

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO.21 OF 2013

1. Shri Dhirendra Chandra Das,
son of late Umesh Chandra Das,
Bordwali, P.O. A.D. Nagar,
P.S. West Agartala, Agartala,
District: West Tripura
2. Shri Phanindra Jamatia,
son of late Meru Kumar Jamatia of
Manikya Dewanpara, P.O. Manikya Dewan,
P.S. Karbook, District: Gomti Tripura
3. Shri Debasish Debbarma,
son of late Amullya Debbarma,
resident of Kadamtala, Thakur Palli Road,
Agartala, P.O. Agartala, District: West Tripura
4. Shri Pintu Debbarma,
son of late Pulin Debbarma,
resident of Durga Choudhury Para,
P.O. Khash Noagaon, P.S. Bodhjungnagar,
District: West Tripura
5. Shri Subrata Debbarma,
son of Shri Kshitish Chandra Debbarma,
resident of village: Durga Choudhury Para,
P.O. Khash Noagaon, P.S. Bodhjungnagar,
District: West Tripura
6. Shri Hari Mohan Das,
son of late Ramani Mohan Das,
resident of village: Karatiamura,
P.O. Melaghar, P.S. Melaghar, District: Sepahijala
7. Shri Santosh Choudhury,
son of late Satyendra Choudhury,
resident of A.D. Nagar Police Quarters Complex,
Quarter No.C/17 Type-III, P.O. A. D. Nagar,
P.S. West Agartala, District: West Tripura
8. Shri Rati Ranjan Debbarma,
son of late Adhin Debbarma,
resident of A.D. Nagar Police Quarters Complex,
Quarter No.42/C, P.O. A.D. Nagar,
P.S. West Agartala, District: West Tripura

9. Shri Nila Kumar Jamatia,
son of Shri Bir Kishore Jamatia,
resident of village: Jalema, P.O. Manikya,
District: Gomti Tripura
10. Shri Chitta Ranjan Debbarma,
son of late Devendra Debbarma,
resident of East Dalucherra, P.O. Salema,
P.S. Salema, District: Dhalai, Tripura
11. Shri Arun Lal Das,
son of late Bipin Behari Das,
resident of village: Barjala, P.O. Barjala,
P.S. West Agartala, District: West Tripura
12. Shri Ratan Kumar Das,
son of Shri Manoranjan Das,
resident of A.D. Nagar Road No.9, Surjya Para,
P.O. A. D. Nagar, P.S. West Agartala,
District: West Tripura
13. Shri Nikunja Das,
son of late Umesh Chandra Das,
resident of village Pitra, P.O. Pitra, P.S. R.K. Pur,
District: Gomti Tripura
14. Shri Sujit Das,
son of late Surendra Chandra Das,
resident of A.D. Nagar Police Quarters Complex,
Quarter No. 43/C Type-III, P.O. A.D. Nagar,
P.S. West Agartala, District: West Tripura
15. Shri Ratan Majumder,
son of late Narayan Majumder,
resident of village Gandhighat Quarter Complex,
Gangail Road, Quarter No. B/8, Type-III,
P.O. Agartala, District: West Tripura
16. Shri Hare Krishna Debbarma,
son of late Sukharam Debbarma,
resident of village Biswamani Para,
P.O. Champaknagar, Jirania,
District: West Tripura
17. Shri Rajendra Dutta,
son of late Kumud Behari Dutta,
resident of village Charipara,
P.O. A.D. Nagar, P.S. Amtali,
District: West Tripura

18. Shri Kishore Kumar Das,
son of late Subal Chandra Das,
resident of village Jirania,
P.O. Birendranagar,
District: West Tripura
19. Shri Pran Krishna Das,
son of late Bhasan Chandra Das,
resident of 67, H.G. Basak Road,
P.O. Agartala, P.S. West Agartala,
District: West Tripura
20. Shri Tushar Kanti Bhattacharjee,
son of late Thakur Das Bhattacharjee,
resident of Post Office Road, Dharmanagar,
P.O. & P.S. Dharmanagar,
District: North Tripura
21. Shri Sajal Sharma,
son of Shri Sudhir Chandra Sharma,
resident of Bhati Abhoynagar, Agartala,
P.O. Agartala, P.S. West Agartala,
District: West Tripura
22. Shri Ranjit Chandra Das,
son of late Krishnamohan Das,
resident of Jogendranagar Vidyasagar Road,
P.O. Jogendranagar, P.S. East Agartala,
District: West Tripura
23. Shri Tulumani Chakma,
son of Shri Sanat Kumar Chakma,
resident of village Tilak Para,
P.O. Chailengta, P.S. Longtharai Valley,
Manu, District: Dhalai
24. Shri Arun Roy,
son of late Ramani Mohan Roy,
resident of New Gangail Road,
Town Pratapgarh, P.O. Agartala,
P.S. East Agartala, District: West Tripura

..... Petitioners

– Vs –

1. The State of Tripura,
represented by the Chief Secretary to the
Govt. of Tripura, New Secretariat Complex,
P.O. Kunjaban, P.S. East Agartala, Agartala,
District : West Tripura, PIN : 799001

2. The Principal Secretary,
General Administration(P&T) Department,
Govt. of Tripura, New Secretariat Complex,
P.O. Kunjaban, P.S. East Agartala, Agartala,
District : West Tripura, PIN : 799001
3. The Director General of Police,
Government of Tripura, P.O. Agartala,
P.S. West Agartala, Agartala,
District: West Tripura, PIN: 799001
4. The Tripura Public Service Commission,
represented by its Secretary, Agartala,
P.O. Agartala, P.S. West Agartala,
District : West Tripura, PIN : 799001
5. Sri Rajib Nag,
son of Shri Bhabasankar Nag,
resident of Matri Bandana,
Shyamali Bazar, P.O. Kunjaban,
P.S. East Agartala,
District: West Tripura, PIN: 799001
6. Sri Tapas Deb,
son of Shri Sib Prasad Deb,
resident of village: Damdama,
P.O. & P.S. Sabroom, District: South Tripura,
7. Shri Surajit Dhar,
son of late Kshitindra Kr. Dhar,
care of Shri Mohit Ranjan Dhar,
resident of village Santi Palli,
P.O. R.K. Pur, P.S. R.K. Pur, Udaipur,
District: Gomti Tripura
8. Sri Anirban Dhar Choudhury,
son of Shri Sukomal Dhar Choudhury,
Hrishi Aurobindo Lane, near Bordowali BOC,
P.O. Agartala, P.S. West Agartala,
Agartala, District: West Tripura,
PIN: 799001
9. Shri Narayan Roy Choudhury,
son of Shri Rathindra Krishna Roy Choudhury,
care of Nakul Dutta, Roy Kutir,
Durga Chowmuhani, P.O. Agartala,
P.S. West Agartala, District: West Tripura

