

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4832 OF 2013
(Arising out of SLP (C) No. 3464 of 2012)

P. Dharni & Ors.

... Appellants

Versus

Govt. of Tamil Nadu & Ors.

... Respondents

J U D G M E N T

Jagdish Singh Khehar, J.

1. Leave granted.
2. The controversy raised in the instant appeal revolves around the genuineness of the claim of respondent no. 5, K.V. Karthalingan, for promotion from the post of Motor Vehicles Inspector (Grade II) to the post of Regional Transport Officer. In order to understand the veracity of the aforesaid claim it would be relevant to mention, that the post of Motor Vehicles Inspector (Grade II) is the lower most entry level post. The post of Motor Vehicles Inspector (Grade II), is filled up only by way of direct recruitment. Onward promotion therefrom is to the post of Motor Vehicles

Inspector (Grade I). It is not a matter of dispute, that Special Rules framed under Section 42 of the Tamil Nadu Transport Subordinate Service exclusively prescribe the conditions of eligibility and the manner/method of promotion from the post of Motor Vehicles Inspector (Grade II) to the post of Motor Vehicles Inspector (Grade I). The aforesaid rules came into force with effect from 19.8.1981. The said rules have been made available to us from the Tamil Nadu Service Manual, Volume III. For purposes of the present controversy, a relevant extract of rules 2, 5 and 9 of the said Special Rules is being reproduced hereunder:-

- “2. Appointment – (a) Appointment to the category mentioned in column (1) of the table below shall be made by the methods specified in the corresponding entries in column (2) thereof:-

TABLE

Category (1)	Method of Recruitment (2)
1. Motor Vehicle Inspector Grade-I	Promotion from Motor Vehicles Inspector, Grade – II
2. Motor Vehicles Inspectors Grade - II	Direct Recruitments:

- (b) Promotion to category – 1 shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal.

xxx

xxx

xxx

5. Qualifications – (a) Age—(i) No per shall be eligible for appointment to category-2 by direct recruitment, unless he possesses the qualifications specified below, namely :-

- (1) Must have completed 21 years of age;

(2) Must not have completed 32 years of age :

Provided that a person belonging to the Scheduled Caste/Scheduled Tribes shall be eligible for appointment by direct recruitment to category-2 if he has not completed 37 years of age.

Provided further that the minimum age limit of 21 years prescribed above shall apply also to the candidate belonging to Scheduled Caste/Scheduled Tribes and Backward Classes.

(ii) The age limit prescribed in this rule shall be reckoned so far as direct recruits are concerned with reference to the first day of July of the year in which the selection for appointment is made.

(b) Other Qualifications.—No person shall be eligible for appointment to the category specified in column (1) by the method specified in column (2) of the table below unless he possess the qualifications specified in the corresponding entries in the column (3) thereof :-

TABLE

Sl.No. (1)	Category (2)	Method (3)	Qualification (4)
1.	Motor Vehicles Inspectors, Grade-I	Promotion	i) Must have served as Motor Vehicles Inspector, Grade-II for a period of not less than 5 years and must be an approved probationer in that category.
2.	Motor Vehicles Inspectors	Direct Recruitment	xxx xxx xxx
	xxx	xxx	xxx

9. Preparation of Annual List of approved candidates – For the purpose of preparation of the annual list of approved candidates for appointment by promotion, the crucial date on

which the candidates shall be qualified shall be the 15th March of every year.”

A perusal of the rules extracted hereinabove reveals, that the post of Motor Vehicles Inspector is to be filled up exclusively by promotion (Rule 2(a)). The above rules postulate, that merit and ability would be the criterion for such promotion (Rule 2(b)). It is also clarified that seniority would be taken into consideration, only when merit and ability of the competing candidates is found to be almost the same. The above Special Rules lay down, that Motor Vehicles Inspectors (Grade II) would be considered for promotion to the post of Motor Vehicles Inspector (Grade I) only after rendering five years' service (Rule 5(b)). Eligibility, on the basis of the qualifications prescribed for promotion to the posts of Motor Vehicles Inspectors (Grade I) is to be determined annually. For the said exercise the cut off date is 15th of March of every year (Rule 9).

3. It is also relevant to mention, that Special Rules have been framed under Section 28 of the Tamil Nadu Transport Service for regulating the conditions of eligibility and the manner/method of appointment, inter alia to the post of Regional Transport Officer. Under the above rules, the post of Regional Transport Officer can be filled up only by way of transfer. The above Special Rules came into force with effect from 15.9.1974. The same have been made available to us, from the Tamil Nadu Service Manual, Volume II. Relevant extracts of Rules 2, 3 and 6 of the above

Special Rules, which have a bearing on the present controversy, and are being reproduced hereunder:-

“2. Appointment.—(a) Appointment to these categories shall be as follows :

Category (1)	Method of Appointment (2)
Category-1: Deputy Transport Commissioner	1) By promotion from category-2; or 2) For special reasons by recruitment by transfer from any other service on tenure basis.
Category-2: (1) Regional Transport Officer and Additional Transport Officer (2) Assistant Secretary State Transport Authority	1) By recruitment by transfer from among— (i) Motor Vehicles Inspectors, Grade-I in the Tamil Nadu Transport Subordinate Service; or (ii) Superintendents, Selection Grade and Personal Assistant to Regional Transport Officers, in the Tamil Nadu Ministerial Service;

(or)

(2) For special reasons by recruitment by transfer from any other service on tenure basis;

(3) Appointment of an Officer on tenure basis from any State Transport Undertakings.

(b) Promotion to Category-I shall be made on grounds of merit and ability, seniority being considered only where merit and ability of competing candidates are approximately equal.

(c) The posts in category 2 other than those filled up by recruitment by transfer from any other service on a tenure

basis shall be filled up by rotation, the first, second, fourth and fifth vacancies being filled up by recruitment by transfer from among Motor Vehicles Inspectors, Grade I, and the third vacancy being filled up by recruitment by transfer from Superintendents in the Selection Grade and Personal Assistants to Regional Transport Officers in the Ministerial Service :

Provided that this rotation shall be followed in respect of appointments made on and from the 26th June 1978 :

Provided further that the temporary appointments to Category-2 made on and from the 15th September 1974 to the 25th June 1978 shall be regulated in the proportion of 1 : 1 between Motor Vehicles Inspectors, Grading – I, and Superintendents, Selection Grade, including Personal Assistants to Regional Transport Officers in the Ministerial Service.

