

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 1521 & 1522 OF 2014

P.Govindarasu .. Petitioner in WP 1521/2014

G.Prakasam .. Petitioner in WP 1522/2014

- Vs -

1. The Secretary to Government
Home (Pol-9) Department
Secretariat, Chennai 600 009.
2. The Director General of Police
Tamil Nadu, Chennai 600 004.
3. The Addl. Director General of Police
Armed Police Head Quarters
Chennai 600 010. .. Respondents in both petitions

Writ petitions filed under Article 226 of the Constitution of India praying this Court to call for the records pertaining to the order passed by the 1st respondent herein in G.O. (Ms.) No.171, Home (Pol.9) Department, dated 23.11.07 amending Rule 24 of the Tamil Nadu Special Police Subordinate Service Rules and quash the same and consequently direct the respondents herein to consider the petitioner's promotion to the post of Inspector (General Line) taking into account the date of promotion to the post of sub Inspector (Armourer) i.e., 18.3.04 and promote the petitioner as Inspector (General Line) from the date of promotion of immediate junior with all consequential service and monetary benefits.

For Petitioners : Mr. Ravi Shanmugam

For Respondents : Mr. S.Thangavel, Spl. G.P.

COMMON ORDER

The present petitions have been filed assailing the amendment made to the Tamil Nadu Special Police Subordinate Service Rules, which prescribes that the persons from any post in the Specialist category, other than regular line, on transfer

to general category in the regular line, their seniority should be placed immediately above his junior serving in any post in the general category and their seniority shall be determined on the basis of the date of their initial entry into the service.

2. It is the case of the petitioners that they joined the service in the police department as Grade-II Police Constable in the Tamil Nadu Special Police Battalion in the year 1993 and 1994 respectively and, thereafter, transferred to the Armourer Unit in the year 1997 and 1995 respectively. Thereafter, the petitioners were promoted as Havildar and, subsequently, in the year 2004, they were promoted as Sub Inspector (Armourer) and that the petitioners have put in efficient service with clean service record and are discharging their duties in the post of Sub Inspector since the year 2004.

3. It is the further case of the petitioners that the Tamil Nadu Special Police consists of General Line and Specialist Units. The Specialist force constitute compact supporting groups to the General Line, who forms the majority of the force. The Specialist Unit comprises of Motor Transport, Signal Group, Armoury, Band and Miscellaneous posts, such as Carpenters, Cobblers, Tailors, etc. However, recruitment of Grade-II Police Constable to the said two groups is a composite process and on appointment, after training, persons are assigned to different units, either in general line or special groups.

4. It is the further case of the petitioners that in the General Line, the subsequent promotions to the Grade-II Police Constables are Naik, Havildar and Sub-Inspector of Police, while for the Specialist group, the promotional opportunities are Havildar and Sub-Inspector of Police (Armoury), the promotional post of Naik being unavailable under the Specialist wing. While under the Specialist Group, except for the Armoury Unit, the Motor Transport, Signal Units, etc., are provided with further promotional opportunity to the post of Inspector of Police, however, the the Sub-Inspectors of General Line and Armoury Unit under the Specialist Wing get promoted as Inspector of Police in the General line as they form the feeder category to the post of Sub-Inspector of Police under the General Line. The said practice has been in vogue time immemorial till the present amendment.

5. It is the further case of the petitioners that pointing out the fallacies in the promotions given to the Specialist Sub Inspectors, the Inspector General of Police, Armed Reserve, had addressed the Director General of Police for creation of post of Inspector (Armourer) and pursuant to the said communication, the Director General of Police had sent proposal to the Government, dated 4.4.06, for amendment of the Special Rules to the effect

that on the rejoining of the personnel in the cadre of Sub Inspectors (Armourer) in the General Line, they be placed in their original seniority in the position immediately above their junior in the General Line. It is the further case of the petitioners that subsequent to the above communication, vide memorandum dated 19.9.06, the Director General of Police had called for further particulars for creation of post of Inspector (Armourer), consequent upon which the Inspector General of Police had addressed the Director General of Police on 23.10.06 for creation of the said post and the said proposal is still pending with the Government for creation of the post of Inspectors (Armourer) in the Tamil Nadu Special Police Battalions.