10. Shri Ranaditya Das,
son of Shri Mrityunjoy Das,
resident of Milan Chakra, Stadium Link Road
P.O. A. D. Nagar, P.S. West Agartala,
District: West Tripura, PIN: 799001
11. Shri Ashis Debnath,
son of late Dinesh Chandra Debnath,
care of Amrita Lal Debnath,
East Shibnagar, Kalitala, P.O. Agartala College,
P.S. East Agartala, District: West Tripura,
PIN:799001
12. Shri Prasenjit Ghosh,
son of late Pradip Kr. Ghosh,
opposite to Shiksha Niketan School,
P.O. Indranagar, P.S. East Agartala,
District: West Tripura
13. Shri Rajib Sen Gupta,
son of late Janardhan Sen Gupta,
care of late Nepal Chakraborty,
Paradise Chowmuhani, Hospital Road,
P.O. Agartala, P.S. West Agartala,
District: West Tripura, PIN:799001
14. Shri Kallol Roy,
son of Shri Mihir Ranjan Roy,
Milan Sangha, P.O. A.D. Nagar,
P.S. West Agartala, District: West Tripura, PIN:799003
15. Shri Amitabha Paul,
son of Shri Manindra Kishore Paul,
Salema, P.O. Kamalpur, P.S. Kamlpur, District: Dhalai
16. Shri Alok Bhattacharjee,
son of Shri Ashutosh Bhattacharjee,
care of Shri Gopal Ch. Das,
North Joynagar (opposite Fruit Preservation Centre),
Agartala, P.O. Agartala, P.S. West Agartala,
District: West Tripura, PIN:799001
17. Shri Ashok Kumar Sinha,
son of late Phalguni Sinha,
Village & P.O. Goldharpur, Kailashahar,
P.S. Kailashahar, District: Unakoti, Tripura
18. Shri Sudip Kumar Paul
son of Shri Mantu Kumar Paul,
Village & P.O. Nadiya, P.S. Jatrapur,
Sonamura, District: Sipahijala

19. Shri Kishan Kumar,
son of late Munsur Ali,
resident of South Ramnagar, P.O. Ramnagar,
P.S. West Agartala, District: West Tripura, PIN : 799002
20. Shri Sishir Kumar Das,
son of late Sachindra Kumar Das,
village : East Dukli (near Housing Complex),
P.O. East Pratapgarh, via Agartala College,
P.S. East Agartala, Agartala, District: West Tripura,
PIN:799004
21. Shri Jyotisman Das Chaudhuri,
son of sri Dilip Kr. Das Chaudhuri,
"Dinesh Smriti", Krishnanagar, Natun Palli,
P.O. Agartala, P.S. West Agartala,
District: West Tripura, PIN:799001
22. Shri Mihir Lal Das,
son of shri Makhan Lal Das,
village : Dugangi, P.O. Gandhigram,
P.S. Airport, District: West Tripura,
PIN:799012
23. Shri Ranadhir Debbarma,
son of late Biswa Ranjan Debbarma,
14, Radhamohan Sharani (J.B. Road),
P.O. Agartala, P.S. West Agartala,
District: West Tripura, PIN:799001
24. Shri Badal Debbarma,
son of shri Maniram Debbarma,
village : Hezamara, P.O. Baikuntha Pur,
P.S. Sidhai, District: West Tripura
25. H. Francis Darlong,
son of late Lala Darlong,
village : Kathal Cherra,
P.O. & P.S. Nepaltilla old, District: Dhalai, Tripura
26. Shri Amitabha Dewan,
son of shri Mohit Lal Dewan,
village : Madhab Master Para, P.O. Mainama,
P.S. Manughat, District: Dhalai, Tripura
27. Shri Binoy Kishore Debbarma,
son of shri Kartik Chandra Debbarma,
village : Narayanbari, P.O. & P.S. Jirania,
District: West Tripura, PIN : 799045

28. Shri Rajesh Bardhan,
son of shri Khagendra Ch. Bardhan,
village : Rajarbag, P.O. R.K. Pur,
Udaipur, District: Gomati, Tripura
29. Shri Jai Kishore Jamatia,
son of Saptam Dayal Jamatia,
village : Mohar Para, P.O. Uttar Pulinpur,
Teliamura, District: Khowai, Tripura

.....Respondents

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. S. Deb, Sr. Advocate
Mr. S.M. Chakraborty, Sr. Advocate
Mr. A. Pal, Advocate

For the respondents : Advocate General, Tripura
Mr. K.N. Bhattacharjee, Sr. Advocate
Mr. D.K. DasChoudhuri, Advocate
Mr. C.S. Sinha, Advocate
Mr. P. Datta, Advocate,
Mr. J. Majumder, Advocate

Date of hearing : 14.08.2015

Date of judgment & order : 10.12.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

(S. Talapatra J.)

By means of this writ petition, the petitioners who are borne in the Tripura Police Service (TPS) Grade-II, have challenged the validity of the 'note' (appearing below the Schedule of the duty posts for the TPS, Grade-II of the Tripura

