appellant in the said decision.

"9. Thus due weight is given only to merit and where merit and ability are approximately equal, seniority also could be considered. It is also not in dispute that the appellant being senior to the respondents by more than 10 years the question is whether he could be considered for promotion as Executive Engineer. It is not in dispute that the appellant while in the Army, was a Class I officer and had held three ranks, namely, Lieutenant, Captain and Major. All the three posts were Class I posts equivalent to Executive Engineer Class I post. It is also not in dispute that one of the learned Judges, in the circumstances, and in our view quite rightly, has given direction to consider him notionally as if he is eligible to be considered as an Executive Engineer for promotion to the post of Superintending Engineer. It is also not in dispute that throughout his career he earned "excellent" confidential reports. Merit under Rule 17 alone is the consideration for promotion as Superintending Engineer and upwards. Under these circumstances, the DPC has considered, as per the directions referred to earlier, the relative merits of all the persons and considered the appellant more meritorious and accordingly directed the Government to give promotion to him and in furtherance thereof promotion was given. In the same proceedings further consideration was made for promotion to the post of Superintending Engineer, Chief Engineer and Engineer-in-Chief. Rule 24 of the Rules speaks that promotion to the post of Superintending Engineer and the Chief Engineer "shall be made by selection and seniority alone shall confer no claim". Thus it could be seen that promotion should be only on merit. The appellant having been found more meritorious than others, obviously the DPC had considered and directed him to be promoted as Superintending Engineer, Chief Engineer and thereafter as Engineer-in-Chief. Thus, his promotion to the above posts is consistent with the Rules and according to law.

10. It is true that the respondents entered into service much earlier to the entry into the service by the appellant. That is obvious. But the question is whether the respondents who entered service later than the appellant can deny him the

seniority. But for the Circular of the Government of Bihar, giving the benefit of past service as a demobilised military officer, obviously the appellant has not right to claim seniority over them. The Government Order giving such a benefit to the ex-servicemen, when challenged, was upheld and thereafter it was not challenged in this Court. It cannot be challenged since in several cases the policy has been upheld by this Court for the reason that the persons like the appellant rendered service to the country at the time when their service was needed by the nation to defend it from foreign aggression. Further though the appellant was initially appointed to a temporary post, admittedly, permanent post was available to the demobilised officers as Assistant Engineer. His representation to consider his case for fitment into the permanent post was acceded to and the Government had passed that order and that order also had become final. Thus the appellant became senior to the respondents as permanent Assistant Engineer much earlier to the respondents.

12. Thus it was held that the seniority would be from the date of the entry into the service on a substantive appointment. Though the respondents were senior in temporary posts or in temporary promotions as Executive Engineers their status remained as temporary until they were confirmed. Before their confirmation as Executive Engineers, the case of the appellant, a senior permanent Assistant Engineer was not considered. So that confirmation was bad in law. Though for purposes other than seniority, their temporary service would be counted, for the purpose of seniority only confirmation as permanent Assistant Engineers would be the criteria. The ratio in the above case applies to the facts in this case. Though the respondents are entitled to other benefits by virtue of their temporary appointment, for the purpose of inter se seniority their seniority would be considered only from the date of entry into the service as permanent Assistant Engineers. Since they entered into service much later to the appellant, they cannot claim any seniority over the appellant. Thus considered, we hold that the view of the High Court that the appellant is not entitled to seniority and other benefits is clearly bad in law.

"18. Mr. V.Raghavachari, relied on yet another decision reported in 1995 Supp (1) Supreme Court Cases 434, Sarat Kumar Dash Vs. Biswajit Patnaik. In the said

