

(1993) 08 GAU CK 0006

In the Gauhati High Court

Case No : Civil Rules No's. 1 of 1984 and 37, 131 and 162 of 1989, 94, 95, 100, 102, 111, 117, 129, 136, 142, 143, 151, 167, 187, 221 and 236 of 1990, 136 and 249 of 1991 and 133 and 182 of 1992

Bholanath Bhattacharjee and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 05-08-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 309

North Eastern Areas (Reorganisation) Act, 1971 — Section 66(1)

Tripura Police (Merit Promotion and Special Recruitment) Rules, 1989 — Rule 1(2), 3, 6

Citation : (1994) 1 GLR 164

Hon'ble Judges : U.L. Bhat, C.J.;M. Sharma, J;J.N. Sharma, J

Bench : Full Bench

Judgement

U.L. Bhat, C.J.—Petitioners and private Respondents in this batch of writ petitions were members of either the Armed Branch or Unarmed Branch of the Tripura Police Force, on the dates of filing of the petitions. A few of them have retired during the pendency of these cases, Many of the Petitioners were Sub-Inspectors of Police on the dates on which the respective Writ petitions were filed and others were Inspectors of Police on such dates. Many of the private Respondents were Inspectors of Police on the dates of filing of the Writ petitions and a few of them had risen higher in rank on such dates. The grievance, in substance, of the Writ Petitioners is that on the date of formation of the Tripura State they were members of the Force governed by what is referred to in this Judgment as 1962 Rules, that their rights have been substantially affected by the subsequently framed Rules, which are referred to in this Judgment as 1981 Rules, that they continue to be governed by 1962 Rules in the eyes of law and if they had been duly considered for promotion under the 1962 Rules as and when their turn for promotion (sic). Petitioners have also a common grievance that several of their juniors were wrongly promoted by invoking 1981 Rules, many of them by reason of Judgments of this Court and some others without reference to any Rules and wholly illegally, There is also a complaint that special rules are

framed in 1989 to grant favour of promotion to a particular officer by name B.K. Nag, who is junior to many of the Petitioners, 1989 Rules are in challenge in few of these writ petitions. The common relief sought substantially in all these writ petitions is that the Petitioners must be considered for promotion under 1962 Rules and not 1981 Rules and must be given retrospective promotion with consequential benefits with effect from the dates on which their respective juniors were promoted as (sic) of Police and Dy. S.P. respectively. Petitioner in Civil Rule 95/90 is a retired police officer, who seeks declaration of entitlement to get higher scale of pay on the basis of notional promotion with arrears of salary, enhanced pension, gratuity etc. Petitioner in Civil Rule 151/90 claims further relief regarding result of examination held on 25.9.75. Petitioner in Civil Rule 133/92 seeks a further relief of quashing a notification publishing a combined seniority list of Inspectors of Police and also a notification by which his junior was promoted as Dy. S.P. Petitioners in Civil Rule 1/84 seek a further relief of restraining reversion from the post of Inspectors of Police for non-appearance or non-passing the departmental examination under the 1981 Rules. A few Petitioners claim benefit of retrospective promo as Sub-Inspectors of Police also.

2. Originally Police Regulation of Bengal, 1943 (for short "Bengal Regulation") governed the police force in the territory of Tripura. Assistant General of Police is the appointing authority for the post of Sub-Inspectors in Armed and Unarmed Branches and Inspector General of Police is the appointing authority in regard to the posts of Inspector of Police. A Departmental Board consisting of Inspector General and Deputy Inspector General in conference is required to make selections for the approved list of Sub-Inspectors and Sergeants fit to be Inspectors from nominations obtained from the Deputy Inspector General before the conference. Permanent promotions are required to be made from this list in the order in which the names are placed in the list by the Board. The procedure for selection is laid down in Appendix XLIII. Superintendents under the D.I.G. are required to submit nominations with full information and also the confidential report books. Nominations should be made bearing in mind that ordinarily no officer who has not a thoroughly clean record as regards honesty and who is not of marked activity and efficiency and who has not completely passed the departmental examination should be nominated. The name of an officer is not to be submitted solely on the ground of seniority but what is wanted is seniority combined with merit and it is rather the latter than the former that should be the determining factor. From the nomination rolls the approved list of officers fit for promotion is to be prepared after personal interview by the Deputy Inspector General. Regulation regarding promotion to the post of Sub-Inspectors (sic) (Police) contemplated Central Recruitment Board consisting of two or more Deputy Inspectors General with a Superintendent of police as Secretary. Half of the vacancies are to be filled up by direct recruitment and half by promotion from the rank of Assistant Sub-Inspectors. Eligibility for promotion is at least three years service as Assistant Sub-Inspectors and pass in the Qualifying