Police Service Rules, 1967) for purpose of absorbing the existing officers who are holding the ex-cadre posts of Assistant Commandants and fulfil the criteria of educational qualification as prescribed in Rule 14 in the post of TPS Grade-II by a notification to be issued by the State Government. It further stipulates that on absorption of those officers in the TPS Grade-II the ex-cadre post held by them shall stand abolished. However, the existing officers who are holding the ex-cadre posts of Assistant Commandant if opt for continuation in the ex-cadre post of Assistant Commandant, shall be allowed to continue in the ex-cadre posts held by them. As the respondents No. 5 to 29 have been appointed by virtue of that 'note' and in terms of the notification No.F.13(4)-GA(P&T)/06 dated 15.11.2006 (Annexure-P/9 to the writ petition), in the TPS Grade-II., the said notification dated 15.11.2006 has also been challenged. The petitioners have further challenged the memorandum No.F.30(1)-GA(P&T)/11 dated 16.09.2011 (Annexure-P/7 to the writ petition), whereby the draft seniority list as published by the memorandum under even number dated 16.04.2011 has been made final declaring the seniority positions in the TPS Grade-II, inasmuch as the petitioners have been shown junior to the respondents No. 5 to 29. According to the petitioners, the respondents No. 5 to 29 cannot be treated appointed in terms of Rule 5 of the Tripura Police Service Rules, 1967, as amended from time to time. The petitioners have also prayed to treat them as senior to the

respondents No. 5 to 29 and not to allow the respondents No. 5 to 29 hold the posts of TPS Grade-II. As the petitioners have sought the writ of prohibition, from promoting any of the respondents No. 5 to 29 to the superior post, this court by the order dated 05.03.2013 has observed as under :

"We are of the considered opinion that it would meet justice if the appointments of respondent Nos. 5 to 29 is made subject to the result of the writ petition and more so, if the State respondents are directed not to give any further promotion to any of the aforesaid respondents without obtaining the leave of this Court. Ordered accordingly."

2. The facts are mostly admitted. Sans unnecessary details, the facts which are requisite may be laid in brief.

The respondents No. 5 to 29 were appointed as the Assistant Commandant in the TSR pursuant to the advertisement No.4/2002 dated 21.04.2002 published by the Tripura Public Service Commission in terms of the notification No.F.20(4)/GA/05 dated 11.08.1998 (Annexure-P/2 to the writ petition). By the notification under No.F.2(14)-GA(P&T)/2001 dated 08.09.2004 (Annexure-P/4 to the writ petition), the petitioners were appointed to the post of Assistant Commandant of TSR. Accordingly, they joined the post of Assistant Commandant of the TSR on 01.10.2004 forenoon, as is evident from the office order dated 04.11.2004 (Annexure-P/5 to the writ petition). Their appointments in the post of Assistant Commandant of TSR are not in controversy. But, after their appointment to the post, the

Government set up a committee for cadre review and that committee led by the Director General of Police, made certain recommendations for restructuring the Tripura Police Service. The recommendation of the said committee is available in note No.38 in File No.F.3(1)-GA(P&T)/96(L). In view of the said recommendation, the Council of Ministers considered that the TPS Rules shall appropriately be amended making provision for absorbing the existing police officers who are holding the ex-cadre post of Assistant Commandants of various battalions who fulfilled the criteria of minimum qualification as prescribed in Rule 14 of the TPS Rules, if those police officers opt for getting absorbed in the TPS Grade-II.

3. A draft amended Rule was processed for consultation and concurrence of the Tripura Public Service Commission ('TPSC' in short). The Tripura Public Service Commission has inter alia deliberated upon such process for absorption and that exercise is available in Note No.11 in File No.Ex.1/37(32)-TPSC/2005. Thereafter, the commission discussed threadbare of the various aspects of the proposed amendment in the Tripura Police Service Rules, 1967 and asked for certain clarifications and also suggested some change in the draft in their meeting held on 10.01.2006. Thereafter, the State Government replied the queries of the TPSC and finally the TPSC by their note No.17 decided to concur the amendment of the Tripura Police Service (12th

Amendment) Rules, 2005 and their concurrence was communicated to the Government.

4. Thereafter, by the notification No.F.2(1)-GA(P&T)/96(L) dated 19.05.2006, the Tripura Police Service (12th Amendment) Rules, 2006 was published in the Tripura Gazette dated 19.05.2006. By the said amendment rules, some important changes have been made in the principal rules. The other provisions as amended are not challenged in this writ petition. The relevant parts which are essential for appreciating the challenge, as projected in this writ petition, inter alia, is the entry-26 in the schedule of the Tripura Police Service Grade II Posts (under rule 3 and 4 of the said Rules) which has been indisputably added for treating the post of Assistant Commandant (Tripura State Rifles Battalion) as the 'Duty post' as defined in Rule 2(b) of the said Rules. The strength of the Assistant Commandant has been shown as 80 and the total strength has been enhanced to 162 and thus the grand total came to 210 with deputation reserve, training reserve and leave reserve. Further, below the said schedule, the following note has been incorporated:

"The existing officers who are holding Ex-Cadre posts of Asstt. Commandants and fulfil the criteria of minimum educational qualification as prescribed in Rule-14 may be absorbed in the posts of Tripura Police Service Grade-II by the notification to be issued by the State Government. On absorption of the officers in Tripura Police Service Grade-II, the Ex-Cadre posts held by them shall stand abolished.

Provided that the existing officers who hold ex-cadre posts of Asstt. Commandants and opt for continuation in the ex-cadre posts of Asstt. Commandants shall be allowed to continue in the ex-cadre posts held by them.

5. For purpose of reference, Rule 14 of the said Rules is also extracted hereunder :

"14. Conditions of eligibility and procedure for selection:-

- (1) The Committee shall consider from time to time the cases of officers eligible under clause (b) of sub-rule (1) of rule , who have served in the cadre of Inspectors of Police [and Subedars of Tripura State Rifles Battalions]* (incorporated by the TPS Amended Rules, 2006) for not less than [five]* (substituted for 'two years' by the TPS Amended Rules, 2006) years, and prepare a list of officers recommended taking into account the actual vacancies at the time of selection and those likely to occur during a year. The selection for inclusion in the list shall be on merit and suitability in all respects for appointment to the service with due regard to seniority.**
- (2) The names of persons included in the list shall be arranged in order of merit [and forwarded to the State Government]* (amended by TPS Amended Rules, 2006)**
- [(3) Minimum educational qualification for promotion to Grade-II of the service shall be Graduation]* (substituted for 'two years' by the TPS Amended Rules, 2006)**
- (3) [(4) The committee shall not consider the cases of the officers in the feeder posts who have attained the age of 53 years on the 1st day of January of the year in which the Committee meets]* (amended by TPS Amended Rules, 2006)**

From a bare reading of the note, it would transpire that for purpose of absorption in the post of TPS Grade-II, the existing officers who were holding the ex-cadre post of Assistant Commandant shall fulfil the criteria of minimum educational

qualification as prescribed in the rule 14(3) of the rules. There is no dispute that the respondents No. 5 to 29 are all graduates and they as such fulfilled the minimum qualification in terms of the rule 14(3) of the said rules. By the memorandum No.F.2(1)-GA(P&T)/96(L) dated 12.06.2006, the State Government sought option from the police officers holding the ex-cadre posts of Assistant Commandants etc. for absorption in the Tripura Police Service. It is beyond any dispute that the respondents No. 5 to 29 exercised their options and en block they were absorbed in the TPS Grade-II w.e.f. 01.01.2004, from the date when they were appointed in the post of Assistant Commandant (TSR).

