

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.30956 of 2013

and

M.P.Nos.1 of 2013 and M.P.No.3 of 2015

- 1.M.Arumugam
- 2.A.Karmegam
- 3.S.Manimaran
- 4.S.Selva Kumar

... Petitioners

Vs.

- 1.The State of Tamil Nadu,
represented by
The Secretary to Government,
Home Department,
Secretariat,
Chennai - 9.
- 2.The Director General of Police,
Tamil Nadu,
Chennai - 4.
- 3.The Additional Director General of Police,
Armed Police,
Chennai - 10.
- 4.P.Thirunavukarasu
- 5.S.Ravindran
- 6.S.Jayachandran
(R.4 to R.6 impleaded as per order dated 24/02/2015
in M.P.No.1/2015)
- 7.Mr.P.Palpandian
- 8.Mr.K.Govindarasu
(R.7 & R8 suo-motu impleaded as per
order dated 17.03.2015 in WP.No.30956/2013)
- 9.J.Augustine Francis
(R9 impleaded as per order dated 14/07/2015
in W.P.No.30956/2015)
- 10.R.Venkatachalam

11.M.Patel

12.V.Jeyaraman

13.E.Jayaratchagan

(R10,R11,R12,R13 impleaded as per order
dated 14/07/2015 in M.P.2/2015 in
W.P.No.30956/2013

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents to draw the panel for further promotion to the post of Inspector or Assistant Commandant from the post of Sub Inspector or Inspector respectively in Tamil Nadu Special Police Subordinate Service by taking note of the date of initial appointment in General Line of the said service as per Rule 24 (f) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 and consequently, promote them from the said panel to the post of Assistant Commandant or Inspector.

For Petitioners ... Mr.R.Singgaravelan
for M/s.M.Srividhya

For Respondents ... Mr.P.H.Aravind Pandian,
Additional Advocate General
assisted by

Mrs.P.Kavitha

Govt. Advocate for R.1 to R.3

Mr.Ravi Shanmugam for R.4 to
R.7

Mr.K.S.Govinda Prasad for R.9

ORDER

The first two petitioners, namely, Mr.M.Arumugam and Mr.A.Karmegam were appointed on 15.09.1981 and on 01.08.1984 as Constables. The third and fourth petitioners, namely, S. Manimaran and S. Selvakumar were appointed on 25.05.1988 and 30.04.1989 respectively. The respective petitioners were promoted to the post of Sub Inspector of Police in 1999, 10.01.2001, 18.3.2005 and 18.09.2006 respectively. The 1st and the 2nd petitioners were promoted to the post of Inspector of Police on 06.03.2011 and 20.12.2013 respectively. The 4th

respondent joined service on 15.09.1981, the 5th respondent, namely, S. Ravindran, joined service on 0.08.1984 and the 6th respondent, S. Jayachandran, joined on 27.05.1988. The date of joining of the 1st and 2nd petitioners and the date of joining of respondents 4 to 6 is one the same, namely, 15.09.1981 and 01.08.1984. The date of joining of the 3rd writ petitioner and the 6th respondent was on 27.05.1988. Though the date of joining of the 1st and 2nd petitioners as well as respondents 4 to 6 is one and the same, respondents 4 to 6 reached the level of Inspector of Police on 11.08.2006, 17.08.2006 and on 21.08.2006 respectively where as the 1st and 2nd petitioners reached the level of Inspector of Police only on 06.03.2011 and 20.12.2013 respectively after a lapse of 7 years. According to the petitioners, respondents 4 to 7 got promotion earlier as they chose Armoury Line wherein promotion to the post of Sub Inspector of Police is very easy and after reaching the said post in the Armoury Line, they got themselves reverted back to the General Line, up above the petitioners, when they were stagnating in the lower level, namely, in the post of Havildar. Subsequently, respondents 4 to 7, because of the quicker promotion to the post of Sub Inspector of Police, in the Armoury Line, had the advantage of becoming Inspectors of Police, at the earliest, after they got themselves reverted back to the General Line. When the petitioners (except the first petitioner) are, at present, working as Sub Inspectors of Police, respondents 4 to 7 have been empanelled for the post of Assistant Commandant. Aggrieved over that, the petitioners have come before this Court praying for a direction to the official respondents to draw a panel for further promotion to the post of Inspector of Police or Assistant Commandant, from Sub Inspectors of Police or Inspectors of Police respectively, under the Tamil Nadu Special Police Subordinate Service Rules, by taking note of the date of initial appointment in the General Line of the said service, as per Rule 24(f) of Tamil Nadu Special Police Subordinate Service Rules, 1978 and consequently promote them from the said panel to the post of Assistant Commandant or Inspector of Police.

2. The learned Counsel for the petitioners would contend that the petitioners as well as respondents 4 to 7, joined the service on the same day or in the same year, but, the private respondents, to achieve quicker promotion to the post of Sub Inspector of Police, adopted a shortcut route, by switching over to Armoury Line and thereafter, came back to the General Line, easily got promoted as Inspectors of Police and are now trying to become Assistant Commandants whereas petitioners 1 and 2, who are in the General Line, right from the beginning, have been discriminated and were promoted to the post of Inspector of Police, very belatedly, nearly 7 years after the date of promotion of respondents 4 to 7 as Inspectors of Police. Besides, names of respondents 4 to 7 have been included in the proposal sent for promotion to the post of Assistant Commandant and nearly 84 senior Inspectors, who are still holding the post of Inspector, are awaiting their due promotion, on the verge of retirement. Respondents 9 to 13, who have been subsequently impleaded are some among the 84 Senior Inspectors, in the General Line of promotion. The injustice caused to the petitioners and similarly placed persons, namely, respondents 9 to 13 have not been addressed by the official respondents.