Examinations. Any confirmed Assistant Sub-Inspectors who has rendered two years of service and is less than 43 years of age on the 1st of January of the year would be permitted to sit in the examination. The examination is to be in Law and Procedure consisting of two papers, The Board will interview each of the candidates who have, qualified themselves in the examination and hold personality test and scrutiny of service records. The Board is to prepare an approved list. Similar is the provision regarding the post of Sub-Inspector (Armed Police). The posts of Deputy Superintendent of Police are to be filled up partly by promotion from amongst Inspectors and partly by direct recruitment, as laid down in Appendix XLII.

3. By notification dated 6.12.62, the Tripura Administration framed Rules governing method of recruitment and the qualifications necessary for appointment to the post of Inspector of Police (Armed and Unarmed). The number of posts available then were 19. The post is treated as selection post to be filled up by promotion failing which by transfer/deputation. Sub-Inspectors of Police with three years of service in the grade are eligible for promotion. Selection is to be conducted through Class - II DPC.

4. On 28.11.1979, Government of Tripura issued two notifications, publishing Rules, one relating to the post of Sub-Inspector in Armed Branch and the other to the post of Sub-Inspector in Unarmed Branch. There were 90 posts of Sub-Inspectors in the Armed Branch. As per the Rules appointment is by selection subject to minimum qualification prescribed, 50% by promotion and 50% by direct recruitment. Substantive ASIs (Armed Branch)/Head Constables (Armed Branch)/Havildar (Armed Branch) who have put in at least three years service in the grade and passed departmental examination, as also such officiating officers with five years or more service in the grade and have passed departmental examination are eligible for promotion. Selection has to be made through Class III DPC

5. The 1979 Rules relating to the posts of Sub-Inspectors in the Unarmed Branch are more or less similar to the 1979 Rules relating to Armed Branch. The Appendix makes it clear that there shall be an examination and personality test.

6. The 1962 Rules were replaced by Rules published on 12.2.1981 in relation to the post of Inspector of Police (Armed Branch) and (Unarmed Branch). Process of selection through DPC has been retained in these Rules. All the posts are to be filled up by promotion failing which by transfer/deputation. Those eligible are Sub-Inspectors of Police of the respective Branch with 8 years service in the grade having passed pre-promotion examination as prescribed by the State Government. The Rules are subject to reservation and other concessions to be granted by the Government.

7. On 10.2.1984, the Government published Regulations for pre-Promotion Examination for Sub-Inspector of Police (Unarmed Branch) and Sub-Inspector of Women Police for promotion to the post of Inspector of Police (On-armed Branch)/

Women, The purpose of the Regulation is to ensure that Pre-Promotion Examination is conducted by the Public Service Commission. Further notifications have been issued regarding the syllabus for the examination.

8. On 4.1.1990, the Government issued the Tripura Police (Merit Promotion and Special Recruitment) Rules, 1989 with retrospective effect from 8.12.1985. These Rules provide for giving out of turn promotion to any person who has distinguished himself by any act of conspicuous courage or an act of outstanding dedication towards duty or an act of extraordinary resourcefulness in discharge of duty or any other act in discharge of duty otherwise, including outstanding performance in sports, which merit a special recognition. The Rules also provide for certain conditions.

9. One of the Writ petitions has been referred to a larger Bench by a Division Bench, which felt that the decision in Civil Rule 168/82 and connected cases may require reconsideration in view of decision of the Supreme Court in *Sanwarmal Kejriwal Vs. Vishwa Co-operative Housing Society Ltd. and others*, Subsequently other Writ petitions, considered analogous have been tagged with Civil Rule 236/90. This is how the Full Bench had occasion to hear the referred case as well as analogous cases.

10. Though several contentions are urged in the writ petitions, at the time of hearing learned Counsel for the Petitioners restricted their arguments to the following aspects:

(1) Sub-Inspectors of Police, who were in service at the time of promulgation of 1981 Rules, continued to be governed by 1962 Rules and were entitled to be considered for promotion and promoted in accordance with 1962 Rules. This is so because 1981 Rules have no retrospective operation.