6. By the 12th Amendment Rules, the following provisions have been added after sub-rule (iii) of Rule 28 of the principal rules, now part of the TPS Rules, 1967 :

"[(iv)The relative seniority of a person who is absorbed in the Tripura Police Service from some other post or service shall be determined in consultation with the Commission and his seniority shall normally be counted from the date of his absorption in the service;

Provided that if the person concerned has already been holding on the date of absorption, the same or equivalent post/grade on regular basis in his parent organization, such regular service rendered by the person concerned in the post/grade of the parent organization shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from the date from which he has been appointed on regular basis to the same or equivalent post/grade in his parent organization.]* (inserted by the TPS Amended Rules, 2006)"

The said sub-rule (iv) of Rule 28 however, has been challenged by the petitioner. It is not disputed that the State

Government, the respondents No. 1, 2 and 3 herein, had absorbed the respondents No. 5 to 29 from the date of their appointment as the Assistant Commandant in the TSR i.e. 01.04.2004.

7. The petitioners were promoted to the TPS Grade-II from the feeder post of Inspector of Police in view of Rule 5(1)(b) from the vacancies earmarked for filling up by selection in the manner as specified in part-V of the rules from the officers who are substantively borne in the cadre of Inspectors of Police and Subedars of Tripura State Rifles Battalions in the State of Tripura. According to Rule 5(1)(a), 50% of the substantive vacancies which occur from time to time in the authorised permanent strength of the service shall be filled up by direct recruitment in the manner specified in Part-IV of the rules and the remaining such substantive vacancies shall be filled by selection in the manner as specified in Part-V of the rules. Out of 50% vacancies marked to be filled up by selection, 64% of the vacancies to be filled up by selection from the eligible Inspectors of Police and the remaining 36% of the vacancies shall be filled by the Subedars of the Tripura state Rifles Battalions. The petitioners have been selected and appointed in the TPS Grade-II out of 50% of the vacancies w.e.f. 30.12.2000. The service particulars as provided in the memorandum dated 16.09.2011 (Annexure-P/7 to the writ petition), are not disputed from any quarters. From there

it can be gathered that all the petitioners were appointed in the TPS Grade-II by selection w.e.f. 30.12.2006. The challenge against the 'note' appearing below the schedule for the Duty post of the TPS Grade-II is that the note is in conflict with the rule 5 of the said rules, which provides only two mode of recruitment in the TPS Grade-II, namely by direct recruitment and by selection. The said note has provided the third source of recruitment, which according to the petitioners cannot be sustained inasmuch as the principal provisions of the rules framed under proviso to Article 309 of the Constitution of India cannot be truncated, affected or anyway departed. That apart, the minimum qualification as prescribed by the rule 14 of the said rules is exclusively for the persons who would be appointed in the TPS Grade-II by way of selection. Absorption, according to the petitioners by its all meaning and texture is recruitment having all trappings of direct recruitment and as such, if a person is not selected in the manner as provided under Chapter IV of the said rules, he cannot be recruited in Grade-II of the TPS in the vacancies available for the direct recruits.

8. It is admitted position that the respondents No. 5 to 29, in terms of the recruitment rules for the post of Assistant Commandant in the TSR, have been selected by the Tripura Public Service Commission by a crash written screening test followed by the interview whereas Chapter IV of the TPS Rules,

1967 provides that there shall be a competitive examination as would be determined by the TPSC, both written and oral and after selecting the candidates by that competitive examination, they shall make the recommendations. For the said examination, there is a resolution, which is akin to the Indian Administrative Service, but the respondents No. 5 to 29 have not gone through that kind of competitive examination and they have been selected by the said method as stated.

9. According to Mr. S. Deb, learned senior counsel, by applying any yardstick, those two examination procedures cannot be compared. Hence, it cannot be held that their absorption is akin to the direct recruitment as provided under Rule 5(1)(a) of the said rules. Mr. Deb, learned senior counsel has further submitted that absorption of the respondents No. 5 to 29 are wholly dehors the rules and as such those are liable to be set aside. Mr. Deb, learned senior counsel has contended that the list published by the General Administration (Personal & Training), Govt. of Tripura, by the memorandum dated 16.09.2011 (Annexure-P/7 to the writ petition) is wholly erroneous inasmuch as the respondents No. 5 to 29, have not been appointed through the prescribed methods as prescribed by the said rules. Alternatively, Mr. Deb, learned senior counsel has submitted that the respondents No. 5 to 29 cannot be placed above the petitioners in the seniority list. In this regard, to further nourish

his submission, he has pointed out that the disposal of claims and objection suffers from lack of judicious consideration of the relevant facts. The note given below the said seniority list has clearly provided the reasons for disposal of the claims and objection, which reads as under :

"The officers as mentioned at Sl.No.15 to 39 have been absorbed from the post of Assistant Commandant of TSR Battalions (Ex-cadre) to the cadre post of Tripura Police Service Grade-II (vide Notification No.F.13(4)-GA(P&T)/06 dated 15th November, 2006 prior to promotion of the petitioners. But, as per proviso under sub-rule (iv) of Rule-28 of Tripura Police Service Rules, 1967 (12th Amendment), the Police personnel who have been absorbed in TPS Grade-II (Cadre Rules), their seniority shall be counted from the date from which they have been appointed on regular basis to the same or equivalent post/grade in their parent Organization. Prior to absorption in the TPS Gr-II, the Police personnel as mentioned at Sl.No.15 to 39 were appointed in the TSR Bns. as Assistant Commandant on 01/10/2004 in the same scale of TPS Gr-II on regular basis. Therefore, as per rule ibid their seniority shall be counted from the date from which they have been appointed on regular basis."