6. In line with the communication of the Director General of Police with regard to fixation of seniority of the persons in the cadre of Sub Inspector of Police being placed in the General Line on transfer, the present amendment has been issued by the 1st respondent vide the above impugned G.O. Ms. No.1710, Home (Pol.9) Department, dated 23.11.07, amending Rule 24 of the Special Rules for Tamil Nadu Special Police Subordinate Service, which is in detriment to the persons, who are placed in the Specialist Unit and adorn the post of Sub Inspector (Armourer) and is in clear violation of Articles 14 and 16 of the Constitution, inasmuch as the said amendment negates and curtails the rights accrued to the petitioners and persons similarly placed to get themselves promoted to the next higher post of Inspector of Police. Therefore, the present writ petitions have been filed for quashing the said Government Order and to further grant promotion to the petitioner on the basis of their respective inter se seniority in the post of Sub Inspector (Armourer). The petitioners have also pressed into service the decision of the Division Bench of this court in Damodaran & Ors. - Vs - Paul & Ors. (1991 WLR 436).

7. Learned counsel appearing for the petitioners vociferously submitted that once the petitioners have been placed in the Specialist Unit, based on their aptitude and they have risen to the post of Sub Inspectors in the said group, transferring them, either at their option or at the option of their employer, would in no way affect their seniority in the post which they are holding, as the post of Sub Inspector, be it in the Specialist Unit of Armourer or the General Line is the feeder category to the promotional post of Inspectors. Therefore, placing them in the seniority in the General Line just above their junior, with relation to their seniority at the time of entry into service, in the post of Grade-II Police Constable, is wholly illegal and unknown to service jurisprudence.

8. It is the further submission of the learned counsel for the petitioner that very similar issue relating to promotion arose for consideration before the Division Bench of this Court in Damodaran's case (supra) and the Division Bench held that the employees starting from a common point in service may take to two different routes until they meet again at a future point and from there proceed together and any promotion earned by such of those persons, the inter se seniority in the lower rank will have no effect on the inter se seniority in the superior rank and the persons must be placed in the seniority in the respective rank with effect from the date they were promoted to the said rank.

9. It is therefore the submission of the learned counsel for the petitioners that the petitioners, though come from a common pool, having taken a different route and had obtained promotion to a higher post, than the persons who had taken an other route not identical to that of the petitioners, the petitioners cannot be deprived of their seniority in the promoted post and the seniority in the lower rank would be of no consequence. However, the amendment made in the Rule 24 vide the above G.O. Ms. No.1710, Home (Pol. 9) Department dated 23.11.07, is in gross violation and against the ratio laid down in the decision in Damodaran's case (supra) and, therefore, the same requires interference at the hands of this Court.

10. Counter affidavits have been filed by the respondents countering the contentions raised by the petitioners in the affidavit filed in support of their respective petitions. Learned Special Government Pleader appearing for the respondents, referring to the various counter contentions raised by the respondents, sought to distinguish the decision in Damodaran's case (supra) and highlighted that the grievance of the personnel in the General Line had resulted in the 1st respondent issuing the above amendment. It is the further contention of the learned Special Government Pleader that once the persons have opted to go out of the General Line, their promotion in the Armoury Line cannot be in detriment to the service and promotion of the personnel in the General Line. It is the submission of the learned Special Government Pleader that the persons in the Specialist category, like the petitioners and persons in the General Line cannot be considered as a common category and any movement of personnel from the Specialist category to General line, such of those persons should retain their position in the General Line, as on the date of their enlistment and mere promotion in another category should not be the ground for putting the specialist category personnel on a higher pedestal by offering them promotion to the next higher post. It is the further submission of the learned Special Government Pleader that persons like the petitioners, coming

from a different group for the purpose of earning promotion, cannot be allowed to take a higher position than the persons in the General Line and the placement of the persons from other line into the General Line immediately above their juniors is logically right and it has legal sanctity and cannot be found fault with.