3. Qualification:- No persons holding the post specified in Column (2) of the Table below, shall be eligible for appointment to the category specified in column (1) unless he posses the qualifications specified in column (3) thereof :

TABLE		
CATEGORY (1)	POST (2)	QUALIFICATION (3)
Category – 1 Deputy Transport Commissioner	1. Regional Transport Officer and Additional Regional Transport Officer 2. Assistant Secretary, State Transport Authority	xxx xxx xxx

Category-2

(1) Regional Transport Officer and Additional Regional Transport	Motor Vehicles Inspector, Grade-I	Must have served for a total period of not less than five years as Motor Vehicles Inspector, Grade-I out of which not less than two years must be in a field office
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Officer.

(2) Assistant Secretary State Transport Authority	Superintendents, Selection Grade and Personal Assistants to the Regional Transport Officers	Must have served for a total period of not less than five years as Superintendent or a Personal Assistant to the Regional Transport Officer of which not less than two years shall be as a Personal Assistant to Regional Transport Officer.
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Provided that this rule shall not be applicable to appointments prior to the date of 1st July 1978.

6. Preparation of Annual List of Approved Candidates – A list of approved candidates for appointment by promotion to Category 1 and recruitment by transfer to category 2 shall be prepared every year. The crucial date for inclusion in the panel of all eligible officers for such appointment shall be the 1st July of the year in which the selection for appointment is made.”

A perusal of the rules extracted above reveal, that appointment to the post of Regional Transport Officer is to be made only by way of transfer, interalia, from amongst Motor Vehicles Inspectors (Grade I) (Rule 2(a)). Appointment by way of transfer to the post of Regional Transport Officer from other services, (including the post of Motor Vehicles Inspectors (Grade-I) is to be only on tenure basis (Rule 2(c)). It is significant to notice, that to be eligible for appointment to the post of Regional Transport Officer (from amongst Motor Vehicle Inspectors (Grade I)), the incumbent in question must have served for a total period of not less than five years as Motor Vehicles Inspector (Grade I), out of which not less than two years must be in a field office (Rule 3). Eligibility, on the basis of the

qualifications prescribed for transfer to the post of Regional Transport Officer, is to be determined annually. For the said exercise, the cut off date stipulated under the Special Rules is 1st July of every year (Rule 6).

4. The career of respondent no. 5, K.V. Karthalingan, in the Transport Department of the State Government commenced on his appointment by direct recruitment as Motor Vehicles Inspector (Grade II), on 9.2.1995. While serving as Motor Vehicles Inspector (Grade II), he claimed that he had detected on a single date 14 cases of passenger vans being used as public careers. He asserted, that he had seized the concerned vehicles, whose owners were evading payment of tax (to the Transport Department). He also asserted, that he had detected irregularities being committed by certain dealers, for evading revenue (payable to the Transport Department). He also claimed to have detected various instances where dealers were found meddling with chassis numbers of vehicles. By a process of tempering, chassis numbers were being altered, by the dealers. According to respondent no. 5, his actions had resulted in bringing to book, numerous persons evading payment of tax to the Transport Department. According to respondent no. 5, K.V. Karthalingan, the above actions were taken by him despite grave personal risks. In this behalf, it was his assertion, that he had received a number of threatening letters, for having revealed the aforesaid irregularities. In the above letters he was

threatened, that he would be eliminated. Despite receipt of such letters, respondent no. 5 claims to have continued to discharge his duties with dedication and devotion.

5. In appreciation of the above alleged exemplary devotion of duty displayed by respondent no. 5, the Managing Director of the Tamil Nadu State Transport Corporation, Kumbakonam Division-1, as well as, the Managing Director of Cholan Roadways Corporation, recommended the name of respondent no. 5, K.V. Karthalingan, for accelerated/out of turn promotion as Regional Transport Officer. On 26.9.1997, having considered the recommendations made by the Managing Directors (referred to above), the Regional Transport Officer by citing Rule 36(b)(ii) of the Tamil Nadu State and Subordinate Services Rules, also recommended the claim of respondent no. 5 for out of turn/accelerated promotion. The Deputy Transport Commissioner, Trichy, on 10.7.1998, having considered the above recommendations, endorsed the claim of respondent no. 5, K.V. Karthalingan, for accelerated/out of turn promotion, to the Commissioner of Transport, Chennai. In order to appreciate the recommendation made on 26.9.1997 by the Regional Transport Officer, it is essential to extract hereunder Rules 36 and 36A of the Tamil Nadu State and Subordinate Services Rules, which came into force with effect from 1.1.1955. It was pointed out, that the above rules were framed in exercise

of powers conferred by the proviso under Article 309 of the Constitution of India. The said rules are reproduced below :-

- “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-seniority among the persons found suitable for such promotion shall be with reference to the inter-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.

(c) Appointment of a member to higher category not to be considered if he had been on leave for three or four years or more continuously.—Notwithstanding anything contained in sub-rules (a) and (b), a member of a service who had been on leave for a period of three years continuously for any reason except higher studies or for a period of four years continuously for higher studies, shall not be considered for appointment as a higher category either by promotion or by recruitment by transfer unless he has completed service for a period of one year from the date on which he joins duty on return from leave.

36A. Appointment by Recruitment by Transfer.—Appointments by recruitment by transfer to a class or category in a State Service from among the holders of posts in a Subordinate Service, shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal.”

6. Whilst it is the claim of respondent no. 5, that he had a genuine claim for out of turn/accelerated promotion under Rule 36(b)(ii), it is the vehement contention of the learned counsel for the appellants before us, that the aforesaid rule could neither be invoked for promotion to the post of Motor Vehicles Inspector (Grade I) nor for appointment by way of transfer to the post of Regional Transport Officer.

7. Before examining the merits of the controversy, it will be essential for us to narrate the sequence of events leading to the direction by the High Court of Judicature at Madras (hereinafter referred to as the ‘High Court’), for promoting respondent no.5, K.V. Karthalingan, to the post of Regional Transport Officer. Insofar as the instant aspect of the matter is concerned, it would be relevant to mention, that respondent no. 5 addressed a

representation dated 30.6.1998 seeking out of turn/accelerated promotion. For his instant prayer, he sought consideration of his sincere, efficient and unblemished record of service, detailed above. On receipt of the aforesaid representation, relying on the recommendation made by the Managing Director of the Tamil Nadu State Transport Corporation, Kumbakonam Division-1 and Managing Director of Cholan Roadways Corporation, on 26.9.1997 the Regional Transport Officer, also recommended the claim of respondent no. 5. Thereupon, the Deputy Transport Commissioner, Trichy, on 10.7.1998, further recommended respondent no. 5, K.V. Karthalingan, for accelerated promotion, to the Commissioner of Transport, Chennai.

8. Despite the above recommendations, no action was taken by the authorities. It is, therefore, that respondent no. 5, K.V. Karthalingan, approached the Tamil Nadu Administrative Tribunal, at Chennai (hereinafter referred to as, the Administrative Tribunal), by filing Original Application no. 5918 of 1998. The aforesaid Original Application was disposed of by an order dated 6.11.1998, without issuing notice to the respondents. A perusal of the order dated 6.11.1998 reveals, that the Transport Secretary of the State Government, was directed to pass orders on the recommendations made by the Deputy Transport Commissioner, Trichy dated 10.7.1998.