10. As already mentioned, there has been no challenge against the sub-rule (iv) of Rule 28 of the Tripura Police Service Rules, 1967, which has been added by the Tripura Police Service (12th Amendment) Rules. Mr. Deb, learned senior counsel, bringing notice of this court to the impugned notification under No.F.13(4)-GA(P&T)/06 dated 15.11.2006, has submitted that effective date of absorption has nowhere been mentioned. The said notification dated 15.11.2006 only provides that absorption, shall come with immediate effect.

11. From the other side, Mr. B.C. Das, learned Advocate General, assisted by Mr. J. Majumder, learned counsel appearing for the respondents No. 2 and 3, has submitted that "note" as added below the schedule of the Duty post of TPS Grade-II is the reflection of the policy decision of the State to abolish the post of Assistant Commandant in the TSR and to absorb the police officers who are holding the ex-cadre post of Assistant Commandant in the TPS Grade-II and it is a transitional provision as it will have no effect after the absorption is complete on exercise of option by the said police personnel. There is no ambiguity in the said note and the said provisions, embodied in the said note, does not come in conflict with the methods of recruitment as provided under Rule 5(1) of the said rules. That apart, the State Government has considered the post of the Assistant Commandant, TSR (ex-cadre) can be equated with the post of TPS Grade-II as they are borne in the same pay scale (Rs.7800-15100/-, pre-revised) and strictly in accordance with the provision of sub-rule (iv) of rule 28 of the said rules. The absorption has been given effect from 01.10.2004 when the respondents No. 5 to 29 were substantively appointed in the post of Assistant Commandant, TSR (ex-cadre) and as such there is no irregularity or illegality as alleged.

12. Mr. Das, learned Advocate General, has categorically submitted that under Article 309 of the Constitution of India the

Government has competence to make such provision, inasmuch as Article 309 of the Constitution of India has given wide power to the executive to create or abolish the post or constitute or re-constitute the new cadre and merge certain existing cadre. To achieve that purpose, the State Government is permitted to alter, amend and vary the Service Rules including avenues of promotion from time to time unilaterally as the administrative exigency may necessitate. These pertain to the field of policy decision which falls exclusively within the executive domain. In this regard, he has relied on a decision of the apex court in **Roshan Lal Tandon vs. Union of India & Ors.**, reported in **AIR 1967 SC 1889**, where it has been held that :

"In our opinion there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in

the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned."

[Emphasis added]

13. To press the similar point, another decision of the apex court has been relied. In **P.U. Joshi & Ors. vs. Accountant General, Ahmedabad & Ors.**, reported in **(2003) 2 SCC 632**, it has been held that:

10. We have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge

the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

[Emphasis supplied]

14. "Note" in a Rule is a part of the Rules framed in exercise of legislative power. In the instant case, the absorption has been effected by insertion of 'note' in the Rules. According to learned Advocate General, 'note' will have the same effect as the Rules and when the Rule are silent, the 'note' will fill up the gaps. In the instant case, the absorption has been effected by the aforesaid 'note'. There is no lack of legislative competence in that regard nor is the note violative of Article 14 or 16 of the Constitution inasmuch as the petitioners were recruited by way of selection under Rule 5(1)(b) much later from the day of absorption of the respondents No. 5 to 29. To drive this point at home, learned Advocate General has relied on a decision of the apex court in **Tara Singh vs. State of Rajasthan & Ors.**, reported in **AIR 1975 SC 1487**, where it has been held that :

18. Rule 244(2) as it stands now does not specifically mention that an order is to be passed in the public interest. The notes to the rule indicate that the right to pass an order of compulsory retirement is to be exercised only against the Government servant whose efficiency is impaired and against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient but not to such a degree as to warrant his retirement on compassionate allowance. The notes further say that it is not the intention to use this rule as a financial weapon, that is to say, that the provision should be used only in the case of Government servants who are considered unfit for retention on personal as opposed to financial grounds. The notes are promulgated with the rules in exercise of legislative power. The notes are made

contemporaneously with the rules. The function of the notes is to provide procedure and to control discretion. The real purpose of the notes is that when rules are silent the notes will fill up gaps.

[Emphasis supplied]

15. Mr. Das, learned Advocate General has also emphasised that the qualification for both the Assistant Commandant and TPS Grade-II is graduation. The duties of both the cadres are also the same and in that view, the Government treated the post of Assistant Commandant as equivalent to that of the TPS Grade-II post and absorbed the ex-cadre Assistant Commandants in the TPS Grade-II, correspondingly abolishing the same number of posts in the TSR. Such action cannot be held in conflict with the provision of Article 14 and 16 of the Constitution of India. Even if it may adversely affect the promotional prospect of some employees, this cannot be a ground for setting aside the absorption which is essentially a policy decision. To nourish this, Mr. Das, learned Advocate General has relied on a decision of the apex court in **S.B. Mathur vs. Hon'ble the Chief Justice of Delhi High Court & Ors.**, reported in **AIR 1988 SC 2073**, where it has been held that :

11. The first submission of Mr. Thakur, learned Counsel for the petitioners is that there is a violation of Article 14 of the Constitution in treating the posts of Superintendents, Court Masters or Readers and Private Secretaries to the Judges as equal status posts. It was urged by him that the sources of recruitment to these posts were not identical and so also the qualifications required for appointments to these posts. He also pointed out that the duties of the incumbents of these

posts were different. It was submitted by him that in treating these posts as equal status posts unequals were treated equally and hence the rule of equality was violated. In appreciating this submission, it must be borne in mind that it is an accepted principle that where there is an employer who has a large number of employees in his service performing diverse duties, he must enjoy a certain measure of discretion in treating different categories of his employees as holding equal status posts or equated posts, as questions, of promotion or transfer of employees inter se will necessarily arise for the purpose of maintaining the efficiency of the organisation. There is, therefore, nothing inherently wrong in an employer treating certain posts as equated posts or equal status posts provided that, in doing so, he exercises his discretion reasonably and does not violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. It is also clear that for treating certain posts as equated posts or equal status posts, it is not necessary that the holders of these posts must perform completely the same functions or that the sources of recruitment to the posts must be the same nor is it essential that qualifications for appointments to the posts must be identical. All that is reasonably required is that there must not be such difference in the pay-scales or qualifications of the incumbents of the posts concerned or in their duties or responsibilities or regarding any other relevant factor that it would be unjust to treat the posts alike or, in other words, that posts having substantially higher pay-scales or status in service or carrying substantially heavier responsibilities and duties or otherwise distinctly superior are not equated with posts carrying much lower pay-scales or substantially lower responsibilities and duties or enjoying much lower status in service.