3. However, the then Director General of Police, wrote to the 1st respondent to make suitable amendment to Rule 24 of the Special Rules for Tamil Nadu Special Police Subordinate Service vide his letter dated 04.04.2006 giving the details of anomalies in the promotion of Police Officials in the General Line and Armoury Line. The said authority pointed out that Armoury Personnel are in an advantageous position to get early promotions upto the rank of Sub Inspector of Police and thereafter, they revert back to the General Line, as there is no post of Inspector of Police existing in the Armoury Line. Therefore, he proposed that when a person shifts from Armoury Line to General Line, then his original seniority, which he would have been holding, had he remained the General Line, should be taken into consideration for promotion and they cannot be allowed to take advantage of their earlier promotion in the Armoury Line.

4. Based on the proposal given by the then DGP, the Rule was amended incorporating Sub-Rule (f) by virtue of G.O.Ms. No. 1710, followed by the judgment dated 23.11.2007 by referring to Section 24(f). Learned counsel for the petitioners would submit

that in case of transfer of persons from Specialised Category to the General Category, the said person shall be assigned seniority immediately above his juniors serving in any post, in the General Line which the said officer is otherwise qualified to hold. If such a Rule is employed by the official respondents, then the seniority of respondents 4 to 7 at the time of entry into service have to be taken into consideration. However, contrary to Rule 24(f), respondents 4 to 7 are empanelled for promotion as Assistant Commandant. Taking into consideration, the seniority of respondents 4 to 7 at the time of entry into service, if Rule 24(f) is followed in letter and spirit, then respondents 4 to 7 cannot take advantage of the promotion gained in the specialised group and reach a higher post, especially, when persons, who are far senior to them, are still in the lower level. If the panel is approved, grave injustice would be caused to the petitioners and similarly placed persons.

5. The learned counsel for the petitioners further submitted that even before the introduction of Rule 24(f), respondents 4 to 7 should not have been given any advantage in view of Rule 24(b) of Tamil Nadu Special Police Subordinate Service Rules, 1978. According to him, the transferee officer, who is transferred from Armoury Line cannot claim seniority and his seniority has to be determined with reference to the rank in the category from which he was transferred from General Line.

6. It is contended by the petitioners that the first proviso to Rule 36(a) and 36(aa) of Tamil Nadu Police Subordinate Service Rules, 1978 states that where any junior appointed by a particular method of recruitment happens to be appointed to a service, class or category or grade earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to service, class, category or grade, on the same day on which the junior was so appointed. In view of the aforesaid provisions, it is contended by the petitioners that the official respondents cannot effect promotions illegally in the General Line, contrary to the above provisions, especially, Rule 24(b) and 24(f) and the first proviso to Rule 36(a) and 36(aa). The promotion of respondents 4 to 7 has to be made by fixing the seniority only on the basis of their entry into service in General Line after the petitioners. The illegal promotion already gained by the respondents 4 to 7 could not be taken into consideration for further promotion even though they served for a considerable time in the promoted post. In other words, he would submit that respondents 4 to 7 cannot claim any seniority over and above the writ petitioners and other General Line candidates, who are senior to respondents 4 to 7, on the date of their initial appointment. The judgment of the Honourable Supreme Court in Kunod Kumar v. State of Jharkhand reported in (2015) 4 SCC 646, is relied upon by the learned counsel for the petitioners.

Therefore, on the above grounds, he seeks to allow the writ petitions.

7. On the other hand, Mr. Arvinth Pandian, learned Additional Advocate General, appearing for respondents 1 to 3 would submit that the Government is not taking any stand in favour of any of the parties. Though all the parties joined the service as Police Constable, an option was given to all the persons to transfer to Armoury Line, which requires 10 months basic training in maintenance of all weapons, maintained by the Tamil Nadu Police Service. On successful completion of training, the said personnel will be treated as fully qualified Armoury Police Constable and therefore, seniority will be maintained separately in each battalion. They are also incharge of arms and ammunition maintained in each battalion. The personnel have to necessarily undergo electrical, mechanical Engineering Course for Grade II for 6 months and for Grade III, for one year and 15 days in connection with handling of arms and ammunition. As the said posts are very sensitive and important, their promotion avenue is kept separate to that of General Line, who are doing only general duties. As there is no separate post of Inspector of Police in the Armoury Wing of battalions, the said category of Sub Inspector (Armoury) has been merged with the category of Sub Inspector in the General Category for the purpose of promotion to the post of Inspector of Police. It is submitted by the learned Additional Advocate General that equal opportunity to exercise option after recruitment as constable was given to all to go to the specialised category. He would submit that the Division Bench of this Court in Damodar and others V. Paul and others reported in 1991 WLR 536 held that for the purpose of promotion to the post of Inspector of Police, the special category of Sub Inspector (Armoury) has been merged with the category of Sub Inspector in the General Category. Therefore, taking into consideration, the General Line Police Personnel's promotion got blocked due to inclusion of Sub Inspectors from Armoury Line, the Government issued amendment to Special Rules in the Tamil Nadu Special Police Subordinate Service Rules, by including sub-rule (f). It is settled that any person serving in the post of any specialised category, on transfer to the General Category, shall take his seniority immediately above his junior serving in any post in General Category, if he is otherwise qualified to hold the post and for determining the seniority for the said purpose, the seniority at the time of entry into service shall be taken into account. However, the said amendment is of no use to the petitioners as the said amendment came into effect only with effect from 22.11.2007 whereas respondents 4 to 7 reverted to the General Line before 23.11.2007.