9. Consequent upon the issuance of the above directions, the State Government passed an order dated 8.12.1998. By the instant order, the claim of the respondent no. 5 K.V. Karthalingam, for out of turn/accelerated promotion came to be rejected. While rejecting the prayer of respondent no. 5, the State Government recorded, inter alia, the following reasons:-

“2. The government have examined the representation of Mr. V. Kathalingam, taking into consideration of the direction the Hon'ble (Tribunal). (The) Tamil Nadu Transport Subordinate Service do not provide for out of turn or accelerated promotion. Besides, there is no merit in the claim of the petitioner. Instances of extraordinary services quoted by him are common in Transport Department as well as in Civil Service.

3. Accordingly, the Government rejects the request of Mr. Kathalingam, Motor Vehicles Inspector, Grade-II for accelerated Promotion.”

A perusal of the order passed by the State Government reveals, that the rules regulating the conditions of service of respondent no. 5 do not provide for an avenue for out of turn/accelerated promotion. The State Government also arrived at the conclusion, that the instances of extraordinary service relied upon by respondent no. 5 (to claim out of turn/accelerated promotion), could not be treated as exceptional or unprecedented, because such instances were common in the Transport Department.

10. Dissatisfied with the order of the State Government dated 8.12.1998, respondent no. 5 preferred Original Application no. 429 of 2002 before the

Administrative Tribunal. The aforesaid Original Application was allowed by the Administrative Tribunal vide an order dated 10.7.2002. In the instant matter, the Administrative Tribunal had issued notice to the respondents (i.e, different functionaries of the State Government). The respondents were duly served. But the matter was disposed of without waiting for a reply from them. While allowing the aforesaid application, even though the State Government while rejecting the claim of respondent no. 5 vide order dated 8.12.1998 had recorded that the instances indicated by him for out of turn/accelerated promotion, could not be treated as exceptional or extraordinary, the Administrative Tribunal held that the same constituted conspicuous merit and ability, and were sufficient to earn respondent no.5, K.V. Karthalingan, out of turn/accelerated promotion as Regional Transport Officer. In its aforesaid determination, the Administrative Tribunal recorded the following observations:-

“5. The rejection order is found in G.O.Ms. No.2535 Home (Transport II) Department, dated 8.12.1998. There is no dispute about the extraordinary performance of the petitioner. In one of the leading English Journals circulated in Tamil Nadu, the publication is to the following effect :

“Parambalur October 31 Instance of dealers in two-wheelers illegally altering the chassis and registration numbers of vehicles to distribute vehicles with numbers as desired by the clients have come to light during inspections here.

On July 18, a two-wheeler with the chassis number A 606 F 376242 was brought to the office of motor vehicle Inspector here. During the Inspection the digit ‘6’ in the chassis number

was found repunched. Following this the inspector verified the papers relating to the vehicle issued by a local dealer. It came to light that as per the invoice issued by the manufacturers of June 8, 1996, the chassis number was A 606 F 3708242 and the vehicle has been registered from June 10. The Inspector found that the digit '6' had been repunched in lieu of '0'.

Consequently, the Inspector has reportedly written to the manufacturers and the Regional Transport Officer recommending cancellation of the grade licence issued to the dealer.

Instance of meddling with the chasis number were also found in the vehicle brought for registration on earlier occasions. The digits '0' '3' and '1' were found tampered to read as '6', '8' and '7'.

The Inspector has sent letters to the individual owners calling for explanation. The replied were similar. We parted with a bribe of Rs.2300 to avoid registration numbers totaling to '8' but the Vehicles allotted to us carried numbers totaling to '8' only. We returned the vehicles and after a few days got vehicles with fresh registration numbers.

It is said though it is three months since the irregularity was detected, no action has been taken so far. On the contrary the Inspector who detected the irregularity has reportedly received threat letters from a number of sources."

6. There is already a direction from this Tribunal in O.A. No.5918 of 1998 to consider the case of the petitioner and pass orders. Accordingly the government has passed orders rejected the claim of the petitioner stating that special rules for Tamil Nadu Transport Subordinate Service do not provide for out of turn for accelerated promotion.

7. Mr. P. Jayaraman, Senior Counsel relied upon General Rule 36(b)(2). It reads as follows :-

"Promotion according to seniority:-

All the other promotion shall be made in accordance with seniority unless :

- (i) The promotion of a member shall be withheld as a penalty or
- (ii) A member is given special promotion for conspicuous merit and ability.

By this Sub-rule (ii), there is an implication for grant of special promotion for conspicuous merit and ability. In this case, it is not disputed that the petitioners has rendered meritorious service. Therefore, rejecting the claim of the petitioner on the ground that there are no rules is not proper. Hence the rejection order is set aside. The petitioner shall be given promotion as Regional Transport Officer. The orders shall be passed within a period of six months from today.”

A perusal of the determination rendered by the Administrative Tribunal reveals, that a clear and categorical finding was recorded by it, that there was no dispute about the extraordinary performance of respondent no. 5, K.V. Karthalingan. Reliance was also placed on Rule 36(b)(ii) of the Tamil Nadu State and Subordinate Service Rules to conclude, that the claim of respondent no. 5 for out of turn/accelerated promotion could have validly been considered under Rule 36(b)(ii) of the General Rules. Having recorded the aforesaid factual finding, as also having concluded that there was a statutory provision whereunder the claim of respondent no. 5 for out of turn/accelerated promotion could be granted, the Administrative Tribunal directed the respondents, to issue an order promoting the respondent no. 5 as Regional Transport Officer, within a period of six months (from the date of the order dated 10.7.2002).