judgement, the Hon'ble Apex Court has held that in case of merit and suitability, seniority should have no role to play. Para 8 of the said judgement which the learned counsel placed reliance is extracted here under:- "8. In case of merit-cum-suitability, the seniority should have no role to play when the candidates were found to be meritorious and suitable for higher posts. Even a junior most man may steal a march over his seniors and jump the queue for accelerated promotion. This principle inculcates dedicated service, and accelerates ability and encourages merit to improve excellence. The seniority would have its due place only where the merit and ability are approximately equal or where it is not possible to assess inter se merit and the suitability of two equally eligible competing candidates who come very close in the order of merit and ability. Under those circumstances, the seniority will play its due role and calls it in aid for consideration. But in case where the relative merit and suitability or ability have been considered and evaluated, and found to be superior, then the seniority has no role to play. In our view the PSC has evolved correct procedure in grading the officers and the marks have been awarded according to the grading. It is seen that the four officers have come in the grading of 'B'. In consequence, the PSC had adopted the seniority of the appellants and Panda in the lower cadre in recommending their cases for appointment in the order of merit. " The principle laid there under is that the seniority would have its due place only where merit and ability are approximately equal or where it is not possible to assess the merit and suitability of two equally eligible competing candidates who come very close in the order of merit and ability. In the present case on hand, relative merit and ability of the petitioners and the seniors to them have not been considered at all while granting accelerated promotion to the petitioners. Thus, the juniors can march over their seniors if they have been considered meritorious. There can be no quarrel over the said position. Hence, the said judgement is also of no relevance to the facts on hand.

19. The other judgement that has been cited by Mr. V.Raghavachari, the learned counsel appearing for the petitioners is reported in AIR 1990 SUPREME COURT 1607 Direct Recruit Class II Engg. Officers' Assn. Vs. State of Maharashtra. That is the case where the dispute was between the direct recruits and the officiating Deputy Engineers. The ratio made thereunder may not have any relevance to the facts on hand.

20. Yet another decision that was relied on behalf of the petitioners is reported in (2008) 1 MLJ1202(SC), Shiv Nath Prasad Vs. Saran Pal Jeet Singh Tulsi. That is the matter where the appellant therein was appointed as Assistant Engineer in the PWD after selection made through Madhya Pradesh Public Service Commission. Later, he was promoted to the post of Executive Engineer in July 1980 against the reserved post of Executive Engineer, whereas the respondents therein were not considered for promotion on ground of non-availability of the post under General category. However, they were considered and appointed to the post of Executive Engineer in the year 1985. A provisional gradation list was issued and published on 18.06.1991 and the same was finalised on 08.10.1991 after receiving objection. In that gradation list the candidates who were appointed against the Scheduled Caste vacancies were shown above the other private respondents who were appointed against the general quota. The list was challenged before the Tribunal. The Tribunal directed to consider all the petitioners before the Tribunal and other persons similarly selected against the General Category for promotion to the post of Superintending Engineer from the date prior to the date on which private respondent No.2 was promoted by calling a Review Departmental Promotion Committee and consequently, all benefits to be given to them, if they were found suitable including for the post of Chief Engineer and it would become necessary to revert private respondent No.2 from the post of Chief Engineer for want of the post. Aggrieved against the said order of the Tribunal writ petition was filed by the appellant challenging the order of the Tribunal. It was held by the High Court of Madhya Pradesh, that the appellant will carry his seniority as was given in the feeder post and he cannot have a march over on account of his earlier promotion against the reserved category. 20.1. Thus, the order of the Tribunal was confirmed by the Division Bench of Madhya Pradesh. Aggrieved over the same, the matter was taken up before the Hon'ble Apex Court, and the same was confirmed by the Hon'ble Apex Court. Thus, it was the case relating to inter-se-seniority between general and the reserved candidates. Juniors in the category belong to Scheduled Caste who got promoted earlier were not entitled to retain their seniority vis-a-vis seniors who got promoted later. Article 16(4a) of the constitution was inserted which enable the Government to provide for reservation in promotion and also to provide for consequential seniority. The said amendment of the year 2001 was

given retrospective effect on and from 17.06.1995. The Madhya Pradesh Government amended the Rule in 2000 enabling the said benefit to the candidates belonging to Scheduled Castes and Schedule Tribes who were promoted to reserved posts. They have claimed consequential seniority and they have been given as such. However, their claim was ultimately rejected by the Hon'ble Supreme Court holding that the amendment to the constitution was brought into force only on and from 17.06.1995 and hence neither the said amendment nor the Rules framed by the Madhya Pradesh Government will operate with reservations to promotions granted prior to 1995 and held that the Scheduled Caste and Scheduled Tribe candidates who have got accelerated promotion prior to 1995 were not entitled to consequential seniority. 20.2. However, in the present case on hand, absolutely there was no Rule for providing consequential seniority to the accelerated promotees. Proviso to Rule 35(aa) alone will have application. The above facts would indicate that the finding arrived at in the above said decision may not have any relevance to the facts of the case on hand.