11. It is the submission of the learned Special Government Pleader that the Government, considering all the above fallacies in the promotional prospects of the individuals, under the two groups, had thought it fit to make the above amendment, which in no way could be termed to be arbitrary or capricious or illegal exercise of powers conferred on the Government. By the above amendment, equality as enunciated in Articles 14 and 16 stands maintained and the stand of the petitioners that there is violation of Articles 14 and 16 of the Constitution does not stand the test of judicial scrutiny.

12. It is the further submission of the learned Special Government Pleader that the Government have been addressed for the next higher avenue for promotion, viz., the Inspector of Police, for the personnel of the Armoury Unit, as is available to the General Line and other Specialist Categories, which is pending with the Government. Once the persons in the specialist category exercises their option to come to General Line for the purpose of earning promotion to the next higher post of Inspector of Police, the said option should not be in detriment to the persons occupying and holding the posts all along in the General Line and only to alleviate this grievance, the present amendment has been made by the Government, which is just and reasonable and does not suffer the vice of illegality and, therefore, no interference is called for with the amendment impugned herein.

13. This Court bestowed its best attention to the contentions and counter contentions advanced by the learned counsel on either side and also perused the materials available on record as also the decisions, more especially the decision of the Division Bench of this Court in Damodaran's case (supra) relied on by the learned counsel for the petitioners.

14. Before advertng to the decision and the factual matrix so as to arrive at a just finding in the matter, it is but necessary to have a cursory look at the amendment, which has been made by the Government vide G.O. Ms. No.1710 and for better clarity, the same is quoted hereunder :-

"In the said Rules, (1) in rule 7, in sub-rule (a), under the Table against the entry "(b) Inspectors" under the column "Name of Post", for the entry in item (1), the following entries

shall be substituted, namely :-

(1) Promotion from Sub Inspector General Category (Regular line); or

(2) In Rule 24, after sub-rule (e), the following sub-rule shall be added, namely:-

(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 into 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."

15. On a holistic reading of the above amendment, this Court is entrusted with the task of finding out whether the decision in Damodaran's case (supra) stands attracted to the case on hand and if that be so, whether the amendment needs to be struck down or whether the amendment has been couched in a fashion that it satisfies the ratio laid down in the decision in Damodaran's case (supra).

16. While it is the case of the petitioners that it is to be based on the position/post which they are occupying, however, it is the stand of the respondents that their position would be determined based on their original seniority in the post of appointment at the time of their entry into service, which would determine their position in the overall seniority.

17. The issue of inter se seniority between two different groups, who emanate from a single category, viz., Police Constable Grade-II, at the time of their appointment, was the subject matter of issue before this Court in Damodaran's case (supra) and a Division Bench of this Court, framed the following two crucial questions, which are quoted hereunder :-

"7. The question before us, therefore, are -

(1) whether the Sub Inspector Armourer and Sub Inspector in the General Category together constitute a common pool from which promotion to Inspector will be made.

(2) If Sub Inspector Armourer and Sub Inspector in the General Category constitute a common pool, whether Sub Inspector Armourer vis-a-vis Sub Inspector in the General Category will reckon his seniority with reference to the original appointment as Constable irrespective of the promotions already earned and their becoming Sub Inspector Armourer much before those who were in the General Category."

18. The Division Bench, dwelling further in detail on the issue, with particular reference to the ratio laid down on the above subject through the various decisions by the Hon'ble Supreme Court, held as under :-

11.