8. According to the learned Additional Advocate General, respondents 4 to 7 were already promoted as Inspector of Police

in the General Line and have been discharging their duties as Inspectors of Police for more than 5 years, which is essential for considering them for the post of Assistant Commandant. When respondents 4 to 7 already gained 5 years experience as Inspectors of Police and made themselves eligible for promotion by applying Rule 24(f), their promotion cannot be scuttled. The further submission of Additional Advocate General is that the promotion of respondents 4 to 7 as Inspectors of Police has not been challenged at any point of time by the petitioners right from 2006 onwards. Therefore, he would submit that the promotion/advantage gained by respondents 4 to 7 before amendment of the Rule concerned, cannot be wiped out and therefore, the empanelment of respondents 4 to 7 to the post of Assistant Commandant cannot be questioned by the petitioners, especially, when they failed to challenge their promotion as Inspectors of Police, as early as in 2006. Hence, he prays that the writ petition may be dismissed.

9. Learned counsel appearing for contesting respondents 4 to 7 would advance his arguments mostly on the line of argument advanced by the learned Additional Advocate General. Firstly, he would submit that the writ petitioners cannot challenge the promotions of respondents 4 to 7 as per Rule 35(f) of Tamil Nadu Special Police Subordinate Service Rules. As per the Division Bench judgment of this Court reported in 2013 5 MLJ 777 (A. Ravi V. Secretary to Government, Municipal Administration and Water Supply Department), the writ petition is liable to be dismissed for non-joinder of necessary parties as the contesting respondents namely, respondents 4 to 7 have not been made as parties to the writ petition as they are necessary parties. The judgment of the Honourable Supreme Court reported in AIR 1985 SC 167 (Prabodh Verma and Others V. State of Uttar Pradesh and Others), (2012) 7 SCC 610 (Vijay Kumar Kaul V. Union of India) are relied upon in this regard. He would also rely upon rule 24 (b) of Tamil Nadu Police Subordinate Service Rules and would submit that the transfer of a person from one class or category carrying the same pay scale shall not be treated as first appointed to the latter for the purpose of seniority and the seniority of the person so transferred shall be with reference to the class or category from which he was transferred. By applying the aforesaid provision, it is contended that respondents 4 to 7 were transferred from special category to general category, they are entitled to seniority based on the rank and place from where they were transferred.

10. As contended by the learned Additional Advocate General, it was also submitted by the learned counsel appearing for the contesting respondents that only after amendment of Rule 24, the inclusion of sub-rule (f) that a person from specialized category shall take his seniority immediately above his junior in any post in General Category, came into effect only on 22.11.2007 whereas respondents 4 to 7 were transferred from

Armoury Line to General Line as early as on 31.08.2006, much before the introduction of Rule 24(f). Hence, Rule 24(f) cannot be applied to the contesting respondents. He referred to G.O.Ms. NO. 734 Home Department dated 08.11.2011 to stress the point that no person, in the General Category, is eligible for promotion as Assistant Commandant unless he has put in 5 years of service in the respective category, officiating or permanent, provided he is a holder of SSLC. As the petitioners have not put in 5 years of service as Inspector of Police, as on 2013, they cannot be considered for promotion as Assistant Commandant for the year 2013-2014, which qualification is possessed by the contesting respondents.

11. The other contention mainly raised by the learned counsel for the contesting respondents is that the petitioners have not challenged so far, the promotion granted to respondents 4 to 7 on 03.08.2006. As per the Apex Court judgment reported in 1983 3 SCC 284 (Y.V. Rangaiah and Others V. J. Sreenivasa Rao and others), the amendment to a Rule cannot take away the accrued right or cannot be allowed to affect the claim for promotion as a Rule cannot work to the prejudice of an employee, who was holding the post of his eligibility prior to the enforcement of the amended rule. Since Rule 24(f) came into effect on 23.11.2007, the said rule cannot be given retrospective effect affecting the petitioners. The judgments relied on in this regard are 2008 12 SCC 112 (State of Punjab V. Bhajan Kaur), 2013 4 SCC 169 (State of U.P. V. Mahesh Narain), 2013 4 SCC 540 (Tej Prakash Pathak V. Rajasthan High Court) and the judgment of the Division Bench of this Court reported in 2013 5 MLJ 777 (cited surpa). Moreover, it is pointed out by the learned counsel for respondents 4 to 7 that petitioners 2 to 4 are yet to be promoted as Inspectors of Police and the first petitioner, though promoted as Inspector of Police, has not completed 5 years in the said post. Therefore, the relief claimed by the petitioners cannot be granted. Respondents 4 to 7 are eligible for promotion as Assistant Commandant in the year 2013-2014 as they possess the required qualification for the same. Hence, he seeks dismissal of the writ petition.

12. Heard the parties and perused the records.

13. The case of the petitioners is that the private respondents 4 to 7 and the petitioners were selected by common recruitment and they joined the same entry level posts on merits. However, the private respondents 4 to 7 opted for Armoury Line, to get quicker promotion, to Sub Inspector of Police and reverted back to General Line as Inspector of Police up above their seniors who are stagnating either as Sub Inspector of Police, without even getting promoted as Inspector of police or Inspector of Police with lesser service than the private respondents. Whereas the private respondents now are

claiming promotion as Assistant Commandant, which is not justified.

14. According to the petitioners, the benefits of promotions given to the private respondents 4 to 7, are in contravention of Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 and further clarified by Rule 24 (f) and also Rule 35 of the Tamil Nadu State and Subordinate Service Rules, read with Rule 42 of the Special Rules.

15. On the other hand, the learned Counsel for the private respondents would submit that as per law, the private respondents joined Armoury Line and got promotion as per Rules and reverted back to General Line and are eligible to be promoted as Assistant Commandant for which their names are rightly empanelled by the Government.