11. Now that respondent no. 5 had succeeded before the Administrative Tribunal, the State Government filed Writ Petition (Civil) no. 21562 of 2003 before the High Court, to assail the order passed by the Administrative Tribunal dated 10.7.2002 (whereby respondent no. 5 was directed to be promoted to the post of Regional Transport Officer). The instant challenge raised by the State Government did not achieve the desired purpose, inasmuch as, the aforesaid writ petition came to be dismissed by an order dated 13.10.2004. In paragraph 2 of the order passed by a Division Bench of the High Court, on a consideration of the instances relied upon by respondent no. 5, as also, the recommendations made by the Managing Directors of Tamil Nadu Transport Corporation, Kumbakonam Division-1 and Cholan Roadways Corporation, and the recommendation made by the Deputy Transport Commissioner, Trichy, dated 10.7.1998, it came to be concluded, that respondent no. 5, K.V. Karthalingan, was entitled to out of turn/accelerated promotion. The High Court also took into consideration Rule 36(b)(ii) of the Tamil Nadu State and Subordinate Service Rules, and on the basis thereof held, that the statutory rules regulating the conditions of service of respondent no. 5, provided for out of turn/accelerated promotion, based on meritorious/outstanding service. Having so concluded, the High Court also expressed the view, that there was nothing in the Special Rules (the rules framed under Section 42 of the Tamil Nadu Transport Subordinate Service, and/or Section 28 of the Tamil Nadu

Transport Service), that was repugnant to the General Rules (the Tamil Nadu State and Subordinate Service Rules) providing for accelerated promotion. Accordingly, the High Court upheld the order passed by the Administrative Tribunal. The High Court while disposing of Writ Petition (Civil) no. 21562 of 2003, directed the State Government (i.e. the petitioners before the High Court) to implement the order passed by the Administrative Tribunal, within four months from the date of receipt of a copy of the High Court order.

12. Aggrieved with the decision rendered by the High Court in Writ Petition no. 21562 of 2003 (decided on 13.10.2004), the State Government filed Petition for Special Leave to Appeal (Civil) bearing no. 11538 of 2005. Besides the above petition filed by the State Government before this Court, one P. Mani also approached this Court by filing Petition for Special Leave to Appeal (Civil) bearing no. 11542 of 2005, for assailing the order of the High Court dated 13.10.2004. Both the above mentioned petitions were withdrawn by the State Government, as also, by the said P. Mani, on 7.7.2006. As a result of the withdrawal of the aforesaid petitions, the order passed by the High Court on 13.10.2004 directing the State Government to promote respondent no. 5 to the post of Regional Transport Officer, attained finality.

13. Despite the above legal position, namely, that the order of the High Court dated 13.10.2004 had attained finality, the State Government did not implement the order passed on 10.7.2002 (in O.A. no. 429 of 2002) by the Administrative Tribunal, or the order passed by the High Court dated 13.10.2004 (in Writ Petition No.21562 of 2003). It is in the aforesaid background, that respondent no. 5, K.V. Karthalingan, filed Contempt Petition no. 5188 of 2006 before the High Court. The High Court having taken notice of the entire factual position upto the date of withdrawal of the petitions for special leave to appeal preferred before this Court, recorded the following observations:-

“6. After dismissal of the SLPs as withdrawn, the Special Commissioner and Transport Commissioner has sent a proposal to the Government on 19.7.2006, recommending the name of the petitioner for the post of Joint Transport Commissioner also after implementing the orders of the Tribunal and this Court, since the petitioner would reach that position if the orders are implemented properly. But, pending remarks from the Transport Commissioner, the Government issued G.O.2(D) No.111, Home (Trpt-II) Department dated 21.2.2007, temporarily promoting the petitioner as Regional Transport Officer and posted him at the office of the Regional Transport Officer, Chennai (West). According to the petitioner, the Special Commissioner and Transport Commissioner, by his considered remarks dated 10.05.2007, sent a proposal that his name has to be included in the list of panel of Regional Transport Officers for the year 1996, next to Mr. A.A. Khader Moideen, who was lastly promoted on 2.4.1996, vide G.O.Rt. No.831, Home (Tr-II) Department. According to the petitioner, while the above process was on, on some complaints by a dealer, whose irregularities were found out by him, certain charges were framed against the petitioner by the authorities and on enquiry, final orders were passed in favour of the petitioner. The petitioner would further contend that the properties purchase through the business income of his wife and her brothers were shown as his disproportionate assets, charges were

framed against him, but on enquiry, they dropped on 15.12.2008, in consultation with TNPSC, and the former Principal Secretary and Transport Commissioner. In his letter dated 29.4.2010 addressed to the Director of vigilance and Anti-corruption denied permission to prosecute the petitioner. But, however, on the very same allegations, the succeeding Transport Commissioner, took a contrary view and accorded sanction for prosecution on 24.11.2010. But, again on 4.2.2011, the very same Transport Commissioner sent remarks, by referring the pleading that a person once convicted or acquitted shall not be tried for the same offence again, and sent his remarks to the Government stating that the Government is the competent authority to withdraw the case referred to Tribunal for Disciplinary Proceedings, Trichy at any stage, as per Rule 8(b) of the TNSC (D&A) Rules. A reminder was also sent by the said authority on 20.6.2011 and the petitioner has also sent a representation dated 14.7.2011, but no orders have been passed till date by the Government.

7. A perusal of the entire materials placed on record, prima facie, would establish the fact that in order to deprive the petitioner from getting his accelerated promotion as ordered by the Tribunal and by this Court, the respondents have adopted various dilatory tactics and are trying to water down the order of the Tribunal and this Court. When this Court has ordered to grant the petitioner accelerated promotion as Regional Transport Officer, the respondents have issued orders temporarily promoting him to that cadre. Today, during the course of arguments, it has been submitted on behalf of the respondents that there is a criminal case pending against the petitioner for possessing assets disproportionate to his known sources of income."

14. The appellants before us filed Petition for Special Leave to Appeal (Civil) no. 3464 of 2012 on having realised, that the claim raised by respondent no. 5, for promotion to the post of Regional Transport Officer, had now fructified into a reality. The reason for approaching this Court directly was, that it would be an exercise in futility for the appellants to approach the High Court, as a Division Bench of the High Court had

already adjudicated the controversy, and while doing so, examined the factual, as well as, the legal propositions involved. And furthermore, a challenge raised to the order passed by the Division Bench of the High Court, before this Court had been withdrawn. It was also their contention, that the petitioners (now the appellants before this Court) were never arrayed as party respondents in the litigation preferred by respondent no. 5, K.V. Karthalingan, even though their rights were liable to be prejudicially affected by the promotion of respondent no. 5, K.V. Karthalingan, to a higher post in the service. Since respondent no. 5 was junior to all of them, it was their submission, that they ought to have been arrayed as party respondents. Insofar as the instant aspect of the matter is concerned, it was pointed out, that whilst respondent no. 5, K.V. Karthalingan, was appointed against the post of Motor Vehicles Inspector (Grade II) on 9.2.1995, appellant no.1 P. Dharni was appointed as such on 18.1.1988, i.e., more than seven years before the appointment of respondent no.5. It was further pointed out, that even though respondent no. 5 was promoted as Motor Vehicle Inspector (Grade I) on 10.5.2000, appellant no. 1 P. Dharni was promoted as such, on 5.9.1994 i.e., almost six years before the promotion of respondent no. 5 K.V. Karthalingan as Motor Vehicles Inspector (Grade I). It was sought to be pointed out, that in the seniority list of the cadre of Motor Vehicles Inspector (Grade I), whilst the name of P. Dharni (appellant no. 1 herein) figured at serial no. 81, that

of respondent no. 5, K.V. Karthalingan was placed at serial no. 141. In the above view of the matter it was submitted, that despite respondent no. 5 being 60 steps below the appellant P. Dharni, he was being promoted unjustifiably above him, and many other similarly situated persons, senior to respondent no. 5, K.V. Karthalingan. It was submitted, that even the other appellants were likewise superiorly placed vis-a-vis respondent no. 5, K.V. Karthalingan.