There is no parallel in the facts of the above case with the facts of the instant case. It is clear that it was open to each constable to opt, and thus go for specialisation at his option. It is not possible to accept that because there is an option, there should also be contemplation of continuity of the original inter se seniority irrespective of any promotion or not in the specialist category. A substantive rank created on account of promotion cannot be termed to be a fortuitous event. Promotions depended not on any whim or caprice or just on account of a situation created because of a bifurcation of a cadre, but on account of a legitimate choice made by those who opted to go for specialisation. By not opting for specialisation, those who decided to remain in the general category cannot say they did not know that in case vacancies become available in the specialist category, those who have gone to the specialist category may earn advance promotion and thus get a march over them.

* * * * *

13.

This case is quite different on facts. If the principles stated therein are applied, it has to go against the writ petitioners-respondents. The rule is not in doubt. The moment there is any

attempt to deny the benefit of a position in the rank held by a certain person, Articles 14 and 16(1) of the Constitution are attracted. The case on hand is quite different. Herein, it was not the fault of the respondents-appellants Inspectors that they earned their promotion in their specialist category. They earned, because they were found qualified for such promotions. It appears that they earned substantively, and that is why they were given promotion to higher ranks as well. We also find from the rules aforementioned that promotion from one cadre to another in the service is not a routine promotion and is not dependent upon seniority only. The rule envisages that promotion is given on merit, and thus seniority is only one of the considerations. Having earned their respective promotions, when the respondents-appellants Inspectors came to the rank of Sub Inspector Armourer, they could not have been left to stagnate, and since the rule envisaged a common pool, and they were thus put in the common pool, they could not have been placed below those, or in anticipation of those, who were in a lower rank without being promoted. They must be placed for the purpose of inter se seniority in the rank of Sub Inspector either effect from the date they became Sub Inspectors. That inter se seniority in the lower rank will have no effect on the inter se seniority in the superior rank is such a well settled principle that no authority for that purpose is needed.

14. The above view finds support from a judgment of the Supreme Court in A.K. Ghosh v. Union of India . In that case, the petitioners were shown as being seniors to respondents in the time scale of Class I Postal Service. They were selected for promotion to the grade of Directors of Postal Services. The respondents were also later on appointed to such posts. The Government sought to disturb the order of seniority in the grade of Directors to the prejudice of the petitioners^ the ground that their seniority while in the time scale was wrongly determined. The Supreme Court held that though the Government could justifiably revise their seniority in timescale of Class I service, it could not so revise their order of seniority in the grade of Directors and that such an action by the Government was arbitrary and

liable to be struck down as violating Article 16 of the Constitution. Thus, the appellants who had earned their promotion and become Sub Inspectors Armourer, merely because they were juniors as Constables at their initial appointment in the service cannot be made junior to those who became Sub Inspectors in due course, but after the appellants had become Sub Inspectors. There is bound to be some play in the points as in the course of service, not on fortuitous, but on account of the system that has been evolved, some may receive better opportunities of promotion and some may suffer, for want of vacancies or otherwise availability of the avenue of promotion. The case pleaded before us by the writ petitioners-respondents, if accepted, will give rise to either of the two consequences, viz., that the Sub Inspector Armourer will have no opportunity of being promoted as Inspector in the service or a Constable opting for the service as Armourer will earn all promotions upto the level of Sub Inspector in the category or group of Armourer, but shall wait for his promotion until a Constable in the general line who was senior on account of his earlier recruitment as Constable also becomes Sub Inspector and is considered for promotion. We have already noticed the rules. We have no hesitation in holding that for the purpose of promotion to the post of Inspector, the special category of Sub Inspector Armourer has been merged with the category of Sub Inspector in the general category. A Sub Inspector Armourer thus has been provided with the avenue of promotion as Inspector in the general category. This alone will ensure that those who opted for the special category of Armourer are not made to stagnate as Sub Inspectors, while in all other categories, a further promotion as Inspector is available. Any interpretation otherwise will be violative of Article 16(1) of the Constitution of India. We also do not subscribe to the view that since the Sub Inspector Armourer has to be considered for promotion as Inspector in the General category, the original seniority as Constable should alone be adhered to between the general category Sub Inspectors and the Sub Inspector Armourer. This will not only make the specialisation a cause of loss of seniority to the Sub Inspector Armourer,