16. The point for consideration is as to whether the persons who got recruited by the same method and joined entry level, are eligible to get quicker promotion in the Armoury Line and reverted back to General Line and get promotion, over and above the similarly placed persons or their seniors and claim further promotion? To put it in other words, whether the private respondents 4 to 7 are not entitled to gain further promotion as per law, in view of opting for Armoury Line and reverting back to General Line and get higher posts over and above the similarly placed persons?

17. The factual details are that the petitioners as well as the private respondents, were appointed to the entry level posts on merits by way of the same recruitment procedure. The service details of the petitioners as given in paragraph 9 of the written arguments filed by the official respondents 1 to 3, are extracted as follows:

S1 .N o.	Name & Rank	BN	As Hav. what category was he? General list or Specialist line (ARMR, MT, RT)	Date of Birth	Date of Entry into Service	Date of Promotion as SI	Date of promotion as Inspr.
1	M.Arumugam , Inspr (G)	V	General	17.5.1961	15.09.1981	18.3.2004	07/03/11
2.	Karmegam, Inspr (G)	VIII	General	05/04/64	01.08.1984	18.3.2004	06/02/14
3.	Manimaran, SI (G)	XI	General	04/03/69	27.05.1988	18.2.2005	-
4.	Selvakumar , SI (G)	XIII	General	18.9.1962	30.04.1989	08/03/05	-

17.1. Similarly, the service details of the private respondents 4 to 7 and one K.Govindrajan, are also extracted as follows:

Sl. No.	Name & Rank	BN	Date of Birth	Date of Entry into Service	Date of Promotion as SI	Date of promotion to the present rank (Inspr.)
1.	Tr.Thirunavukarasu, Inspr (G)	II	26.05.1960	15.09.1981	17.09.1998 (in Armourer Line)	11.08.2006
2.	Tr.P.Paulpandian, Inspr (G)	VI	05.04.1960	01.08.1984	25.09.1998 (in Armourer Line)	17.08.2006
3.	Tr.S.Ravindran, Inspr (G)	IX	09.05.1964	01.08.1984	07.10.1998 (in Armourer Line)	21.08.2006
4.	Tr.S.Jayachandran, Inspr (G)	II	17.03.1962	27.05.1988	16.09.1998 (in Armourer Line)	23.08.2006
5.	Tr.K.Govindrajan, Inspr (G)	VII	17.09.1966	09.06.1993	01.10.1998 (in Armourer Line)	09.08.2006

17.2. From the above, it is evident that the first petitioner - M.Arumugam and the contesting fourth respondent - P.Thirunavukarasu, joined the entry level posts on the very same day on 15.09.1981. The first petitioner remained in the General Line and got promoted as Sub Inspector of Police after 23 years of service on 18.03.2004 and promoted as Inspector of Police only on 07.03.2011. Whereas the contesting fourth respondent - P.Thirunavukarasu, got migrated to Armoury Line and promoted as Sub Inspector of Police on 17.09.1998 within 17 years of service and thereafter, got promoted as Inspector of Police on 11.08.2006 and his name is further empanelled for further promotion as Assistant Commandant.

17.3. Similarly, the third petitioner - Manimaran and the contesting seventh respondent - S.Jayachandran, joined the service on 27.05.1988. The third petitioner remained in the General Line and got promoted as Sub Inspector of Police after 17 years on 18.02.2005. Whereas the contesting seventh respondent - S.Jayachandran, got migrated to Armoury Line and promoted as Sub Inspector of Police on 16.09.1998 within 10 years of service and thereafter, got promoted as Inspector of Police on 23.08.2006 and his name is further empanelled for further promotion as Assistant Commandant.

18. The above facts themselves would categorically demonstrate as to how by entering into Armoury Line, the contesting respondents 4 to 7, achieved higher posts within shorter period and further promotion as Inspector of Police and now are eligible to be promoted as Assistant

Commandant. Whereas the petitioners got promoted as Sub Inspector of Police after six years of promotion of the contesting respondents as Sub Inspector of Police and the contesting respondents 4 and 5 were further promoted as Inspector of Police in August 2006. Whereas the petitioners 1 and 2 could get promotion only in March 2011 and February 2014 respectively, namely, after five years of promotion of the fourth respondent and eight years of the promotion of the fifth respondent, respectively.

19. The third petitioner - Manimaran as well as the seventh contesting seventh respondent - S.Jayachandran joined the service on 27.05.1988. The third petitioner chose to remain in General Line and got promoted as Sub Inspector of Police on 18.02.2005 and continued to remain as Sub Inspector of Police without even getting promotion as Inspector of Police. Whereas the seventh respondent - S.Jayachandran got migrated to Armoury Line and promoted as Sub Inspector of Police on 16.09.1998 within 10 years of service and subsequently got promotion as Inspector of Police on 23.08.2006 and his name has been empanelled for promotion as Assistant Commandant.

20. The facts narrated above, really shock the conscience of this Court as to how the similarly placed persons were treated differently. However it is not as if the first and fourth petitioners and the third and seventh respondents remained in the same line and are being treated differently.

21. As rightly pointed out by the learned Additional Advocate General as well as Mr.Ravi Shanmugam, learned Counsel for the contesting respondents 4 to 7, that option to join the Armoury Line was available to all the parties. Whereas the contesting respondents 4 to 7 alone chose to Armoury Line wherein the manner of promotion is different from General Line.

22. It is contended that the Armoury Police Constables have to undergo the basic training in maintenance of all weapons and they are in-charge of ammunition maintained in each Battalion/District and the Chief Officers Stores. It is further stated that it is a sensitive and very important post and their promotion avenue is separate to that of General Line, who are doing general duties, such as, Guard Duty, Law and Order Duty, Bandobust Duty, Election Duty to other States.