15. Based on the above pleas, this Court entertained the petition for special leave to appeal preferred by the appellants on 21.12.2011. While issuing notice in the matter, this Court also directed the parties to maintain status quo. After being served, all the respondents have filed counter affidavits. The appellants have also filed a rejoinder affidavit, to the counter affidavit filed by respondent no.5, K.V. Karthalingan. Pleadings are, therefore, complete.

16. Having heard learned counsel for the rival parties we realised, that Original Application no.5918 of 1998 filed by respondent no.5 was disposed of (on 6.11.1998), without issuing notice to the State or the affected parties. Insofar as Original Application no.429 of 2002 is concerned, the same was disposed of (on 10.7.2002) without seeking a reply from the State, even though it had been duly served. In fact, in neither of the said Original Application, persons senior to respondent no.5

K.V. Karthalingan were impleaded as respondents, despite his claim for promotion before them. After the dismissal of Writ Petition no. 21562 of 2003 by the High Court, the Petitions for Special Leave to Appeal filed by the State Government, as also by a private individual, were withdrawn. There was therefore no adjudication on merits, by this Court. These factors persuade us to feel, that the questions raised had far reaching consequences, and therefore, needed to be examined on merits. Remanding the matter back to the Administrative Tribunal or the High Court, for re-determination of the issue, by affording an opportunity of hearing to the appellants before us, as also to those senior to respondent no. 5, K. Karthalingan, was one available option. Having heard learned counsel for the rival parties at great length, even on merits, we felt that it would be best for us to adjudicate upon the matter ourselves. It was possible for us to do so, because the rival parties had an opportunity for the first time before us, to raise their claims and counterclaims, through detailed pleadings and submissions.

17. During the course of hearing, submissions advanced at the behest of the appellants were based on the peculiar facts of the case, as also, purely on the basis of the rules regulating the conditions of service of the appellants, as well as, respondent no. 5, K.V. Karthalingan. Even though the chronological order in which the submissions were advanced during

the course of hearing were different, we have chosen to deal with the same in a different sequence so as to bring out the true effect of the statutory rules, on the basis whereof rival claims were projected.

18. We shall first deal with the legal aspects in the matter. Principally the contention advanced at the hands of the appellants before us was, that Rule 36(b)(ii) of the Tamil Nadu State and Subordinate Services Rules relied upon by respondent no. 5, K.V. Karthalingan, as also the authorities which had recommended his claim for out of turn/accelerated promotion, is a part of the General Rules, as it figures in Part II of the Tamil Nadu State and Subordinate Services Rules. It was submitted, that the Special Rules override the General Rules. Based on the Special Rules framed under Section 42 of the Tamil Nadu Transport Subordinate Service, and under Section 28 of the Tamil Nadu Transport Service, it was sought to be contended, that Rule 36(b)(ii) of the General Rules relied upon by respondent no. 5, K.V. Karthalingan, could not have been taken into consideration, for granting him out of turn/accelerated promotion, as the same is in conflict with the Special Rules.

19. To substantiate the contention noticed in the foregoing paragraph, learned counsel for the appellants invited our attention to the Tamil Nadu State and Subordinate Services Rules. The aforesaid rules are divided into two parts. Part I bears the heading – “Preliminary”, whereas Part II

bears the heading “General Rules”. Rule 36(b)(ii) relied upon by respondent no. 5, K.V. Karthalingan, falls in Part II – “General Rules”. For all intents and purposes Rule 36(b)(ii) should therefore be perceived as a General Rule. In fact, for the instant inference, there was no dispute amongst the rival parties. Having substantiated that Rule 36(b)(ii) is a General Rule, learned counsel for the appellants, invited our attention to Rules 9 and 19 of Part I – “Preliminary”, of the Tamil Nadu State and Subordinate Services Rules. The same are being extracted hereunder:-

“9. “General Rules” shall mean the rules in Part II of these rules;

xxx

xxx

xxx

19. “Special Rules” shall mean the rules in Part III applicable to each service or class of service;”

Rules 9 and 19 extracted above, define “General Rules” and “Special Rules” respectively. It was reiterated, that it was further clear from the above definition of “General Rules” recorded in Rule 9 extracted above, that Rule 36(b)(ii) is a General Rule, because it is a rule in Part II of the Tamil Nadu State and Subordinate Services Rules.

20. Thereupon, it was submitted, that the rules referred to in the earlier part of this order, framed under Section 42 of the Tamil Nadu Transport Subordinate Service, and under Section 28 of the Tamil Nadu Transport Service, would fall in the category of Special Rules. For the said inference,

reliance was placed on Rule 19 contained in Part I – Preliminary, of the Tamil Nadu State and Subordinate Services Rules. The above inference was drawn on the assertion that the said rules were framed specially to cater to posts in different cadres of the Transport Department. Again, for the instant inference, there was no dispute amongst the rival parties. We find merit in this contention as well, for the reasons expressed by the learned counsel for the appellants. Therefore, for all intents and purposes, the rules framed under the above provisions must be deemed to be Special Rule.

21. For demonstrating the superiority of one set of rules, over the other, learned counsel for the appellants brought to our attention, Rule 2 from Part II – “General Rules”, of the Tamil Nadu State and Subordinate Services Rules, which reads as under:-

- “2. **Relation to the special rules** – If any provision in the general rules contained in this part is repugnant to a provision in the special rules applicable to any particular service, contained in Part III, the latter shall, in respect of that service, prevail over the provision in the General Rules in this part.”

A perusal of Rule 2 extracted above, leaves no room for any doubt, that in case of repugnancy between the Special Rules and the General Rules, the Special Rules will prevail over the General Rules. We acknowledge and affirm the aforesaid inference. We may now summarise our conclusions. Firstly, that Rule 36(b)(ii) of the Tamil Nadu State and Subordinate

Services Rules, falls in Part II – General Rules, is clearly a General Rule. Secondly, the rules prescribing the conditions of eligibility and the manner/method of appointment by promotion from the post of Motor Vehicles Inspector (Grade II) to the post of Motor Vehicles Inspector (Grade I), framed under Section 42 of the Tamil Nadu Transport Subordinate Service, are Special Rules. Thirdly, the rules prescribing the conditions of eligibility and the manner/method of appointment by transfer to the post of Regional Transport Officer, inter alia out of Motor Vehicles Inspectors (Grade I), framed under Section 28 of the Tamil Nadu Transport Service, are Special Rules. And fourthly, in case of a conflict between the Special Rules and the General Rules, the Special Rules will have an overriding effect over the General Rules.