[Emphasis supplied]

16. In this regard, Mr. Das, learned Advocate General has placed reliance on another decision of the apex court in **S.P. Shivprasad Pipal vs. Union of India & Ors.**, reported in **(1998) 4 SCC 598**. The paragraphs which are relevant in the context are reproduced hereunder :

4. Under Article 309 of the Constitution Legislature is empowered to regulate the recruitment and conditions

of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. The proviso to Article 309, however, empowers the President, in the case of services and posts in connection with the affairs of the Union, to make Rules regulating the recruitment and conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature. The power to regulate recruitment and conditions of service is wide and would include the power to constitute a new cadre by merging certain existing cadres.

5. However, when different cadres are merged certain principles have to be borne in mind. These principles were enunciated in the case of *State of Maharashtra v. Chandrakant Anant Kulkarni* : (1981) SCC 130 (SCR at p.678) while considering the question of integration of government servants allotted to the services of the new States when the different States of India were reorganised. This Court cited with approval the principles which had been formulated for effecting integration of services of different States. These principles are : In the matter of equation of posts, (1) where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis but (2) where there were no such similar cadres, the following factors will be taken into consideration in determining the equation of posts :

- (a) Nature and duties of a post;
- (b) Powers exercised by the officers holding a post the extent of territorial or other charge held or responsibilities discharged;
- (c) The minimum qualifications, if any, prescribed for recruitment to the post and;
- (d) The salary of the post.

This Court further observed that it is not open to the Court to consider whether the equation of posts made by the Central Government is right or wrong. This was a matter exclusively within the province of the Central Government. Perhaps the only question the Court can enquire into is whether the four principles cited above had been properly taken into account. This is the narrow and limited field within which the supervisory jurisdiction of the Court can operate.

6.	XXXXX	XXXXX	XXXXX
7.	XXXXX	XXXXX	XXXXX

8.	XXXXX	XXXXX	XXXXX
9.	XXXXX	XXXXX	XXXXX
10.	XXXXX	XXXXX	XXXXX
11.	XXXXX	XXXXX	XXXXX
12.	XXXXX	XXXXX	XXXXX
13.	XXXXX	XXXXX	XXXXX
14.	XXXXX	XXXXX	XXXXX

15. A decision to merge such cadres is essentially a matter of policy. Since the three cadres carried the same pay scale at the relevant time, merging of the three cadres cannot be said to have caused any prejudice to the members of any of the cadres. The total numbers of posts were also increased proportionately when the merger took place so that the percentage of posts available on promotion was not in any manner adversely affected by the merger of the cadres.

16.	XXXXX	XXXXX	XXXXX
17.	XXXXX	XXXXX	XXXXX
18.	XXXXX	XXXXX	XXXXX

19. However, it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground for setting aside the merger which is essentially a policy decision. This Court in Union of India v. S. L. Dutta : (1991) 1 SCC 505 examined this contention. In S. L. Dutta's case a change in the promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chances of promotion were reduced. Relying upon the decision in the State of Maharashtra v. Chandrakant Anant Kulkarni : (1981) SCC 130 this Court held that a mere chance of promotion was not a condition of service and the fact that there was a reduction in the chance of promotion would not amount to a change in the conditions of service.

[Emphasis added]

17. There is no dispute that the respondents No. 5 to 29 have been absorbed in the TPS Grade-II against the vacancies of

the direct recruits. The petitioners are not the direct recruits. They are commonly known as promotees and they have been so recruited from the post of Inspector of Police. Therefore, the petitioners have no *locus standi* to challenge the action taken by the Government. To buttress such point, the learned Advocate General has place reliance on **Adi Pherozshah Gandhi vs. H.M. Seervai**, reported in **(1970) 2 SCC 484**, where the apex court while dealing upon the question of *locus standi*, has observed as under :

"The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be a tendency to injure him. That the order is wrong or that it acquits some one who he thinks ought to be convicted does not by itself give rise to a legal grievance."

[Emphasis supplied]

Thus learned Advocate General has submitted that the challenge as projected by the petitioners are bereft of any matter.

18. Mr. K.N. Bhattacharjee, learned senior counsel, assisted by Mr. D.K. Daschoudhury, learned counsel appearing for the respondents No. 5 to 13, 15, 16 and 18 to 29, has adopted the submission advanced by learned Advocate General. The same suit has been followed by Mr. C.S. Sinha, learned counsel who has appeared for the respondents No. 14 and 17. Mr. Sinha, learned counsel has however raised one pertinent issue that the writ petition suffers from delay and latches as the notification

dated 15.11.2006 (Annexure-P/9 to the writ petition), which is challenged in this writ petition was assumably within the knowledge of the petitioners as they are the members of the same cadre. But, for purpose of filing the writ petition, they made an averment at para 22 of the writ petition, where they have asserted that "earlier than the publication of the draft seniority list circulated by Memo No.F.30(1)-GA(P&T)/11 dated 16th April, 2011, the petitioners were not aware that the respondent Nos. 5 to 29 had ever been appointed "on promotion to the post of TPS Grade II". According to Mr. Sinha, learned counsel, it is entirely circuitous. The respondents No. 5 to 29 since have been recruited on promotion, they have challenged their seniority position for their 'recruitment on promotion'.

19. Having appreciated the submissions made by the learned counsel for the parties, 3(three) pertinent questions arise for determination :

- (i) Whether by adding a note below the schedule of the duty-posts of the TPS Grade-II, a substantive provision can be added without making any amendment in Rule 5(1)(a) and (b) of the Rules for purpose of absorbing the police officers who are holding ex-cadre posts of Assistant Commandant in TSR in the TPS Grade-II or whether the note can be held valid?