21. Yet another decision that was relied on by Mr. V.Raghavachari is reported in (1996) 10 Supreme Court Cases 177, D.K.Reddy Vs. Union of India. That is also the case where the dispute was between the direct recruits and the promotees. Hence, the issues raised in the said decision may not have any relevance to the facts of the case on hand.

22. The aforesaid judgement cited by Mr. V.Raghavachari, the learned counsel appearing for the petitioners may not in any way relate to the facts of the present case since in each of the case the matter involved was the promotion being given to individual person based on the comparative assessment of the juniors merit vis-à-vis seniors. There cannot be any dispute over such proposition. In the case on hand, there has been no merit assessment between the petitioners being the members of STF and other police personnel who were not given a chance to join the STF. Thus, it cannot be claimed by the petitioners that they have been accorded accelerated promotion basing on individual assessment of merit and ability made on them and have been given promotion superseding their seniors who were found less meritorious than them.

23. Yet another decision that was relied on behalf of the petitioners is reported in (2007) 11 Supreme Court Cases 528, Govt. Of A.P Vs. G.Jaya Prasad Rao. That is the case where certain police personnel approached the Tribunal with a prayer to declare insertion of Note 2 to Rule 3 and Proviso to Rule 6 of the Andhra Pradesh Police (Civil Police) Service Rules, 1998 issued in G.O.Ms.No.267, Home (Police-E) Department dated 26.11.2001 by amendment of Rule as arbitrary and discriminatory being violative of Articles 14, 16, 21 and 311 of the Constitution of India. By the said amendment a scheme was introduced for accelerated promotion for the outstanding work in the field of anti-extremist operation. By virtue of the said amendment, some of the officers have got accelerated promotion on account of their performances in extremist area. The above Rule was struck down by the Tribunal. Aggrieved against the order, a batch of writ petitions was filed before the High Court. The High Court confirmed the order of the Tribunal. The High Court held that the amendment did not satisfy the test of reasonable classification and it further observed that fortuitous circumstances cannot be made a basis for creating a separate class within the class. The matter was taken up to the Hon'ble Apex Court. The Hon'ble Apex Court has set aside the judgement of the High Court, Andhra Pradesh holding that it cannot be sustained. The Hon'ble Apex Court has held in the said decision that the amendment cannot be said to be discriminatory or arbitrary. Further, it has been held that those who have performed in extreme situation deserves better treatment and the same has to be done within four corners of the Rules. Para 25 of the said judgement is usefully extracted here under:-

"25. There is no gainsaying that those who have performed in extreme situation they deserve better treatment but this has to be done within the four corners of the Rules. In order to achieve that objective in view, this accelerated promotion was conceived and necessary amendments were made in the Rules and scheme/guidelines were issued by the State of Andhra Pradesh. Therefore, reading the amended Rules with scheme/guidelines together it leaves no manner of doubt that such amendment cannot be said to be discriminatory or arbitrary. "

23.1. Thus the question of seniority between the promotees and the seniors in the lower cadre was not the issue for consideration in the said case. Further more, the Hon'ble Apex Court also considering the fact that choice shall be made available

for the police personnel to work in the naxal area. Para 27 of the judgement is reproduced here under:-

"27. Before parting with the matter, in order to further safeguard that in case of postings, though Rule 10 covers, but especially when the postings are done in specially naxal affected areas out of the persons posted in that zone, the unit-in-charge concerned, be it Inspector General of Police or the Deputy Inspector General of Police or Police Commissioner, may informally seek voluntary option from the officers working in that zone whether they are willing to be posted in the naxal affected police stations so that even the remote possibility of picking and choosing can be avoided. However, it is still in the discretion of the unit-in-charge concerned, he may after going through the records may turn down the option of the incumbent if he finds that he may not come up to the expectation in that area. But the grievance of the person that he was willing to go for an extremist operation still he was not chosen by the unit-in-charge, could be redressed. This could be done by issuing a circular seeking the option for such preferential posting in the unit but the last choice remains with the unit head and he may, for reasons to be recorded, come to the conclusion that the incumbent may not be suitable for the job and may turn down the request but at least the incumbent will have the choice to serve in anti-extremist operations. " 23.2. As far as, in the present case on hand, choice was not sought from the police personnel for joining the STF.