but also deny to him his right to be considered for promotion as Inspector at least until such time any junior to him is still below the rank of Sub Inspector in the general category. A rule which shall cause harm instead of good, a rule which shall deny instead of promoting, cannot be accepted as a rule of justice. Thus viewed Sub Inspector Armourer must rank interchangeably with Sub Inspector in general category and reckon seniority in the order of continuous officiation as Sub Inspector, whether in general category or in the specialist category of Sub Inspector Armourer. We are not impressed by the argument that there will be denial of equality of opportunity, if Sub Inspector Armourer is not made to wait until those in the general category who were senior to him also become Sub Inspectors, and until then they are considered for promotion, he is not considered for promotion. We have already noticed that there was equal opportunity, are so long the rules hold the field, there shall be equal opportunity to exercise the option after recruitment as constable, and those who avail the opportunity and go to the special category thus do not in any manner cause any discrimination. It is well-settled that starting from a common point in service, employees may take two different routes until they again meet at a further point and from there proceed together. The rule that we have noticed exactly conforms to this method of treating persons recruited in the service together or one after the other."

(Emphasis Supplied)

19. From the above proposition of law laid down by the Hon'ble Division Bench, it is implicitly clear that the post held by the personnel in the respective feeder category should form the basis for considering the candidature of the said persons for promotion to the next higher post, more so when the two categories form a single feeder category for the purpose of promotion to the next higher post. The above ratio has been the well accepted in service jurisprudence and has also stood the test of time irrespective of the passage of law over the past century. In the backdrop of the above ratio, the amendment sought to be introduced vide G.O. Ms. No.1710 needs to be looked into.

20. In the above backdrop of the decision in Damodaran's

case (supra), a careful perusal of the issue as also the facts emanating from the case on hand reveals that both the cases are identically placed not only on issue, but also on facts. In such a backdrop, this Court is of the considered view that the amendment sought to be introduced is beyond the legislative competence of the State, as the decision in Damodaran's case (supra) bars the 1st respondent from making any amendment to the Rule, which is not in consonance with the ratio laid down in the aforesaid decision, more so, when the respondents have not filed any appeal against the said decision and, thereby, the said decision has attained finality. Therefore, for all intent and purpose, this Court is of the considered view that the said decision in Damodaran's case (supra) stand squarely attracted to the case of the petitioners herein, which in turn requires this Court to quash the said amendment. However, inspite of accepting the ratio laid down in the said decision, the 1st respondent had gone ahead and introduced the impugned amendment and in such a scenario, this Court, in the fitness of things, is of the considered view that the only inference that could be drawn for introducing the said amendment is that the 1st respondent wanted to give more clarity to the Rule of promotion vis-a-vis the decision in Damodaran's case (supra). But, while coining the said Rule, the 1st respondent, instead of giving more clarity to the Rule with relation to the ratio in Damodaran's case (supra), has created more ambiguity and insecurity in the manner in which the whole Rule has been couched, thereby, has once again put the ball back in the court of this Court to clarify the Rule and the interpretation that requires to be given to the said Rule. Had the Rule been coined in a more harmonious manner, there would have been no necessity for the present petitions to have been moved before this Court. This is also evident from the counter filed by the respondents, who have wholly misinterpreted the Rule, notwithstanding the fact that this Court has already laid down the ratio with regard to promotion and reckoning of inter se seniority between two categories of personnel and in such a backdrop, instead of merely quashing the amendment in the light of the decision in Damodaran's case, this Court proceeds to show to the respondents the way in which the amendment needs to be interpreted.

21. Already extracted above is the amendment sought to be made vide G.O. Ms. No.1710, which stipulates that 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.