- (ii) Whether on equating the post of the Assistant Commandant in TSR and the TPS Grade-II, absorption of the respondents No. 1 to 29 from the day of their substantive appointment in the post of the Assistant Commandant in TSR is sustainable or not? and
- (iii) Whether the writ petition suffers from delay and laches in the context of the case?
- (i) **Whether by adding a note below the schedule of the duty-posts of the TPS Grade-II a substantive provision can be added without making any amendment in Rule 5(1)(a) and (b) of the Rules for purpose of absorbing the police officers who are holding ex-cadre posts of Assistant Commandant in TSR in the TPS Grade-II or whether the note can be held valid?**

20. We cannot ignore the fact that a Government servant gets a right, though not indefeasible right to be considered for his entitlement in accordance with law. In **Union of India Vs. Hemraj Singh Chauhan & Ors.**, reported in **(2010) 4 SCC 290**, the apex court while dealing with similar situation, held that :

35. The Court must keep in mind the constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article

16 virtually flows from guarantee of equality under Article 14 of the Constitution.

37. In Govt. Branch Press v. D.B. Belliappa : (1979) 1 SCC 477 a three-Judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomised under Articles 14 and 16 is "fairness founded on reason"

[Emphasis supplied]

Thus, we are to look into the reasons which prompted the Government to add by TPS (12th Amendment) Rules, the note under challenge.

21. We have considered the records as placed both by the respondents No. 1, 2 and 3 and by the TPSC, the respondent No.4, represented by Mr. P. Datta, learned counsel and it has transpired very clearly at the time of the cadre review that the Government for the administrative exigencies shall abolish the ex-cadre post of Assistant Commandant in the TSR urgently for consolidation and discipline. A conscious decision was taken by the Government to abolish those posts and as such they had also taken a decision to absorb those personnel who were holding those ex-cadre post of Assistant Commandants in the TPS Grade-II. For that purpose, equal number of posts of Assistant Commandants which existed in the TSR has been added to the strength of the duty post in such a manner so that all the ex-cadre Assistant Commandants can be absorbed in the TPS Grade-II. No doubt about it, the said note is a transitional provision. It will have no effect whatsoever once the ex-cadre Assistant

Commandants are absorbed in the TPS Grade-II. Therefore, according to this court, by incorporating the provision of absorption by way of note, the Government has done no disservice to anyone. For protecting the interest of the respondents No.5 to 29, so far their seniority is concerned, a consequential addition has been made in the form of Rule 28(iv) of the rules giving the space for the Government to decide the equation of post for purpose of giving effect of the absorption from the day of substantive appointment in the ex-cadre post of Assistant Commandant. Regarding the role of the note in a Rule, it has been well enunciated by the apex court in **Tara Singh vs. State of Rajasthan & Ors.** This note has the function of a proviso to Rule 5 of the Rules. That makes an exception for purpose of implementing the policy of the Government. No existing right of the petitioners have been effected as they were all recruited on selection after the notification dated 15.11.2006 had come into effect. Thus the petitioners cannot even have the legitimate expectation in view of what has been enunciated in **Union of India Vs. Hemraj Singh Chauhan & Ors.**

- (ii) **Whether on equating the post of the Assistant Commandant in TSR and the TPS Grade-II, absorption of the respondents No. 1 to 29 from the day of their substantive appointment in the post of the Assistant Commandant in TSR is sustainable or not?**

22. The apex court in **S.B. Mathur vs. Hon'ble the Chief Justice of Delhi High Court & Ors.**, has clearly stated that

where there is an employer who has a large number of employees in his service performing diverse duties, he must enjoy a certain measure of discretion in treating different categories of his employees as holding equal status posts or equated posts. Therefore, nothing is inherently wrong in treating the TPS Grade-II and the ex-cadre Assistant Commandant as the equitable posts or having comparable status for providing the respondents No.5 to 29, the benefits of Rule 28 (iv) of the said rules. That apart, the absorption in the service jurisprudence has its flexibility to accommodate the policy of the Government.

23. In **Devdutta & Ors. Vs. State of M.P.**, reported in **1991 Supp(2) SCC 553**, the apex court has held as under :

8. Now coming to the question of seniority, the term "absorbed" in Service Jurisprudence with reference to a post in the very nature of things implies that an employee who has not been holding a particular post in his own right by virtue of either recruitment or promotion to that post but is holding a different post in a different department is brought to that post either on deputation or by transfer and is subsequently absorbed in that post whereafter he becomes a holder of that post in his own right and loses his lien on his parent post. No one asserts that the instant one was a case of the absorbed Sales-tax Inspectors being initially sent on deputation from the post of Block Level Extension Officer to the post of Sales-tax Inspector and being subsequently absorbed in that post. Consequently, when as pointed out by the High Court, it was not disputed that the surplus Block Level Extension Officers had been absorbed in the post of Sales-tax Inspectors it is obvious that it was a case of absorption by transfer. In this connection it would be useful to recapitulate that the minutes of the meeting referred to above held on 30th September, 1965 laying down the principles of procedure for absorbing the surplus personnel specifically stated that the surplus staff which was to be "absorbed" should be treated as

having been transferred from one post to another so that there may be no break in their service."

[Emphasis supplied]

24. What Mr. Deb, learned senior counsel has submitted, would have persuaded us if he could show before us that the schedule or the note below has wiped out any statutory ambit provided in the rules, as the apex court has held in **Jagdish Prasad Vs. State of Rajasthan & Ors.** that, it is the settled principle of law that the schedule of the Rules, 1979 has to be in conformity with and is required to advance the object of the primary statutory provision. A schedule cannot in any way wipe out the statutory provisions of the Act in effect and spirit. Obviously when it is a matter of absorption, the policy of the Government would have lee-way, otherwise inflexibility by itself would frustrate the object of the rule. While summing up his submission, Mr. Deb, learned senior counsel has laid adequate emphasis that the crash screening written test was for 100 marks, whereas the competitive examination for the TPS Grade-II is covered by Part-II of the Tripura Civil Service and Tripura Police Service (Appointment for Combined Competitive Examination) 9th Amendment Regulation, 2000. The said Rule prescribes that there shall be two parts, written and personality test. The written examination and the personality test will carry 800 marks and 100 marks respectively. He has referred **Jagdish Prasad Vs. State of Rajasthan & Ors.**, where the apex court while deciding

the extent of power of amending the rules, the Rajasthan Transport Service Rules, 1979 by introducing an amendment to Schedule-I and Schedule-II of the said Rules of 1979, has observed as under :

25. The first and the foremost question that arises for consideration by this Court is whether merely by the amendment to Schedule I and the deletion of Schedule II of the 1979 Rules the effect of the statutory provisions like Rules 6, 10, 24 of the 1979 Rules read in their plain language would stand diluted. Can it be argued that amendment to these schedules renders the statutory provisions ineffective and inoperative?