24. The bundle of authorities thus submitted by the learned counsel appearing for the petitioners would disclose that those are the cases where the persons have climbed the ladders and obtained promotion by competing with others including their seniors and obtained promotion because of their merit and ability. Those persons undoubtedly, though are juniors to the persons with whom they have competed on promotion are entitled to hold the seniority in the promotional post and the seniors who have climbed the ladder latter to the said promotional post cannot be considered as seniors to them, though they were seniors in the feeder category. There cannot be any quarrel over the said proposition. But, in the present case on hand, the petitioners were not considered for promotion along with their seniors. They have been accorded accelerated promotion by virtue of the G.O's referred to above. The merit and ability of each of the persons, for

according promotion to the next stage was not taken into account either by the Director General of Police who has sent the proposal for according accelerated promotion or had been considered by the Board constituted for the said purpose. Even, the G.O according accelerated promotion has not spoken about individual persons merit and ability. Further more, as stated already the petitioners and others who have got accelerated promotion have not competed with their seniors for such promotional post.

25. The learned Advocate General appearing for the state relied on the decision reported in (1995) 6 Supreme Court Cases 684 (Union of India vs. Virpal Singh) and the case of Ajith Singh Januja vs. State of Punjab reported in (1996) 2 Supreme Court Cases 715. That is the case where accelerated promotion were given to Scheduled Caste candidates by following the rule of reservation. The Hon'ble Apex Court in its decision have held that accelerated promotion is accorded basing on the rule of reservation superseding others who were seniors in the feeder category. Seniors will rank above the accelerated promotees on reaching that promotional post. However, a different view was taken in Jagdish Lal Vs. State of Haryana reported in (1997) 6 Supreme Court Cases 538. But, the Constitutional Bench of the Hon'ble Apex Court in Ajith Singh (II) vs. State of Punjab reported in (1999) 7 Supreme Court Cases 209 upheld the findings rendered in Virpal Singh and Ajith Singh (I) and it overruled the views taken in Jagdish Lal case. Certain portions in (1999) 7 Supreme Court Cases 209 is usefully extracted here under:-

"50. It is clear, therefore, that the seniority rule relating to continuous officiation in promotion is part of the general scheme of recruitment by direct recruitment, promotion, etc. in each of the services in Classes I, II and III and is based upon a principle of equal opportunity for promotion. In our opinion, it is only to such promotions that the seniority rule of continuous officiation is attracted. (b) Statutory rule of seniority cannot be delinked and applied to roster-point promotions 51. As stated above in Ajit Singh¹ the promotion rule in Rule 7(1) proviso (iii) and the seniority rule in Rule 9 under the 1976 Rules for Class III form a single scheme and are interlinked. In other words, only in case the officers have reached the level of Superintendents Grade II (Level 3) in the manner mentioned in Rule 7(1)

proviso (iii) by competition between the Assistants (Level 2) and on consideration of their cases on the basis of seniority-cum-merit, can the seniority rule in Rule 9 relating to continuous officiation in the post of Superintendent Grade II (Level 3) be applied. Here there is a roster in *Ajit Singh*¹ for promotion from Level 1 to Level 2 and from Level 2 to Level 3. The consequence is that in the case of roster-point promotees, the said candidates who get promoted as Superintendents Grade II (Level 3) as per the roster, having not been promoted as per Rule 7(1) proviso (iii) of the 1976 Rules i.e. upon consideration with their cases on the basis of seniority-cum-merit at the Assistants level (Level 2), they cannot rely upon Rule 9 of the 1976 Rules dealing with seniority from the date of continuous officiation as Superintendents Grade II (Level 3). It is not permissible to delink the seniority rule from the recruitment rule based on equal opportunity and apply it to promotions made on the basis of the roster which promotions are made outside the equal opportunity principle.

66. In our opinion, there is no conflict in the principles laid down in these two judgments, nor is there anything wrong in the above elucidation of the law. In *Virpal*² it was not necessary for the Court to go into the question whether any circular if it gave seniority to the roster-point promotees (reserved candidates) could be treated as valid. But, in *Ajit Singh*¹ which was an appeal against the Full Bench judgment in *Jaswant Singh*⁴²⁴ this Court was dealing with a declaration made by the Full Bench for implementation of the Punjab circular dated 19-7-1969 (see para 29 of the Full Bench) which positively declared that the roster points were seniority points. That was why in *Ajit Singh*¹ this Court had to consider the validity of such a circular. In *Ajit Singh*¹ this Court held that the declaration granted in the impugned judgment of the Full Bench in *Jaswant Singh*²⁴ on the basis of the Punjab circular would be in conflict with Article 14 and Article 16(1). This Court had therefore to lay down that any circular, order or rule issued to confer seniority to the roster-point promotees would be invalid. Thus, the decision in *Ajit Singh*¹ cannot be found fault with. Does *Indra Sawhney*⁴ protect seniority of promotees at roster point A poignant scenario in some cases ⁷³. We next come to the poignant scenario in several of the matters before us. *Virpal*² referred to such a scenario where all the 33 candidates who were to be considered for 11 vacancies were from the SC/ST category (see p. 710 of SCC). Before us, similar facts are placed