The promotion avenue in General Line is as follows:

General Line	Armoury Line
Grade-II Police Constable	Grade-II Police Constable (Armourer)
Naik (General)	Havildar (Armourer)
Havildar (General)	Sub Inspector of Police (Armourer)
Sub Inspector of Police (General)	
Inspector (General)	
Inspector (Adj.)	
Assistant Commandant	

23. The personnel in General Line have to undergo many training courses successfully for getting promotion and the following are stated to be the courses:

1. Small Arms Cadre Course;
2. Foot Drill Cadre Course;
3. Physical Training and Unarmed Combat Course;
4. Field Craft Course;
5. Drill Instructor Course; and
6. Map Reading and Jungle Training.

The above details given by the learned Counsel for the petitioners are not contradicted or denied by the respondents. For Armoury Line, even according to the respondents, the police personnel have to undergo 10 months basic training in maintenance of all weapons and after fully qualified as Armoury Police Constable, their promotions are automatic according to the seniority upto the rank of Sub Inspector of Police in the Armoury Line and there is no necessity for them to undergo any promotional tests for promotions.

24. Though the said procedure is being followed by the respondent Government, it is very discriminatory to treat the persons who are equally placed and give advantage to one group of personnel merely because they chose for Armoury Line. Further it is seen that the General Line candidates have to undergo many

promotional tests as stated above, which is not requisited for promotion in Armoury Line. Having undergone promotional tests in every stage, the General Line personnel are put in disadvantageous position. On the contrary, the Armoury Line personnel are credited with promotions automatically without any promotional tests.

25. The aforesaid anomalous situation of earlier and quicker promotion of the Armoury Line personnel and belated promotions obtained by the General Line personnel, with regard to the facts of the case, are well explained by the following tabular columns, which is repeated for the sake of clarity:

Sl. No.	Name & Rank	BN	As Hav. what category was he? General list or Specialist line (ARMR, MT, RT)	Date of Birth	Date of Entry into Service	Date of Promotion as SI	Date of promotion as Inspr.
1.	M.Arumugam, Inspr (G)	V	General	17.5.1961	15.09.1981	18.3.2004	07/03/11
2.	Karmegam, Inspr (G)	VII	General	05/04/64	01.08.1984	18.3.2004	06/02/14
3.	Manimaran, SI (G)	XI	General	04/03/69	27.05.1988	18.2.2005	-
4.	Selvakumar, SI (G)	XIII	General	18.9.1962	30.04.1989	08/03/05	-

Sl. No.	Name & Rank	BN	Date of Birth	Date of Entry into Service	Date of Promotion as SI	Date of promotion to the present rank (Inspr.)
1.	Tr.Thirunavukarasu, Inspr (G)	II	26.05.1960	15.09.1981	17.09.1998 (in Armourer Line)	11.08.2006
2.	Tr.P.Paulpandian, Inspr (G)	VI	05.04.1960	01.08.1984	25.09.1998 (in Armourer Line)	17.08.2006
3.	Tr.S.Ravindran, Inspr (G)	IX	09.05.1964	01.08.1984	07.10.1998 (in Armourer Line)	21.08.2006
4.	Tr.S.Jayachandran, Inspr (G)	II	17.03.1962	27.05.1988	16.09.1998 (in Armourer Line)	23.08.2006
5.	Tr.K.Govindrajan, Inspr (G)	VII	17.09.1966	09.06.1993	01.10.1998 (in Armourer Line)	09.08.2006

26. Though it is contended by the respondents that as per Rule, the personnel of Armoury Line got precedence over that of the General Line personnel as common seniority is drawn for the Sub Inspector of Police for the purpose of promotion to the post of Inspector of Police. As per Rule, as special category of Sub Inspector of Police, Armoury has been merged with the category of the Sub Inspector of Police, in the General Line for the purpose of promotion to the post of Inspector of Police, the learned Counsel for the petitioners relied upon Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 that the seniority of the Armoury Line personnel, is only with reference to the date of initial appointment in General Line and therefore their seniority as per initial appointment alone should govern and not separately and therefore the promotions obtained by the Armoury Line personnel in Armoury Line contrary to Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, are illegal.

27. To consider the aforesaid contention, it is appropriate to take into consideration Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, which is usefully extracted as follows:

"Rule 24. Seniority.- (a) The seniority of a person in a category shall, unless he has been reduced to a lower ranks as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the appointing authority subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

(b) The transfer of a person from one category to another category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority.

(c) Where a member of the service is reduced to a lower category, he shall be placed at the top of the latter, unless the authority ordering such reduction directs that he shall take rank in such lower category next below any specified member thereof.

(d) The seniority of Police Constables who are appointed on or after 1-7-77 according to rule of reservation shall be determined with reference to the marks obtained by them in the final examination conducted at the recruits schools. In the case of those secured same marks, the seniority shall be decided with reference to their date of birth.

(e) The Inter-se-seniority of those appointed by more

than one method of recruitment and if their date of appointment to the category happens to be one and the same shall be decided with reference to their age."

A close scrutiny of the aforesaid Rule 24(b) of the Tamil Nadu Special Police Subordinate Rules, 1978, could make it clear that Armoury personnel seniority shall be determined only with reference to the rank in the category from which he was transferred, namely, General Line. As the Rule 24(b) is so categorical, there is no question of keeping the seniority of the Armoury Line personnel de hors of the General Line.

28. In such determination of seniority separately without reference to the rank in category from which the personnel was transferred, namely, General Line, is contrary to Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978.