22. The first contention advanced at the hands of the learned counsel for the appellants in order to demonstrate that Rule 36(b)(ii) of the Tamil Nadu State and Subordinate Services Rules, contained in Part II – “General Rules”, is in conflict with the Special Rules, was sought to be substantiated by placing reliance on the Special Rules framed under Section 42 of the Tamil Nadu Transport Subordinate Service, which exclusively prescribe the conditions of eligibility and the manner/method of appointment by promotion from the post of Motor Vehicles Inspector (Grade II) to the post of Motor Vehicles Inspector (Grade I). Referring to Rule 2 of the Special

Rules it was asserted, that the only avenue of promotion from the post of Motor Vehicles Inspector (Grade II) is to the post of Motor Vehicles Inspector (Grade I), and as such, on the subject of out of turn/accelerated promotion, the claim of respondent no. 5, K.V. Karthalingan, could only have been considered for promotion to the post of Motor Vehicles Inspector (Grade I). Relying on Rule 5(b) of the above Special Rules it was submitted, that for promotion to the post of Motor Vehicles Inspector (Grade I) the concerned incumbent must have served as Motor Vehicles Inspector (Grade II) for a period of not less than five years. Referring to Rule 9 of the said Special Rules it was asserted, that a Motor Vehicles Inspector (Grade II) would acquire eligibility after fulfilling the aforesaid eligibility criteria with reference to 15th of March of the year in which he completes the prescribed conditions of eligibility. Taking into consideration the fact, that respondent no. 5, K.V. Karthalingan, was appointed as Motor Vehicles Inspector (Grade II) in 1995, it was submitted, that he would acquire eligibility for promotion to the post of Motor Vehicles Inspector (Grade I) only on 15th of March, 2000. It was accordingly contended, that when respondent no. 5, K.V. Karthalingan, made his representation dated 30.6.1998, seeking out of turn/accelerated promotion, he was not even eligible for promotion to the post of Motor Vehicles Inspector (Grade I). In the above view of the matter, it was the contention of the learned counsel for the appellants, that granting promotion to respondent no. 5, K.V.

Karthalingan, prior to his having acquired the eligibility even for appointment to the post of Motor Vehicles Inspector (Grade I), would violate Rules 5 and 9 of the Special Rules.

23. Having given our thoughtful consideration to the contention advanced at the hands of the learned counsel for the appellants, we are constrained to uphold the first contention raised at the hands of the learned counsel for the appellants. It is not as if we are oblivious of the fact that the question to be considered is whether respondent no. 5, K.V. Karthalingan, has rightfully been granted out of turn/accelerated promotion to the post of Regional Transport Officer, whereas, the instant first contention advanced at the hands of the learned counsel for the appellants is with reference to promotion to the post of Motor Vehicles Inspector (Grade I). The reasons for accepting the instant contention will flow from the conclusions drawn by us with reference to the next two legal submissions advanced at the hands of the appellants. All the same, we are satisfied, that even if the claim of respondent no. 5, K.V. Karthalingan, was considered for out of turn/accelerated promotion to the post of Motor Vehicles Inspector (Grade I), such a claim could not have been accepted without his having acquired eligibility under Rules 6 and 9 of the Special Rules. Allowing him out of turn promotion even to the post of Motor Vehicles Inspector (Grade I) by relying no Rule 36(b)(ii), would have

violated the mandate of the Special Rules. Rule 2 contained in Part II – “General Rules” of the Tamil Nadu State and Subordinate Service Rules, itself specifically mandates, that in case of a conflict between the Special Rules and the General Rules, the Special Rules will prevail. Rules 6 and 9 being Special Rules must therefore, be satisfied, before an individual can make a claim for out of turn/accelerated promotion under Rule 36(b)(ii), which is a General Rule. For the reasons recorded hereinabove, we have no hesitation in holding, that even if promotion had been granted to respondent no. 5, K.V. Karthalingan against the post of Motor Vehicles Inspector (Grade I), on out of turn/accelerated basis by relying on Rule 36(b)(ii) of the General Rules, the same would have been unacceptable in law, and as such, would have been liable to be set aside.

24. The second contention advanced at the hands of the learned counsel for the appellants was, that for the same reasons and on same logic as has been indicated above, for demonstrating that promotion of respondent no. 5, K.V. Karthalingan, to the post of Motor Vehicles Inspector (Grade I) could not have been treated as valid under Rule 36(b)(ii), so also, the promotion of respondent no. 5, K.V. Karthalingan, to the post of Regional Transport Officer cannot be accepted as valid. Insofar as the post of Regional Transport Officer is concerned, learned counsel for the appellant placed reliance on Rules 3 and 6 of the Special Rules framed

under Section 28 of the Tamil Nadu Transport Service. To be eligible for appointment as Regional Transport Officer, a Motor Vehicles Inspector must have served for a total period of not less than five years as Motor Vehicles Inspector (Grade I), out of which not less than two years must be in a field office. It is also clear, that the aforesaid eligibility would be determined with reference to the 1st of July every year. Even if it is assumed, that respondent no. 5, K.V. Karthalingan, came to be promoted as Motor Vehicles Inspector (Grade I) immediately on completion of five years' service as Motor Vehicles Inspector (Grade II), he would still need another five years' service before he could be appointed as Regional Transport Officer. Out of the said service, two years ought to have been in a field office. In the above view of the matter it was submitted, that a minimum of 10 years of service must mandatorily be rendered by a Motor Vehicles Inspector (Grade II), before he can contemplate appointment to the post of Regional Transport Officer. In view of the fact that respondent no. 5, K.V. Karthalingan was appointed as Motor Vehicles Inspector (Grade II) on 9.2.1995, he would acquire eligibility for the same only on 1.7.2005. It was submitted, that if respondent no. 5, K.V. Karthalingan, was promoted as Regional Transport Officer, before fulfilling the aforesaid ten years of service, his promotion would be in violation of Rules 3 and 6 of the Special Rules referred to above.