(2) The above view has been taken by this Court in a batch of Writ petitions including Civil Rule 168/82, the decision in which has been followed in Civil Rule 109/87. There is no warrant for reconsidering the view taken in the above decision, as suggested by another Division Bench which referred the cases to a larger Bench.

(3) Officers, junior to Petitioners, have been promoted, even though they did not pass the Pre-Promotion Examination stipulated in 1981 Rules either on account of the decision in the above Writ petitions or otherwise and the doctrine of equality requires that the Petitioners also should be given the same benefit and advantage.

(4) 1981 Rules are issued in contravention of the proviso to Section 66(1) of North Eastern Areas (Re-organisation) Act, 1971 and therefore, invalid and cannot be enforced, This is because 1981 Rules vary the conditions of service of Petitioners to their disadvantage without the consent of the Central Government.

(5) There has been no delay or laches on the part of the Petitioners in approaching the court,

(6) Petitioners are also entitled to the benefits of decisions in Civil Rule 29/79, Civil Rule 104/81 and Civil Rule 232/81.

(7) Promotion of some of the Petitioners to the post of Sub-Inspector of Police was delayed or denied on account of failure to pass departmental examination and this was wrongful.

11. POINTS NO. (1)&(2):

Points No, 1 deals exclusively with the right of Sub-Inspectors of Police to be considered for promotion and promoted as Inspectors of Police, According to the Petitioners, when 1962 Rules were repealed by 1981 Rules, they were either Sub-Inspectors of Police or Assistant Sub-Inspectors of Police who were already entitled to be promoted as Sub-Inspector of Police and, therefore, their further promotion to the cadre of Inspector of Police should be governed by 1962 Rules and not 1981 Rules, This contention assumes considerable significance in view of the difference in eligibility criteria and method of selection prescribed in the two sets of Rules. Under both sets of Rules the post is treated as selection post to be filled up by promotion failing which by transfer/deputation. Under the 1962 Rules, Sub-Inspectors of Police with three years of service in the grade were eligible for promotion by selection conducted by Class-II DPC. Under 1981 Rules, Sub-Inspectors of Police with eight years' service in the grade and having passed the Pre-Promotion Examination prescribed by the C comment are eligible for promotion by selection conducted by DPC. The two important changes are the increase in the service requirement from three years to eight years and the requirement of passing Pre-Promotion Examination. According to the Petitioners, 1981 Rules do not have retrospective operation and therefore, cannot affect their service career and they have a right to be considered for promotion under the norms prescribed in 1962 Rules. This contention was upheld in Judgment in Civil Rule 168/82 and connected cases referred to earlier.

12. We will advert in some details to the Judgment in Civil Rule 168/82 and connected cases. In paragraph 4 of the Judgment, the Division Bench indicated, on a consideration of the language of the notification dated 12.2.81 by which 1981 Rules were framed, that the Rules were not given retrospective effect. In paragraph 5 of the Judgment referring to the decision in T.R. Kapur and Others Vs. State of Haryana and Others, the Bench indicated that there was not power to make Rule under the proviso to Article 309 which affects or impairs vested rights. In paragraph 6, the Bench referred to the decision in Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, and indicated that amendment of Rules taking away vested rights with retrospective effect, would be invalid. In paragraph 7 of the Judgment, the Bench took the view that increase in the service requirement from three years to eight years and the requirement of pass in Pre-Promotion Examination for promotion, altered the conditions of service of the officers, that even before the 1981 Rules the Petitioners in the batch of Writ petitions had acquired vested right under 1962 Rules to be considered for promotion after three years' service in the grade and this vested right has been

taken away by 1981 Rules and in view of the law laid down by the Supreme Court, 1981 Rules cannot be made applicable to the writ Petitioners so as to take away their vested rights. In paragraph 8 of the Judgment, the Bench held that the fact that the authority did not give retrospective effect to 1981 Rules manifested its intention that Sub-Inspectors of Police, who were appointed prior to 12.2.1981, shall be governed by 1962 Rules for their promotion to the post of Inspectors of Police and that the, 1981 Rules shall govern only those Sub-Inspectors of Police so appointed after 1981 Rules were notified, In paragraph 11 of the Judgment, the Bench directed that Petitioners shall be considered for promotion to the post of Inspector of Police, on the basis of 1962. Rules and the service records at the relevant time. There was a further direction that cases of the Petitioners should be considered individually prior to the dates on which their immediate juniors were promoted to the post of Inspectors, Each of the Petitioners found suitable for promotion shall be so promoted notionally from a date prior to the date of promotion of his immediate junior on a regular basis. Notification dated 12.2.81 issuing the 1981 Rules does not purport to grant any retrospective effect to the Rules. The repealing provision also does not indicate any intention to grant retrospectivity.