by the general candidates. The factual position is not disputed, though certain reasons have been set out by both sides which none has scientifically examined. It is to be noticed that: (i) in Ajit Singh¹ itself, (see p. 76 and pp. 200-15, 232 of paper-book) as on 30-9-1994 out of 107 officers working as Superintendents Grade I, the first 23 officers are from Scheduled Castes. At the level of Under-Secretaries, out of 19, the first 11 are from SC category. In the category of Deputy Secretary, out of four, 2 are from SC category. As on 30-9-1994, the position was that at these levels, the percentage was 22.5%, 54% and 67% respectively in the above categories. If the seniority is to be counted as per the case of the reserved candidates, the position would be that Deputy Secretaries would be 100% manned by Scheduled Castes, and Under-Secretaries would again be 100% manned by Scheduled Castes while Superintendents Grade I would be so manned to the extent of 53%. (ii) In Jatinderpal Singh case (CAs Nos. 316-17 of 1999) the top 134 positions of Principals (from Headmasters source) would be from Scheduled Castes while the top 72 positions (from Headmistresss source) would be from Scheduled Castes. It is stated that adding this to the number awaiting promotions, the position would be that the top 217 and 111 in these categories would be Scheduled Caste candidates which would be 100% and 71% (the posts being only 156 under each source). One does not know what will happen in posts beyond Principal, if all persons in the zone are from SC/ST category. (iii) In Kamal Kant (SLP No.4945 of 1997 from Haryana) as of today: (a) among Deputy Secretaries, the first 8 posts are occupied by the reserved category (Scheduled Castes and Backward Classes); (b) among Under-Secretaries (Group A) (officiating) 14 posts at the higher levels are occupied by the reserved category.

74. The above factual position is not in fact disputed but it is said that this could be because the roster was operated again and again till that was stopped after Sabharwal⁵ was decided, but nobody has gone into the extent to which excess roster operation has created such a situation.

77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand,

the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that Virpal² and Ajit Singh¹ have been correctly decided and that Jagdish Lal³ is not correctly decided. Points 1 and 2 are decided accordingly.

"26. The legal principles that flow from the judgement reported in (1999) 7 Supreme Court Cases 209 is that when accelerated promotion is granted superseding others and if their seniors from the feeder category are subsequently promoted they will rank senior to the accelerated promotees in the promoted post. However, one exception pointed out by the Supreme Court is that, when accelerated promotees gets further promotion from the promoted post that cannot be reverted at a later date when their seniors catch up. In this connection, the learned Advocate General, submitted that the accelerated promotees need not wait in the promoted post for all their seniors to catch up on their promotion. If substantive vacancies arise for further promotion they will continue to get further promotion on substantive vacancies so long as their seniors have not already got up with them from the feeder category. In view of the said assertion made by the learned Advocate General, the petitioners may not have fear that they will have to wait indefinitely till all their seniors are promoted.

27. The last limb of the arguments of the learned counsel appearing for the petitioners is that the STF team has struggled hard to nab the forest brigand veerappan and hence they have been accorded accelerated promotion along with few other benefits. The task undertaken by them cannot be under estimated. Further, the Division Bench judgement reported in AIR 2005 MADRAS²⁰² was strongly relied on for the said purpose. 27.1. That is the case where a Public Interest Litigation was filed seeking mandamus, directing the State of Tamil Nadu to compensate the victims of forest brigand veerappan and STF personnel. The petitioner there in has sought for an injunction restraining the state of Tamil Nadu from holding a function at Jawahar Lal Nehru Stadium to commemorate the death of veerappan and his accomplices and felicitate the STF personnel of Tamil Nadu

pending disposal of the writ petition. The Division Bench of this Court while dismissing the said writ petition has held that instead of appreciating the good service rendered by the STF, which has made the flag of Tamil Nadu Police fly high, the petitioner as a party-in-person, has filed the present writ petition, with accusing unclean fingers. Para 45 of the said judgement strongly emphasised by Mr. V.Raghavachari is reproduced hereunder:-