22. The above amendment prescribes that persons, who opt to

come out of the specialist category into general line should have his seniority reckoned above his immediate junior serving in any post. The said limb of the rule would mean that irrespective of the post held by the individual, who seeks to venture into general line, his seniority would be above his immediate junior. However, the grievance expressed by the petitioners is to the next limb of the rule as also the reckoning of seniority on the basis of the combined seniority between the persons from the Specialist Category and the persons from the General Line at the time of entry into service.

23. The second limb of the rule prescribes that such person coming from specialist category to general line, will be placed immediately above his junior, irrespective of the post held by the junior. This would not, in effect, affect the person coming from the Specialist category to the General line to be placed immediately above his junior in the general line, so long as his immediate senior is not holding a post, which is below the post held by the person, who opts to come from specialist category to the general line. However, if the post held by the immediate senior is way below the post held by the person coming into the general line from the specialist category, the apprehension of the petitioners that fixing them below their immediate senior, who is holding a lower post, then an anomalous situation would arise, in which a junior would hold a substantively higher post than his senior, who would be holding a substantive lower post based on the reckoning of seniority at the time of their entering into service, which is the interpretation that is sought to be given by the respondents to the second limb of the said rule, viz., "in any post in general category" assumes significance.

24. However, the third limb of the said rule, viz., "if he is otherwise qualified to hold the post" gives a lot of meaning and, in fact, clears the air, as to the ambiguity that has crept into the reading of the whole rule. While the first two limbs seem to go against the persons, who come from the specialist wing to the general line, however, the third limb gives clarity and shows the way in which the first two limbs should be read and understood. A person, who is coming from the Specialist category, holding the post of Sub-Inspector, to the General Line and his immediate junior and senior, though are holding the post of Havildar, which is below the position occupied by the person coming from the Specialist Category, the fact that the person coming from the Specialist Category into the General Line having already been placed in a higher pedestal, viz., in the post of Sub-Inspector, that would disentitle him to hold the post of Havildar, as his higher position would be a detrimental qualification so as to disable the said person to hold a lower position. Therefore, for all intent and purposes, and as held

by the Hon'ble Division Bench in Damodaran's case (supra), the persons coming from the Specialist Category on transfer to the General Line will take his seniority immediately above his junior in the substantive post in which he is occupying and the word "in any post in general category" would only effectively mean to be the substantive post which is being held by the person, who is coming from the Specialist category to the General Line. Any other interpretation given to the said rule, than the one above, would not be conducive to the reading of the rule and such construction would be against the ratio laid down by the Hon'ble Division Bench in Damodaran's case (supra), which verdict has already been accepted by the respondents and allowed to attain finality. Therefore, any other interpretation as to the fixation of seniority would judicially be impermissible.

25. It is evident from the affidavit filed by the petitioners that it is the apprehension of the petitioners that the above rule, if implemented in the manner interpreted by the respondents in their counter, without the above clarification as above, the petitioners having been appointed to the post of Sub Inspector in the year 2004, would be denied of promotion as Inspector even when a direct recruit Sub Inspector of the year 2007 in General Line is considered for promotion as Inspector. However, even as stated by the petitioners, the scenario, as highlighted by the petitioners is only their apprehension, but equally true it is that any interpretation to the given by the respondents, in the manner, as projected in their counter affidavit, would cause detriment to the petitioners and would be very much against the ratio laid down by the Hon'ble Division Bench. Further, it is evident from the averment of the petitioners that the petitioners have not given any option for transfer or reversion to the General Line and, therefore, even according to the petitioners, the special rule in no way causes any prejudice to them at the present point of time. However, in spite of the same, the petitioners have come before this Court by filing the writ petitions, which is only an apprehensive act and an illusory notion entertained by the petitioners.

26. However, such apprehension cannot also be brushed aside for the simple reason that as already stated above, the counter affidavit filed by the respondents does not paint a glossy picture, as envisaged by this Court above. The affidavit of the respondents clearly reveal that the amendment seeks to achieve what the Hon'ble Division Bench has nullified as grossly illegal and erroneous. Without subjecting the said decision to appeal before the higher forum, making an amendment to the rule, and interpreting it in a manner, which is in clear contravention and against the ratio laid down by the Division Bench in Damodaran's case (supra). However, for the simple reason that this Court has shown the way in which the amendment has to be read and

interpreted, no prejudice would be caused to any of the parties before this Court, by leaving the amendment as it is, subject to the above interpretation.