13. We agree that 1981 Rules have not been made retrospective and must be regarded as prospective in operation. But there appears to be some confusion about the effect of prospectivity or retrospectivity of service rules and of the concept of conditions of service and alteration of conditions of service and the power of the Government to alter or amend the Rules. In this connection it would be appropriate to refer to a few decisions of the Supreme Court.

14. In *Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others*, a Constitution Bench held that a mere chance of promotion is not a condition of service and introduction of promotion for direct recruitment and promotion on divisional basis does not prejudicially affect the conditions of service, though it may affect chances of promotion. In *Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others*, a Constitution Bench held that reduction of quota for promotion does not affect conditions of service but affects only chances of promotion. *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, related to a case of delay in preparing the list of L.D. Clerks for appointment by transfer as Sub-Registrars Grade II, which ought to have been done in 1976 but was done only in 1977, by which time the Recruitment Rules were amended deleting the provision for appointment of L.D. Clerks by transfer to higher post and the amendment was not challenged. The Court held that the vacancies which occurred prior to the amendment would be governed by pre-existing Rules and not by the amended Rules.

15. In *A.S. Parmar and Others Vs. State of Haryana and Others*, the court interpreted certain provisions of the Punjab Service of Engineers, Class-I P.W.D. (Buildings and Roads Branch) Rules. 1960 and held that Assistant Engineers in Class II Service not possessing Degree are not barred for promotion to the cadre

of Executive Engineers if they satisfy the service requirement stipulated in Rule 6(b) of the Rules, subject to quota Rule. As a result of this decision, Assistant Engineers in Class II Service possessing Diploma qualification became entitled to be promoted to the cadre of Executive Engineer, subject to Other conditions stipulated in the Rules. In *Ashok Gulati and Others Vs. B.S. Jain and Others*, the court issued a direction that all eligible persons should be considered for promotion and appointments be made in four months. Before the expiry of the period of four months, Government amended the Rules retrospectively rendering Diploma Holders ineligible for promotion. This came up for consideration in *T.R. Kapur and Others Vs. State of Haryana and Others*, . The court reiterated the well known principle that any Rule which affects right to be considered for promotion is a condition of service though mere chance of promotion is not such a condition and reiterated that the Petitioners were eligible for promotion by virtue of the decision in *A.S. Parmar's* case. The amendment altered the conditions of service to the disadvantage of the members of the Service, A two-Judge Bench of the Supreme Court observed as follows:

It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect; *B.S. Vadera Vs. Union of India (UOI) and Others*, *Raj Kumar Vs. Union of India (UOI) and Others*, *K.Nagraj v. State of A.P.* 1985 SC 551 and *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, . It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications, The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights therefore, unless it is specifically provided in the rules employees who are already promoted before the amendment of the rules can not be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the test of Articles 14 and 16(1) of the Constitution *State of Mysore Vs. M.H. Krishna Murthy and Others*, *B.S. Yadav and Others Vs. State of Haryana and Others*, ; *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*, and *Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others*, .

[Emphasis supplied]

16. We may now turn to *K. Jagadeesan Vs. Union of India and others*, , which dealt with Rules of Recruitment in the Geological Survey of India. Recruitment to the post of Superintending Mechanical Engineer was by promotion and failing

that by direct recruitment. Degree was essential qualification for direct recruitment. Requisite qualification for promotion was five years of service in the grade of Mechanical Engineer (Senior). Appellant, a diploma holder became eligible for promotion in 1978, but was not promoted as he was far too junior and his seniors were promoted. Rules were amended in 1984 prescribing degree as a requisite qualification for the post of Director (M.E.). The Appellant challenged the amendment on the ground that it affected his right to be considered for promotion to the post of Director. The Appellant placed reliance on the decision in T.R. Kapur's case which had observed that right to be considered for promotion is a condition of service. Supreme Court held that a mere chance of promotion is not a condition of service. Rule-making authority can change retrospectively Rules defining qualifications and suitability for promotion though unless it is specifically provided in the Rules that employees who had already been promoted before the amendment, cannot be reverted. The Supreme Court observed as follows:

6. It is only in this sense, that is, as set out in the immediately preceding paragraph that the view has been taken that the rules cannot be retrospective. The ratio of this decision is not applicable to the case before us as there is no question of reverting the Appellant. Again it has been held by a Bench comprising three learned Judges of this Court, in *State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others*, that more chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the condition of service. A right to be considered for promotion is a term of service but more chances of promotion are not. It was also held there that mere passing of the departmental examination conferred no right on the concerned S.T. Inspectors of Bombay to promotion. They merely became eligible for promotion. They had to be brought on 10 a select list, not merely on the length of service but on the basis of merit-cum seniority principle.

7. In our opinion, no retrospective effect has been given to the said amended rule. It is not argued that the Appellant has been reverted from the post which he occupies on the ground of any lack of any qualification. The only effect is that his chances of promotion or his right to be considered for promotion to the higher post is adversely affected. This cannot be regarded as retrospective effect being given to the amendment of the rules carried out by the impugned Notification and the challenge to the said Notification on that ground must fail.

[Emphasis supplied]

17. The effect of retrospective amendment of the Recruitment Rules pending selection of posts initiated by an advertisement issued by Service Commission has been considered in *N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others*, See also *P. Mahendran and others Vs. State of Karnataka and others*, .

18. We now turn to the decision in *Shyamlal Agarwal Vs. Ratanlal Malviya (dead) by Lrs., .* The Petitioner, an Air Vice Marshal, was looking forward for promotion as Air Marshal. Meanwhile there was change in the policy. 3 rotational posts and 13 out of 15 posts of Air Marshals were open to the officers in Flying Branch. Most of the posts were open to the officers in Navigation Stream to which the Petitioner belonged. On account of change of policy, number of posts available to Navigation Stream was reduced. Following earlier decisions, the Supreme Court hold that what was affected was chance of promotion of the Petitioner and in spite of change of the policy the right or eligibility of the Petitioner to be considered for promotion remained and the change did not involve any change in condition of service.

19. In *Dr. P.K. Jaiswal Vs. Ms. Debi Mukherjee and others*, after giving requisition to Service Commission for the post and before, advertisement by the Service Commission, Government withdrew me requisition on account of amendment of the Rules providing for the post. The court referred to the dictum in *N.T. Bevin Katti's* case to the effect that a candidate, who is eligible and otherwise qualified in accordance with the relevant Rules and the terms of the advertisement acquires a vested right of being considered for selection in accordance with the Rules as they existed it the date of advertisement. He cannot be deprived of that limited right on the amendment of Rules during the pendency of selection unless the amended Rules are retrospective in nature. At the same time the court made it clear that merely on making an application for a post pursuant lo an advertisement, the candidate does not acquire any vested right of selection or appointment. The right, of selection accrues only after a candidate is called for interview pursuant, to the advertisement. The court held that Service Commission cannot insist that it will go ahead with the selection process in view of I he amended Rules.

20. It will also be useful to refer to a decision of a constitution Bench in the State of Jammu and Kashmir v. *triloki Nath Khasa and Ors.* AIR 1974 SC (sic) in some detail. The case related to Engineers in State of Jammu & Kashmir governed by Rules published in 1939. Assistant Engineers could be appointed by direct recruitment or by transfer. Divisional Engineers could be appointed only by promotion from the cadre of Assistant Engineers. In 1962 pay Revision, Assistant Engineers were divided into two categories on the basis of date of appointment. Some sort of distinction between the two groups was maintained in 1968 Pay Revision also. New Recruitment Rules were formulated in 1970 laying down, inter alia, that only Assistant Engineers who possess Bachelor"s Degree in Engineering or equivalent qualification and have put in at least seven years" service would be eligible for promotion to the post of Executive Engineers. The Supreme Court held, inter alia, that retrospective application of the Rules is violative of Articles 14 and 16 of the Constitution. Explaining this conclusion, the Constitution Bench observed as follows:

It is wrong to characterise the operation of a service rule as retrospective for the

reason that it applies to existing employees. A rule which classifies such employees for promotional purposes undoubtedly operates on those who entered service before the framing of the rule but it operates in future, in the sense that it governs the future right of promotion of those who are already in service. The impugned rules do not recall a promotion already made or reduce a pay-scale already granted. They provide for a classification by prescribing a qualitative standard, the measure of that standard being educational attainment. Whether a classification founded on such a consideration suffers from a discriminatory vice is another matter which we will presently consider but surely, the rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past. If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retroactivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective. The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding.