"45. But, unfortunately, instead of appreciating the good services rendered by the Tamil Nadu STF, which has made the flag of Tamil Nadu Police fly high, the petitioner, as a party-in-person, has filed this writ petition, with accusing unclean fingers. " 27.2. There cannot be two opinion about the fact that STF personnel have done an exemplary task in nabbing the forest brigand veerappan. The learned Advocate General appearing for the State, in fact had submitted that the State Government has not under-estimated the act of STF staff. According to him, it was a commendable job done by the STF. The State Government also taking into consideration, their active part in successful over-powering the forest brigand / Sandalwood smuggler veerappan awarded cash and also a house site to them. In addition to that, they have been accorded one stage accelerated promotion. However, he has contended that one stage of accelerated promotion cannot mean to include the successive promotions also. 27.3. As pointed out by the Learned Advocate General, the STF personnel did a commendable job in trying to nab the forest brigand veerappan. However, the question is that since each individual appraisal of the acts of bravery was not considered by the Director General of Police, the committee formed there on and the Government while according accelerated promotion, they are not entitled to further promotion apart from one stage of promotion.

28. The discussions made above will draw the following irresistible conclusion:-
(1.) The petitioners were not promoted to the substantial post which was available when the G.O., was passed but however, supernumerary posts were created for them for according promotion. (2.) Neither the proceeding of the Director General of Police dated 22.10.2004 nor the proceeding dated 25.10.2004 reveals no individual appraisal of the acts of bravery was considered. (3.) The accelerated promotion board minutes dated 25.10.2004, also does not reveal the consideration

of each and every individuals acts of bravery. (4.) G.O.Ms.No.468 Home Department dated 19.03.1996 and the subsequent letter of the Government dated 27.01.1997 discloses how and when accelerated promotions have to be granted. However, the guidelines made therein have not been followed while according accelerated promotion in G.O.Ms.No.1252 dated 29.10.2004 and the other promotions made subsequently by passing G.O's. (5.) The Government was well within its power in considering the representations given by the police officers who are seniors to the persons who have been accorded accelerated promotion and passed the impugned G.O.Ms.No.1396 Home Department dated 03.10.2007. (6.) The Government was well within its power in deleting para 5(e) in G.O.Ms.No.1252 dated 29.10.2004 and substituting by new one in G.O.Ms.No.1346 Home Department dated 06.12.2004, namely " The seniority between the accelerated promotees and the general promotees in the promoted category shall continue to be governed by their panel position i.e with reference to their inter-se-seniority in the lower grade. At any stage the accelerated promotion will not give the individual accelerated consequential seniority, since the accelerated promotion is only for one stage."

(7.) The accelerated promotion was accorded through G.O's and the same was sought to be modified by passing the impugned G.O which cannot be faulted at all.

(8.) The post in question being selection post, requires consideration of eligible and qualified persons. The accelerated promotion were granted to a chosen individuals without considering their eligibility and that whether they are qualified for the same. (9.) Further more, whether accelerated promotion were made under Rule 36(b)(ii)(2) or whether it was accorded as a reward for some act under the accelerated promotion scheme, once the promotion is given effect to, the seniority of the person will be reckoned only under Rule 35. The first proviso to Rule 35(aa) which has been discussed earlier will apply to the case of the petitioners who have superseded their seniors in the feeder category. In effect, it can be said that the impugned G.O enforces first proviso to Rule 35(aa).

29. In fine, these writ petitions deserve to be dismissed and accordingly dismissed. Consequently, connected miscellaneous petitions are closed. However, no costs. 14.10.2009 pgp Index: Yes / No Internet: Yes / No To 1.The State of Tamil Nadu,

Rep. by its Secretary to Government, Home Department, Secretariat, Chennai 9.
2.The Director General of Police, Chennai 4. K.VENKATARAMAN, J pgp W.P.
Nos. 35716, 36553, 33375, 37136 to 37141 of 2007, 15231, 8417, 3455, 8855,
3905, 10760, 2939 of 2008. Dated :

14. 10.2009

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