29. It is seen that without understanding the scope of Rule 24(b), seniority has been kept separately for Armoury Line personnel and they have been given undue promotions, discriminating the personnel in General Line. Had the Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, been scrupulously followed, before promotion of the transferees in Armoury Line, similarly placed persons in General Line should have been called upon to express their option to come to Armoury Line to take promotional post in the Armoury Line, which was not given to the similarly placed personnel in General Line. Therefore, in view of Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, all the promotions which have been given to Armoury personnel are contrary to Rule 24(b) and the contesting respondents cannot take advantage of the illegal promotions gained by them to seek further promotions reverting to General Line, over and above the similarly placed persons and seek further promotion.

30. The above conclusion reached by this Court is further fortified by Rule 35(a) and (aa) of the Tamil Nadu State and Subordinate Service Rules, which categorically states that the juniors appointed by a particular method or recruitment, happen to be appointed to a service, class, category or grade, than the senior appointed on the same method of recruitment, the senior shall be deemed to have been appointed to the service on the same day on which the junior was so appointed.

Rule 35(a) and (aa) of the Tamil Nadu State and Subordinate Service Rules, is extracted as follows:

"35.(a) The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it

applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

(aa) The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade;

Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed;

Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority;

Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age."

The second proviso to Rule 35(aa) would make it very clear that the benefit of the first proviso to Rule 35(aa) shall be available to the seniors for the purpose of fixing the inter-se-seniority.

31. Assuming that there are no rules governing with regard to the transferee personnel and the General Line personnel, regarding their seniority, Rule 35(a) and (aa) of the Tamil Nadu State and Subordinate Service Rules, could be relied upon, in view of Rule 42 of the Special Rules for Tamil Nadu Police Subordinate Service, which reads as follows:

"Rule 42. Application of General Rules:

The provisions of the General Rules in part II of the Tamil Nadu State and Subordinate Services Rules shall apply to the member of service except to the extent expressly provided to these rules. [G.O.Ms.No.182 Home (Pol.VI) Dept. dated 25.02.2003]."

A conjoint reading of Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 and Rule 35(a) and (aa) of the Tamil Nadu State and Subordinate Service Rules, makes this Court to conclude that taking advantage of undue promotion gained by Armoury transferee personnel, contrary to original seniority in the General Line, in violation of Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, that the transferees namely, the contesting respondents 4 to 7 and the similarly placed persons, cannot claim any seniority in the General Line personnel on their return to the General Line.

32. Hence, this Court has got no hesitation to hold that the transferee of Armoury could get their seniority only on the basis of their entry into service in General Line and the promotions gained in the Armoury cannot upset the seniority. Therefore the contention of the learned Counsel for the contesting respondents 4 to 7 that relying upon Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 that when Armoury personnel were transferred to General Line, they are entitled to count the seniority in the rank they were so transferred, is liable to be rejected. Rule 24(b) speaks about the transfer of a person from one category to another in the General category throughout and it is not as if the transferee from General Line to Armoury Line, would automatically become the transferee from Armoury as he has to be throughout known as transferee from the General Line, since his seniority has to be determined only with reference to General Line seniority.

33. The contention of the contesting respondents 4 to 7 is that the promotion of the contesting respondents 4 to 7 has not been challenged by the petitioners at any point of time and the challenge now is belated and the challenge has to be rejected on the ground of laches. He made a reference to Rule 35 (f) of the Tamil Nadu State and Subordinate Service Rules, contending that a claim for seniority cannot be made after three years. Rule 35(f) is extracted as follows:

"35(f). Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts."

In normal circumstances, there may not be any problem to follow Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, if the promotions are made as per Rules. Whereas the promotions gained by Armoury personnel are contrary to Rule 24 (b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 and therefore Rule 35(f) is of no use.

34. Taking note of the anomaly that Armoury personnel are in an advantageous position to get early promotion upto the post of Sub Inspector of Police, and they are being considered next elevation as Inspector of Police in General Line and gain precedence over those in General Line by virtue of early promotion in Armoury Line, an amendment by way of Rule 24(f) was made, which came into effect from 23.11.2007 as per G.O.(Ms)

No.1710, Home (Pol.9) Department, dated 23.11.2007. Rule 24(f) is extracted as follows:

"24(f). Any person serving in any post in specialist category (other than regular line) may opt for transfer to general category (regular line). On transfer to the General Category, such person shall take his seniority immediately above his junior serving in any post in general category, if he is otherwise qualified to hold the post. For determining the seniority for this purpose, the seniority at the time of entry in to the Tamil Nadu Special Police Subordinate Service shall be taken into account. A person in the specialist category shall not have any advantage in the general category by virtue of the promotion, if any, earned by him in the specialist category in the event of his transfer or reversion from specialist category to General category either at his option or otherwise."

The above amendment makes abundantly clear that a person in a specialist category shall not have any advantage in the General category by virtue of promotion earned by him, in the specialist category in the event of his transfer or reversion from the specialist category to General category either at his option or otherwise.

35. Rule 24(f) of the Tamil Nadu Special Police Subordinate Service Rules, supports the case of the petitioner. However, as rightly pointed out by the learned Additional Advocate General and the learned Counsel for the contesting respondents that the said amended Rule came into force only on 23.11.2007 as per G.O.(Ms)No.1710, Home (Pol.9) Department, dated 23.11.2007. Further, in this case, all Armoury personnel have already been reverted to the General Line, in 2006 itself and therefore, this Rule, cannot give any support to the petitioners. However, as stated above, there is already Rule 24 (b) which is in letter and spirit the same as that of the amended Rule 24(f). As already stated, the case of the petitioners is supported by Rule 24(b). If at all, Rule 24(f) only clarifies and confirms the position in the existing provision viz., Rule 24(b), though it is superfluous in nature. Hence the contesting respondents 4 to 7 or similarly placed specialist category personnel, shall not have any advantage in the General Line by virtue of their promotion in the specialist category and their seniority at the time of entry into the Tamil Nadu Special Police Subordinate Service alone should be taken into account for further promotion. In view of the above reasoning, the contesting respondents cannot gain promotion or seek for further promotion, namely, for promotion as Assistant Commandant on their return to General Line, till similarly placed personnel in the General Line get their promotion as that of the Armoury personnel.