[Emphasis supplied]

21. 1981 Rules do not purport to confer any retrospective effect on the Rules. Rules which are not retrospective in operation undoubtedly apply, though in future, to those who entered service before the framing of the Rules. They govern the future right of promotion of those already in service. 1981 Rules do not contemplate reversion of any officer already promoted under 1962 Rules. They enhance the period of experience required for being considered for promotion and prescribe a departmental examination. The Government is free to prescribe such criteria for promotion or selection as it deems fit. Government is also free to prescribe such service requirements as it deems fit, having regard to the nature of the service, the nature of functions and responsibilities of the promotion post and public interest. The expression "vested right" has to be understood in the light of the decisions in K.C. Arora's case, L.R. Kapur's case and Triloki Nath Khosa's case. Petitioners do not have a complaint that having been promoted regularly according to Rules they are facing threat of reversion by virtue of the new Rules. There are a few officers, who have been promoted on condition of passing the examination. Naturally, they will face reversion if they do not pass the examination. But their promotion was not regular or in accordance with the Rules. Those, who have been regularly promoted under the 1962 Rules, have a right to continue in the promotion post and if that right is affected then only it can be said that the vested right is affected. Even such a vested right can be taken away subject of course to Articles. 14 and 16 of the Constitution.

22. No vested right of any officer has been taken away or purported to be taken away under 1981 Rules. With great respect, we have to point out that the Division Bench in the earlier batch of cases did not examine correctly or fully the amplitude of the expressions "vested right" and "retrospective effect". When new Rules are framed, all officers in service at that time would naturally be governed by those Rules, and if retrospective effect is not granted to the Rules, vested rights will not be affected. Of course officers in service when 1962 Rules were repealed did have a right to be considered for promotion to the next higher post in accordance with those Rules but only to the vacancies which existed at the time of the repeal. They do not have a right to contend that all future vacancies in the cadre of Inspectors of Police should be governed only by the Rules in force when they became Sub-Inspectors of Police. Their claim must necessarily be confined to those vacancies which exist when new Rules take effect. This principle of law also was not noticed in the earlier Judgment of the Division Bench. The fact that 1981 Rules do not have retrospective effect persuaded the Division Bench to hold that the intention of the Rule making authority was that Sub-Inspectors of Police who were appointed prior to 12.2.81 shall be governed by 1962 Rules for their promotion and that 1981 Rules shall govern only those Sub-Inspectors of Police so appointed after the 1981 Rules were notified. With great respect, this conclusion is also not sustainable. The intention manifested is that Sub-Inspectors of Police, who were in position at the time of the repeal would be governed by repealed Rules for promotion to the vacancies in the cadre of Inspectors of Police existing as on that date. In the circumstances, we are of the opinion that the reasoning and conclusion of the Division Bench in the previous batch of Writ petitions is not in accordance with the law and on the other hand it is contrary to law. The interpretation placed by the Division Bench on the Service Rules cannot stand.

23. Our conclusions in his behalf can be summarised as follows:

1962 Rules have been repealed by 1981 Rules. 1981 Rules do not have retrospective effect. Therefore, 1962 Rules would govern promotion of Sub-Inspectors of Police, in position on the date of the repeal only to the vacancies existing in the cadre of Inspectors of Police on the date of the repeal and not to vacancies arising in future or post created in future. If on the date of repeal of 1962 Rules there were any vacancies in the cadre of Inspectors of Police and which were not filled up subsequently by virtue of court Judgment, such of the Petitioners, who were Sub-Inspectors of Police before the repeal would be entitled to be considered for promotion to those vacancies on the basis of 1962 Rules. The vacancies which arose and posts which were created subsequent to the promulgation of 1981 Rules can be filled up only in accordance with 1981 Rules. The law laid down in the Judgment in Civil Rule 168/82 and analogous cases is not good law.