25. We have given our thoughtful consideration to the second legal proposition canvassed at the hands of the learned counsel for the appellants. We find merit therein as well. The question to be considered is, whether the Special Rule prescribing the minimum period of eligibility for appointment to the post of Regional Transport Officer, can be overlooked while allowing out of turn/accelerated appointment to respondent no. 5, to the post of Regional Transport Officer. We are satisfied in answering the aforesaid query in the negative. We are of the view, that if promotion is granted to respondent no. 5, K.V. Karthalingan, under Rule 36(b)(ii) of the General Rules, prior to his having rendered five years' service as Motor Vehicles Inspector (Grade I), out of which two years must be in a field office, the same would violate the Special Rules. Since the Special Rules override the General Rules, the claim made by respondent no. 5, for out of turn promotion under Rule 36(b)(ii) of the General Rules, would be valid only if respondent no.5, had satisfied the conditions of eligibility stipulated in the Special Rules for appointment to the post of Regional Transport Officer. Insofar as the present controversy is concerned, even though respondent no. 5, K.V. Karthalingan, was appointed as Motor Vehicles Inspector (Grade II) on 9.2.1995, he made a representation on 30.6.1998 claiming out of turn/accelerated promotion. By that time, he had rendered just over three years of service as Motor Vehicles Inspector (Grade II). At that stage, there was no question of his being considered for appointment

against the post of Regional Transport Officer, as he had by then, not rendered even a single days service as Motor Vehicles Inspector Grade-I (as against the prescribed five years' service). The instant issue can be examined from another angle as well. It would be legitimate to accept, that in the hierarchy of posts in the Transport Department, the post of Motor Vehicles (Grade I) must be treated as a post higher in stature, as compared to the post of Motor Vehicles (Grade II). At the juncture, when respondent no.5 had made his representation claiming out of turn/accelerated promotion he was not even eligible for promotion to the post of Motor Vehicles Inspector (Grade-I), as a minimum of five years' service as Motor Vehicles Inspector Grade-II is required before such promotion. Since a minimum of five years' service as Motor Vehicles Inspector (Grade I) is required before an individual can be appointed to the post of Regional Transport Officer, it is essential to further conclude, that respondent no. 5 ought to have fulfilled the prescribed condition, before claiming appointment as Regional Transport Officer. Having already concluded, that respondent no.5 could not have legitimately been promoted to the post of Motor Vehicles Inspector (Grade-I), it is out of the question to accept or assume, that he could have nonetheless been promoted to the post of Regional Transport Officer, which required a further five years' service. Besides the above, we are of the view, that the Special Rules laying down the conditions of eligibility and the

manner/method of promotion to the post of Regional Transport Officer, would stand violated if the claim of respondent no. 5, K.V. Karthalingan, for out of turn/accelerated promotion, was to be acceded to on the basis of his representation dated 30.6.1998. It needs to be kept in mind that respondent no. 5 had first approached the Administrative Tribunal for claiming out of turn/accelerated promotion in 1998 (having filed Original Application no. 5918 of 1998). He again approached the Administrative Tribunal in 2002 (having filed Original Application no. 429 of 2002) when his claim for out of turn/accelerated promotion was rejected by the State Government. In the instant latter case, his claim for out of turn/accelerated promotion to the post of Regional Transport Officer was accepted by the Administrative Tribunal (on 10.7.2002). At the cost of repetition, it may be noted, that a minimum of ten years service after appointment as Motor Vehicles Inspector (Grade-II) is required under the Special Rules, before an individual can be appointed as Regional Transport Officer (five years' service for promotion as Motor Vehicles Inspector (Grade-I), and another five years' service as Motor Vehicles Inspector (Grade-I) before appointment as Regional Transport Officer). Respondent No.5, K.V. Karthalingan, did not fulfill the prescribed minimum service for promotion, when the courts below directed his promotion to the post of Regional Transport Officer. It would not be out of place to mention, that he had neither fulfilled the conditions of eligibility of appointment to the post of

Regional Transport Officer at the time of filing of the Original Applications, nor when his claim was allowed. We are, therefore of the view, that the order passed by the Administrative Tribunal, as also, by the High Court by relying on Rule 36(b)(ii) of the General Rules, was in clear derogation of the Special Rules referred to above. We may now summarize the conclusions drawn in the instant paragraph. Firstly, respondent no. 5, K.V. Karthalingan, could not have been appointed as Regional Transport Officer because he did not satisfy the conditions of eligibility expressed therefor in the Special Rules. Secondly, because respondent no. 5, K.V. Karthalingan, was not even eligible to be appointed to the lower post of Motor Vehicles Inspector (Grade I), it was out of the question to accept that he was nonetheless eligible to be appointed to the post of Regional Transport Officer, which required a further five years' experience. And thirdly, it needed a minimum of ten years' service to become eligible for being appointed as Regional Transport Officer. Since respondent no. 5, K.V. Karthalingan, had not even rendered such minimum service, his appointment to the post of Regional Transport Officer cannot be considered as valid. For all the above reasons, we are satisfied, that the order passed by the Administrative Tribunal, as also, the High Court directing the promotion of respondent no. 5, K.V. Karthalingan, to the post of Regional Transport Officer is liable to be set aside.

26. The validity of the claim of appointment of respondent no. 5, K.V. Karthalingan, against the post of Regional Transport Officer can be examined from another perspective. Rule 36(b)(ii) contained in Part II – “General Rules”, of the Tamil Nadu State and Subordinate Services Rules, clearly envisage, that an employee can be given special promotion for conspicuous merit and ability. But then, the Special Rules framed under Section 28 of the Tamil Nadu Transport Service, laying down the conditions of eligibility and the manner/method of appointment to the post of Regional Transport Officer, do not postulate appointment to the post of Regional Transport Officer by way of promotion. Rule 2 of the Special Rules clearly envisage, that appointment against the post of Regional Transport Officer, would be made only by way of transfer, inter alia from amongst Motor Vehicles Inspectors (Grade I). Rule 36(b)(ii) of the General Rules does not postulate out of turn/accelerated appointment by way of transfer. In the above view of the matter we are satisfied, that Rule 36(b)(ii) of the General Rules, would clearly be inapplicable for considering the claim of respondent no. 5, K.V. Karthalingan, for appointment to the post of Regional Transport Officer. For the instant reason as well, the direction issued by the Administrative Tribunal, as also, the High Court requiring the State Government to appoint respondent no. 5, K.V. Karthalingan by way of promotion to the post of Regional Transport Officer, is not acceptable in law.