26. It is a settled principle of law that the Schedule of the 1979 Rules has to be in conformity with, and is required to advance the object of the primary statutory provision. Thus, a schedule cannot in any way wipe out the statutory provisions of the Act in effect and spirit. It is nobody's case, and in fact, nothing has been brought to our notice, that Rules 6, 10, 11 and 24 of the 1979 Rules have been subjected to any amendment by the competent authority. Once these provisions stand in the statute book, then respondents cannot escape from complying with them in the appropriate manner and without defeating the object of these Rules.

[Emphasis supplied]

25. To drive the similar point, with sufficient vehemence, Mr. Deb, learned senior counsel has also placed reliance on **Bhupendra Nath Hazarika Vs. State of Assam & Ors.,** reported in **(2013) 2 SCC 516**, where the apex court has held as under :

23. The Division Bench further opined that at such a belated time their appointments could not be annulled. In the ultimate analysis, the Division Bench concurred with the view expressed by the learned single Judge on the issue of fixation of seniority.

24. XXXXX XXXXX XXXXX

25. XXXXX XXXXX XXXXX

26. The fundamental questions that emanate for consideration before this Court are, namely, whether the appointments have been made in violation of the rules; whether the selection of the special batch recruits if accepted to be in violation of the rules, can be treated to be de hors the rules; and whether the concept of relaxation has been extended to them or is extendable to them and further whether they can avail the benefit under the second proviso to Rule 18 of the Rules and whether the tribunal as well as the High Court is justified in refixing the seniority without quashing the appointment of the special batch recruits.

27. XXXXX XXXXX XXXXX

28. We have referred to the said pronouncement only for the purpose that before the tribunal, the challenge was not for the quashment of the appointments on the foundation that they were made in violation of the rules and the propriety in the matter of appointment of the special recruits was not maintained and that apart, the appeal was filed after a span of nine years after the selection and appointment and hence, the principle stated therein is squarely applicable to the case at hand.

29. XXXXX XXXXX XXXXX

30. XXXXX XXXXX XXXXX

31. XXXXX XXXXX XXXXX

32. XXXXX XXXXX XXXXX

33. XXXXX XXXXX XXXXX

34. We have referred to the facts in detail and what this Court had ultimately held only for the purpose that where recruitment of service is regulated by the statutory rules, the recruitment must be made in accordance with those rules and if any appointment is made in breach of the rules, the same would be illegal and the persons so appointed have to be put in a different class and they cannot claim seniority.

35. XXXXX XXXXX XXXXX

36. The Constitution Bench posed the question as to what would be the consideration if the quota rule is not followed at all continuously for a number of years and it becomes impossible to adhere to the same. The Constitution Bench opined that if the rule fixes the quota and it becomes impracticable to act upon, it is of no use insisting that the authorities must continue to give effect to it. But the Government, before departing

from the rule, must make every effort to respect it and only when it ceases to be feasible to enforce it, then it has to be ignored. In such a situation, if appointments from one source are made in excess of the quota but in a regular manner and after following the prescribed procedure, there is no reason to push down the appointees below the recruits from other sources who are inducted in the service subsequently. A reference was made to the rules that permitted the Government to relax the provisions fixing the ratio.

37.	XXXXX	XXXXX	XXXXX
38.	XXXXX	XXXXX	XXXXX
39.	XXXXX	XXXXX	XXXXX
40.	XXXXX	XXXXX	XXXXX
41.	XXXXX	XXXXX	XXXXX
42.	XXXXX	XXXXX	XXXXX

43. Recently, in *State of Haryana and others v. Vijay Singh* : (2012) 8 SCC 633, the question arose with regard to the fixation of seniority in the backdrop of ad hoc initial appointment made de hors the statutory rules but later on services were regularized by the State Government. The Court took note of the fact that the respondents therein were neither appointed by the competent authority on the recommendations made by the Board which was constituted by the Governor of Haryana nor were they placed on probation as required under the rules and, therefore, their ad hoc period could not be counted for the purpose of fixation of seniority. Thus, emphasis was laid that when appointment is made without following the procedure prescribed under the rules, the appointees are not entitled to have the seniority fixed on the basis of the total length of service. In essence, it has been ruled that when the appointment is made de hors the rules, the appointee cannot claim seniority even if his appointment is later on regularized.

[Emphasis supplied]

26. The law as enunciated in **Bhupendra Nath Hazarika Vs. State of Assam & Ors.**, cannot be applicable in this case for the divergence of the context as the others who were compared at par were appointed dehors the Rules. Here, that is not the case

as the note in question provides the provision for absorption. This small difference makes a gulf of difference and as such the said principle cannot be applied in the present case, even for the purpose of seniority.

(iii) **Whether the writ petition suffers from delay and laches in the context of the case?**

27. There cannot be any amount of doubt that the writ petition challenging the note and appointment of the respondents No.5 to 29 simultaneously has been filed after about 7 years. By efflux of time, the status got consolidated and settled. The ex-cadre posts of Assistant Commandant have been abolished. The courts in India are ordinarily reluctant to unsettle the settled position. In **Bhupendra Nath Hazarika Vs. State of Assam & Ors.**, the apex court even after declaring the recruitment dehors of the Rules, has observed as under :

60. From the aforesaid analysis, there can be no scintilla of doubt that the selection of the special batch recruits was totally de hors the Rules; that there was a maladroit effort to go for a special drive when there was no need for the same by the State which is supposed to be a model employer; that neither the concept of relaxation nor the conception of benefit of Rule 18 would be attracted for grant on conferring any privilege to the special batch recruits; that their seniority has to be pushed down and, hence, the directions given by the tribunal and the High Court in that regard are absolutely flawless; and that regard being had to the delayed challenge and long rendering of service in the posts and further promotions having been effected, it would be inapposite to quash their appointments.

[Emphasis supplied]

28. Having held so, we does not find any merit in the writ petition and accordingly the same is dismissed. However, there shall be no order as to costs.

JUDGE

CHIEF JUSTICE

ROY