36. The Honourable Supreme Court in Boopendra Nath Hazarika v. State of Assam reported in 2013 (2) SCC 516,

considered issue of recruitments made by Special Batch in contravention of the Rules encroaching direct recruitments and held that there was a violation of recruitment Rules and recruitment itself was unsustainable. However, the Honourable Supreme Court did not annul the appointment of Special Batch recruits whose recruitments were made contrary to Rules, as there was a long delay in challenging the selection of the Special Batch recruits. Paragraphs 55, 60 and 65 of the said judgment are extracted as follows:

"55. The aforesaid authorities clearly lay down the principle that when there is violation of the recruitment rules, the recruitment is unsustainable. Whether any active part is played by a selectee or not has nothing to do with the appointment made in contravention of the rules. In the case at hand, the special batch recruits have encroached into the quota of the direct recruits. The whole selection process is in violation of the rules and, therefore, we are inclined to concur with the opinion expressed by the learned single Judge that the selection was made de hors the rules. The Division Bench was not justified in stating that the selection could not be said to be de hors the rules. However, we accept the conclusion of the tribunal as well as the High Court that as there had been long delay in challenging the selection of the special batch recruits and some of them have already retired, it would not be apposite to annul their appointments.

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.

65. We have stated the role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation

is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more."

Applying the principles laid down in the above judgment, it can be easily held that though promotions have already been gained by Armoury personnel in the Armoury Line, contrary to Rule 24(b) to the contesting respondents 4 to 7, the said promotions cannot be set aside, after so many years. However, as their promotions are contrary to the Rule 24(b) and therefore, basing on illegal promotions gained with Armoury Line, they cannot claim any seniority or further promotions. If at all they can get further promotion or any promotion in General Line, as per their original seniority, namely, the seniority at the time of entry into the service.

37. Though it may appear that the aforesaid conclusion may not be justified, especially, when the Armoury personnel (the contesting respondents 4 to 7), got promoted on their return, as early as 2006 and their promotions were not challenged for so many years, invoking equity, the equity factor cannot be considered by this Court as laid down by the Honourable Supreme Court in *Ragunath Rai Breja v. Punjab National Bank* reported in 2006 (2) SCC 230, which held that when there is a conflict between the law and equity, the law alone has to prevail. Paragraph 29 of the said judgment is usefully extracted as follows:

"While we fully agree with the learned counsel that equity is wholly in favour of the respondent- Bank, since obviously a Bank should be allowed to recover its debts, we must, however, state that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim 'dura lex sed lex', which means 'the law is hard, but it is the law'. Equity can only supplement the law, but it cannot supplant or override it."

Similar view was declared by the Honourable Supreme Court in *B.Premanand v. Mohan Koikal* reported in 2011 (4) SCC 266 and *Umadevi* (3) reported in 2006 (4) SCC 1.

38. Though equity factor is in favour of the contesting respondents 4 to 7, the very same equity factor is also in favour of the petitioners as they have been given promotions belatedly to the higher posts after passing the promotional

courses, which are not necessary in Armoury Division and still they are stagnating either as Sub Inspector of Police or Inspector of Police for many years, when their counter-parts are able to gain promotion in Armoury.

39. It is true that the Division Bench of this Court in Damodaran and others v. Paul and others reported in 1991 Writ Law Reporter 536, held that for the purpose of promotion to the post of Inspector of Police, the specialist category of Sub Inspector of Police (Armourer) has been merged with the category of the Sub Inspector of Police in General category. However, Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, is otherwise and therefore, the said judgment is of no use.

40. The contesting respondents 4 to 7 were promoted as Inspector of Police in 2006 itself and they have been now considered for further promotion as Assistant Commandant, especially, contrary to the seniority at the time of entry into the service. The following comparative table would categorically prove the injustice caused to the petitioners:

Comparative Study between the first petitioner and the fourth respondent:

Name & Rank	BN	Date of Birth	Date of Entry into Service	Date of Promotion as SI	Date of promotion to the present rank (Inspr.)
M.Arumugam, Inspr. (G) (First Petitioner)	V	17.05.1961	15.09.1981	18.03.2004	07.03.2011
Thirunavukarasu, Inspr. (G) (Fourth Respondent)	II	26.05.1960	15.09.1981	17.09.1998 (in Armourer Line)	11.08.2006

Comparative Study between the second petitioner and the fifth respondent:

Name & Rank	BN	Date of Birth	Date of Entry into Service	Date of Promotion as SI	Date of promotion to the present rank (Inspr.)
Karmegam, Inspr. (G) (Second Petitioner)	VII	05/04/64	01.08.1984	18.03.2004	06.02.2014
P.Paulpandian, Inspr. (G) (Fifth Respondent)	VI	05/04/60	01.08.1984	25.09.1998 (in Armourer Line)	17.08.2006

Comparative Study between the third petitioner and the seventh respondent:

Name & Rank	BN	Date of Birth	Date of Entry into Service	Date of Promotion as SI	Date of promotion to the present rank (Inspr.)
Manimaran, SI (G) (Third Petitioner)	XI	04/03/69	27.05.1988	18.02.2005	Not yet promoted
S.Jayachandran, Inspr. (G) (Seventh Respondent)	II	17.3.1962	27.05.1988	16.09.1998 (in Armourer Line)	23.08.2006

Comparative Study between the fourth petitioner and K.Govindrajan, who is not a party in the writ petition:

Name & Rank	BN	Date of Birth	Date of Entry into Service	Date of Promotion as SI	Date of promotion to the present rank (Inspr.)
Selvakumar, SI (G) (Fourth Petitioner)	XIII	18.9.1962	30.04.1989	08.03.2005	Yet to be promoted
K.Govindrajan, Inspr. (G) (Armoury Line)	VII	17.9.1966	09.06.1993	01.10.1998 (in Armourer Line)	09.08.2006

Even the comparative equity also lies in favour of the petitioners alone.