27. Further, the counter of the respondents reveal that it is not open to the persons, who have earned promotion in the Specialist Category, to take advantage of their climbing up the ladder fast in the specialist category and, thereby, try to gain promotion as Inspector of Police in the General Line. In this regard, it is to be pointed out that Sub-Inspector (Armour) is also a feeder category to the post of Inspector of Police in the General Line in addition to Sub Inspector of Police in the General Line. That being the case, it cannot be said that the persons in the Specialist category, particularly in the Armoury Division, are trying to supercede the persons in the General Line, as the alleged anomalous situation was in vogue till 2007 and in fact had been brought to the light of the respondents in the year 2005 itself.

28. It is further evident from the stand taken by the respondents in the counter affidavit that the merger of the Armour Sub Inspector, viz., Specialist Category, into the General Line during promotion to the post of Inspector of Police in General Line blocks the promotional opportunity of persons performing their duties in the general line and in order to redress their grievance, the said amendment has been brought into place. In this regard, it requires to be noted that a letter had emanated way back on 14.11.05 from the Inspector General of Police, Armed Police to the Director General of Police for the creation of the post of Inspector (Armourer), which would negate the irregularities in the promotion of Specialist Category Sub Inspectors as Inspectors in the General Line. However, inspite of the said letter, without taking any concrete action with regard to creation of posts of Inspector in the Armoury Wing, so as to redress the grievance that flows out from the two groups of promotees, the respondents, without proper application of mind and also not keeping in mind the ratio laid down by this Court in Damodaran's case (supra) have thought it fit to issue G.O. Ms. No.1710 amending the rule. If really the intent of the respondents was to alleviate the grievance of the personnel in the two wings, the proper course that ought to have been adopted by the respondents is creating the post of Inspector in the Armoury Division, as per the proposal forwarded by the Inspector General of Police, Armed Police.

29. In this regard, it is to be pointed out that employees starting from a common point in service may take different routes until they meet again at a future point from where they would proceed further. The meeting point has been created at

the behest of the employer, knowing fully well the implications as also the benefits that would be derived by the respective individuals, who had gone in two different streams. The fallacies created by the employer cannot be put against the individuals, who had opted for the different streams, knowing fully well the positives and negatives in the different streams. Right of the person in the feeder category to be considered for promotion is a fundamental right, which cannot be precluded for the fault of the employer. The persons in the two different streams having made their legitimate choice, one going for specialisation and the other remaining in the general line, the persons in the latter line cannot come back and say that the early arising of vacancies in the specialist line was not within their knowledge and, therefore, the persons, who had opted to go into the specialist category cannot have a march over them.

30. In fact, it is the duty of the respondents to wake up to the situation to set right the anomaly caused due to their obstinate act of not taking any decision on the letter written by the Inspector General of Police, Armed Police, as early as in the year 2005. Had any positive steps taken on the said letter, a situation, as has arisen in the present case, would not have arisen. Giving a go-by to the decision of this Court in Damodaran's case (supra) and not appreciating the nuances put forth in the said decision, the present amendment has been made vide G.O. Ms. No.1710, impugned herein, which does not stand to reason, more so for the reason that the decision in Damodaran's case had been allowed to attain finality without any appeal having been filed against the said decision.