27. There is another legal parameter on the basis of which the validity of the claim of respondent no. 5, K.V. Karthalingan, for out of turn/accelerated promotion under Rule 36(b)(ii) of the General Rules, cannot be accepted. Insofar as the instant parameter is concerned, it requires a close examination of Rule 36(b) of the General Rules. Rule 36(b) of the General Rules has two clauses, clause (i) thereof deals with promotions by way of selection, whereas clause (ii) thereof deals with promotions on the basis of seniority alone. Respondent no. 5, K.V. Karthalingan, as also, the various recommending authorities have referred to clause (ii) of Rule 36(b) of the General Rules, while recommending the claim of respondent no. 5, K.V. Karthalingan, for out of turn/accelerated promotion. We are of the considered view, that the aforesaid clause (ii) of Rule 36(b) of the General Rules, could have been invoked only in matters where promotions are to be made solely on the basis of seniority. Rule 2(b) of the Special Rules laying down the manner/method for promotion to the post of Motor Vehicles Inspector (Grade I) clearly mandates, that promotion to the said post, would be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. It is, therefore apparent, that the post of Motor Vehicles Inspector (Grade I) is a selection post. That being the undisputed position, it would not have been possible for the authorities to invoke Rule 36(b)(ii) of the General Rules, even for promoting respondent no. 5, K.V. Karthalingan to the post of

Motor Vehicles Inspector (Grade I). Insofar as the post of Regional Transport Officer is concerned, we have already expressed above that the same could be filled up only by way of transfer from amongst Motor Vehicles Inspectors (Grade I), and not by promotion. Even though the Special Rules do not lay down the method or manner of making appointments by way of transfer, Rule 36A (introduced with effect from 30.1.1996) contained in Part II – ‘General Rules’, of the Tamil Nadu State and Subordinate Services (extracted in paragraph 5 above), postulates, that appointment by transfer shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. In the aforesaid view of the matter, it is imperative to conclude, that even for appointments by way of transfer, the appointing authority must sieve the eligible candidates by adopting a process of selection. Since the post of Regional Transport Officer, is to be filled up by way of transfer, i.e., by way of selection amongst eligible candidates, Rule 36(b)(ii) of the General Rules would be inapplicable. Stated in other words, the General Rules contemplate out of turn/accelerated promotion, only in cases where seniority is the sole criterion for promotion, whereas, the post of Regional Transport Officer is not to be filled up on the basis of seniority. For the instant reason also, it is not possible for us to accept, that Rule 36(b)(ii) of the General Rules could have been invoked for granting out of

turn/accelerated promotion to respondent no. 5, K.V. Karthalingan, against the post of Regional Transport Officer.

28. From the conclusions recorded by us, while considering the issue of out of turn/accelerated promotion, with reference to respondent no. 5, K.V. Karthalingan, we have repeatedly arrived at a firm determination, that for onward promotions (from the post of Motor Vehicles Inspector (Grade II) held by respondent no. 5, K.V. Karthalingan), the criterion to be adopted was that of selection. Seniority was only to be taken into consideration where merit and ability of two eligible candidates was found to be approximately equal. This would lead us to yet another relevant inference on the issue in hand. In the above view of the matter, every claim for onward promotion from the post of Motor Vehicles Inspector (Grade II) was liable to be considered on the basis of merit. Therefore, an individual with superior merit would steal a march over those less meritorious. Thus viewed, if respondent no.5, K.V. Karthalingan, was actually possessed of outstanding and exceptional merit, as is sought to be suggested, he would have stolen a march over his seniors even under the existing Special Rules. Thus viewed, even by the manner/method of onward progression postulated in the Special Rules, a person with conspicuous merit and ability (as postulated under Rule 36(b)(ii) of the General Rules), would overtake others without having to invoke Rule 36(b)(ii) of the General

Rules. This does not seem to have happened in case of respondent no. 5, K.V. Karthalingan. On his consideration, after he had acquired eligibility for promotion to the post of Motor Vehicles Inspector (Grade I), he was promoted as such only on 10.5.2000. The merit and ability possessed by respondent no. 5, K.V. Karthalingan, is not shown to have resulted in his having superseded other members of the cadre senior to them. For the instant reason also, reliance placed by respondent no. 5, K.V. Karthalingan, for out of turn/accelerated promotion under Rule 36(b)(ii) of the General Rules deserves outright rejection.

29. We shall now deal with the factual aspect of the matter. It is clear from the factual narration recorded above, that the claim of respondent no. 5, K.V. Karthalingan, for out of turn/accelerated promotion was based on his alleged conspicuous merit and ability. The aforestated exemplary and outstanding merit was based on actions allegedly taken by respondent no. 5, K.V. Karthalingan, while working as Motor Vehicles Inspector (Grade II). The very facts relied upon by respondent no. 5, K.V. Karthalingan, constituted the basis of the recommendations of various authorities supervising his work and conduct. Having examined the recommendations made in favour of respondent no. 5, K.V. Karthalingan (by the various authorities adverted to above), the State Government vide its order dated 8.12.1998 concluded, that the factual basis relied upon by respondent no.

5, K.V. Karthalingan, would not entitle him to out of turn/accelerated promotion, as the instances of extraordinary service relied upon by him, were common in the Transport Department. Despite the aforesaid assertion of the State Government in its order dated 8.12.1998, the Administrative Tribunal adjudicated upon the said disputed question of fact. It reversed the factual finding recorded by the State Government. While doing so, the Administrative Tribunal did not await a response by the State Government. The matter came to be disposed of without any reply having been filed by the State Government. Even though the State Government while seeking recourse to the writ jurisdiction of the High Court, brought out other related facts showing that respondent no. 5, K.V. Karthalingan, could not be treated as an employee entitled to out of turn/accelerated promotion, the High Court rejected all those submissions and reversed the factual finding recorded by the State Government (in its order dated 8.12.1998). We find it difficult to appreciate the approach of the Administrative Tribunal, as also, the High Court. The simple reason depicted in the State Government's order dated 8.12.1998 was, that the instances of extraordinary service relied upon by respondent no. 5, K.V. Karthalingan, to claim out of turn/accelerated promotion, could not be treated as exceptional or unprecedented, as such instances were common in the Transport Department. Even though respondent no. 5, K.V. Karthalingan, had not disputed the aforesaid factual position, it is difficult to

understand how the Administrative Tribunal, as also, the High Court had accepted the claim of respondent no. 5, K.V. Karthalingan, by concluding that he had actually rendered extraordinary and exemplary service. Since the factual assertion made by the State Government in its order dated 8.12.1998, had remained unrebutted, we are of the view, that the Administrative Tribunal, as also, the High Court, were wholly unjustified in recording such a conclusion. For the instant reason also, the impugned orders dated 10.7.2002 (passed by the Administrative Tribunal) and 13.10.2004 (passed by the High Court) deserve to be set aside.

30. For the reasons recorded hereinabove, we find merit in the various contentions advanced by the learned counsel for the appellants. The order passed by the Administrative Tribunal on 10.7.2002 (while disposing of Original Application no. 429 of 2002) and the order passed by the High Court on 13.10.2004 (while disposing of Writ Petition (Civil) no. 21562 of 2003) directing the promotion of respondent no. 5, K.V. Karthalingan, to the post of Regional Transport Officer, are clearly unsustainable. They are accordingly hereby set aside.

31. Allowed in the aforesaid terms.

.....J.
(P. Sathasivam)

.....J.

(Jagdish Singh Khehar)

New Delhi;
July 1, 2013

SUPREME COURT OF INDIA



JUDGMENT