41. This Court is inclined to accept the case of the petitioners for the following reasons:

1. The promotion in Armoury Line is automatic except Armoury training for ten months in maintenance of all weapons. Whereas the promotion in the General Line is not automatic. Whereas the personnel in General Line are required to undergo various trainings and get through in the promotional tests for the promotions in Small Arms Cadre Course and five other courses/trainings as already mentioned above. Further they have to undergo examinations and securing 50% of marks in the tests is mandatory for promotions from Naik to Havildar and Havildar to Sub Inspector of Police.
2. The Armoury personnel get quicker promotion as Sub Inspector of Police and Inspector of Police than the personnel similarly placed in the General Line who are languishing in lower grades for years together as could be understood from the above comparative tables.
3. Armoury personnel gets seniority over and above the similarly placed persons and they are seniors over the similarly placed persons in General Line for ever.
4. This kind of anomaly is an evil which would destroy the morale of the police personnel and therefore it has to

be addressed.

5. At the time of retirement, the police personnel should retire with a sense of satisfaction from the force.

42. In view of the above, this Court holds as follows:

1. The seniority of the police personnel is governed by Rule 24(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978;
2. Rule 24(b) of the Rules, makes it very clear that the transferee (Armoury personnel/specialist personnel) has to take his seniority in the General Line at the time of entry into the Tamil Nadu Special Police Subordinate Service;
3. Rule 24(f) of the Tamil Nadu Special Police Subordinate Service Rules, is only clarificatory in nature clarifying the position as spelt out in Rule 24(b) of the Rules;
4. Armoury personnel/specialist personnel shall be considered as transferee, only in Armoury Line/specialist line and they cannot be termed as "transferee" when they revert to General Line, as it is his original line. To put it in other words, the nomenclature "transferee" is only confined to Armoury Line/specialist line and that nomenclature cannot be applied in General Line as they were originally appointed in the General Line only by the same recruitment;
5. By virtue of undue promotions or advantages obtained by Armoury/specialist personnel, the Armoury personnel cannot claim any advantage in the General Line, violating the rights of the General Line personnel;
6. The promotions or advantages gained in the Armoury/specialist line by Armoury personnel cannot be disturbed at this point of time;
7. The specialist/Armoury Line personnel cannot claim any promotion/further promotion in General Line and if at all, it should be according to the original seniority at the time of entry into the Tamil Nadu Special Police Subordinate Service;
8. The contesting respondents 4 to 7 or similarly placed persons cannot be granted any further promotions. Consequently, their empanelment to the post of Assistant Commandant, is illegal;
9. Armoury/specialist personnel could take their promotion only as per their seniority at the time of entry into the Tamil Nadu Special Police Subordinate Service; and

10. As the contesting respondents 4 to 7/Armoury/specialist personnel are holding the higher posts, they can continue to hold the same posts and they can take further promotion along with the similarly placed persons in the General Line, when they get their promotion equal to specialist personnel, as General Line personnel are stagnating or languishing either in the post of Sub Inspector of Police or in the post of Inspector of Police for years together. In other words, specialist personnel have to wait in their present position, till the General Line personnel reach the present position held by specialist personnel.

43. The above directions are inevitable because of the injustice done to the General Line personnel for years together. In service matters, the seniority is one of the main criteria for promotion. If the Government is not considering the seniority of the candidates and their due promotions are not given in time, the morale of the police personnel would be affected, which will not be in the interest of the Government as well as the general public. The police is supposed to be a disciplined force and their morale could be kept in tact only by granting due service benefits as per law. Any violation would definitely lead to unnecessary and unwanted complications, resulting in frustration among the disciplined force. Already the police force is under tremendous pressure due to many problems arising in the society due to extreme elements, criminal elements and communal elements who raise their ugly heads. For anything and everything, the police is being haunted. Though lapses are alleged on the part of the police on many accounts, it has become usual now-a-days to find fault with for doing and undoing by the police. Hence, it is the prime duty of the Government, which is a Model Employer, to treat all the employees, especially, the police personnel, as per law.

44. This case is a classic example which proves anomalies existing in various Departments including the police. Therefore it is time for the Government to appoint a Committee which should go into various problems faced by the Government employees in view of anomalies/deficiencies in the Service Rules and after having the discussions with the stake holders to rectify the same by way of appropriate amendment or by new Rules in the interest of administration.

45. In the light of the above reasonings, the writ petition is allowed, directing the respondents 1 to 3 to draw the panel for further promotion to the post of Inspector or Assistant Commandant from the post of Sub Inspector or Inspector respectively in Tamil Nadu Special Police Subordinate Service by taking note of the date of initial appointment of the personnel (both General and Armoury) in General Line of the said service as per Rules 24(b) and 24(f) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, and promote the eligible personnel from the said panel to the post of Assistant Commandant or Inspector according to their seniority, at the time of entry into service within three months. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nv/srb

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home Department,
Secretariat,
Chennai - 9.
 - 2.The Director General of Police,
Tamil Nadu,
Chennai - 4.
 - 3.The Additional Director General of Police,
Armed Police,
Chennai - 10.
- +3 ccs to Mr.Ravi Shanmugam Advocate sr.3619

W.P.No.30956 of 2013
and
M.P.Nos.1 of 2013 and 2 &
3 of 2015

aa04/02/2016