31. However, as already stated above, the amendment, which has been made by the respondents vide the impugned G.O. Ms. No.1710, having been read down by this Court to be interpreted in the manner, as noted above, this Court is of the considered view that the impugned G.O. Ms. No.1710, which had in fact, made the amendment to the rule, does not require to be quashed. However, it is to be pointed out that the said amendment will have to be read harmoniously in tandem with the decision in Damodaran's case (supra) and in the manner shown above and the respondents cannot go beyond the said decision by making any amendments, which tries to nullify the decision in Damodaran's case (supra). If at all the respondents are aggrieved by the decision in Damodaran's case (supra), the course open to the respondents is to challenge the same in accordance with law before a higher forum and not pass amendments, which in turn, tries to nullify and defeat the ratio laid down in the said decision, which is grossly impermissible and contemptuous.

32. At the risk of repetition, this Court, reiterates that

following the ratio laid down by the Hon'ble Division Bench in Damodaran's case (supra), the persons coming from the Specialist Category on transfer to the General Line will take their seniority immediately above his junior in the substantive post in which he is occupying and the word "in any post in general category" would only mean to be the post which is being held by the person, who is coming from the Specialist category to the General Line. The amendment sought to be made vide G.O. Ms. No.1710, impugned herein, would stand read in the above manner so as not to cause any prejudice to any individual, who has opted to come to the General Line from Specialist category.

33. The writ petitions are disposed of with the aforesaid observations and directions. However, there shall be no order as to costs.

34. Before parting with the case, this Court feels that a word of caution to the respondents is the need of the hour. It is to be pointed out that presently these two petitions alone have been filed on apprehension and illusion that the petitioners would be prejudiced if the ratio in Damodaran's case (supra) stood violated by this amendment. Had any promotion been given based on the abovesaid amendment on the basis of the interpretation sought to be given by the respondents, as evidenced from their counter, the consequences would have been graver and it would have opened the floodgates and this Court would have witnessed flooding of petitions questioning the vires of the amendment. Further, it is an undisputed position, as borne out by records, that except for the Armoury Division, which is a specialist category, which has not been provided with the further higher promotional post of Inspector, the other specialist wings such as Motor Transport, Signal Group, etc., have been provided with promotional opportunities. The reason for not providing promotional avenue to the next higher post of Inspector for the Armoury Division has not been clearly spelt out by the respondents. The respondents have not taken any steps to sort out the ambiguities and inconsistencies in the promotional arena between the specialist category of Armoury and the General Line, inspite of the letter written by the Inspector General of Police, Armed Police, way back in November, 2005. Had the respondents taken timely steps with regard to the said letter, there would have been no necessity to make the present amendment. Further, without there being any reason or rhyme to exclude the higher post of Inspector in the Armoury Division, causing prejudice to the personnel when they enter the General Line, is wholly impermissible. The respondents ought to have realised this scenario and created the promotional avenue of Inspector in the Armoury Division in the interests of one and all, which has not been done by the respondents. This Court hopes and trusts that the respondents, in right spirit, will

consider the letter of the Inspector General of Police, Armed Police, written way back in November, 2005 for the creation of the post of Inspector of Police (Armour), which would avoid anomalies and inconsistencies in the matter of promotion between the persons, belonging to the same recruitment process, who have hitherto occupied varied positions in different categories at the behest of the respondents. Such an act of creating of post would set at rest the various litigations that would ensue in the event of deviations being made in grant of promotion between two different categories, but belonging to the same feeder category, without following the well laid judicial precedents relating to service jurisprudence. Till such time such a course of action is taken, it is made clear that the respondents would be bound by the decision of the Division Bench in Damodaran's case (supra) relating to fixation of inter se seniority and that the amendment, which is impugned herein, would be interpreted in the way, as has been interpreted by this Court above, while fixing the seniority of the personnel who come from Specialist Category to the General Line.

Sd/-
Assistant Registrar

/true copy/
Sub Asst. Registrar

GLN
To

1. The Secretary to Government
Home (Pol-9) Department
Secretariat, Chennai 600 009.
2. The Director General of Police
Tamil Nadu, Chennai 600 004.
3. The Addl. Director General of Police
Armed Police Head Quarters
Chennai 600 010.

+1 cc to Government Pleader sr41411

W.P. NOS.1521 & 1522 OF 2014

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