24. It is strenuously contended on behalf of the Petitioners that prescription of a Pre-Promotion Examination adversely affects the conditions of service. We have

given our deep and careful consideration to this contention, but we are not able to agree with the same, 1962 Rules make it clear that promotion to the cadre of Inspectors of Police is by selection through D.P.C. The Rules did not prescribe any particular process of selection. Of course, examination of Service records, past performance and confidential records is a must for selection or promotion without selection. It is trite law that when Statute or Statutory Rules are silent on any particular aspect, it is open to the Government to cover the field by executive instructions. Even during the subsistence of 1962 Rules, it would have been possible for the Government to issue executive instructions requiring the D.P.C. to hold or for the D.P.C. to devise an examination to strengthen the process of weeding out those not fit for promotion. That would be part of process of selection itself and would not affect the conditions of service of the officers. Therefore, introduction of such an examination as a part of the process of selection cannot be regarded as altering or violating the conditions of service. Points No, 1 and 2 are answered accordingly.

25. POINT No. (3):

In almost every one of the Writ petitions it is alleged that several Sub-inspectors of Police junior to various Writ Petitioners have been promoted to the cadre of Inspectors of Police though they did not appear or pass Pre-Promotion Examination stipulated in 1981 Rules and to deny the Petitioners the same benefit would go against the doctrine of equality enshrined in Articles 14 and 16 of the Constitution. Learned Counsel for the Petitioners referred to several instances. These instances can be categorised as follows:

- 1) Sub Inspectors of Police, who filed Writ petitions Civil Rule 168/82 etc. and obtained Judgment in their favour and who were promoted on the basis of the Judgments.
- 2) Certain officers, who were promoted on condition that they should pass the examination within a particular period or an extended period.
- 3) Instances relating to B.K. Nag and Smt. Hela Dutta.

26. The present Petitioners were not parties to the previous batch of Writ petitions in which this Court held that 1962 Rules will govern officers in position at the time of repeal of the Rules. As between the Government and the Petitioners in those Writ petitions, the Judgments have become final and have been, implemented. We have now taken the view that the interpretation placed on the 1962 Rules and on their repeal in the previous Judgments is not correct. Assuming that any of the Writ Petitioners in the previous batch of Writ petitions were junior to any of the present Writ Petitioners, it cannot be said that they have been promoted as a result of the decision of the Government; such promotions were the result of decision of the court. We do not understand the law to be that whenever a person in service obtains a favourable decision of the court on a wrong interpretation of the Rules, every other person in service senior to him would be automatically entitled to promotion, particularly in relation to

selection posts.

27. The Government in some of the counter affidavits has explained that Sub-Inspectors of Police, who did not pass the examination but were otherwise eligible were granted promotion conditionally on their passing the examination within a particular period and the period was subsequently extended. This, it is explained, was on account of the large number of vacancies in the cadre of Inspectors of Police and inadequacy of the number of Sub-Inspectors of Police who had passed the examination. It is not shown that such officers were junior to any of the present writ Petitioners. Petitioners cannot claim right for such promotion.

28. The case of Smt. Hela Dutta stands on an entirely different footing. The counter affidavits filed on behalf of the Government explain the promotion given to Smt. Hela Dutta. There is no dispute that Smt. Hela Dutta was initially given conditional promotion as Inspector of Police and subsequently the promotion was regularised. The Petitioners allege that Smt. Hela Dutta did not pass Pre-Promotion Examination and her promotion was regularised on the basis that she was governed by 1962 Rules. The counter affidavit filed in Civil Rule 142/90 states that Smt. Hela Dutta's conditional promotion was regularised under 1981 Rules after granting exemption from the requirement of pass in Pre-promotion Examination in consultation with the Public Service Commission, as referred to in the letter dated 27-3-89. Annexure-E states that Smt. Hela Dutta was appointed Assistant Sub-Inspector of Police in July, 1961 at a time when police was not a popular profession for women. She did not get opportunity for regular police work to gain experience necessary for passing examination for no fault of hers and on account of the peculiar working conditions. She has been working as Inspector of Police since 1980. The counter affidavit further states that she was treated as a class by herself deserving exemption.

29. Thus it can be seen that the Government in exercise of its power to grant exemption, extended exemption to Smt. Hela Dutta, who was at the relevant time the only woman Sub-Inspector of Police in the State. Reasons given in the counter affidavit mark out the case of Smt. Hela Dutta as a distinct case which stands on its own. The fact that exemption was a special treatment granted to the only Woman Sub-Inspector of Police in the interest of administration and public (sic) and with a view to encourage women to join the police force and denial of similar treatment to Petitioners cannot be regarded as violative of Articles 14 and 16 of the Constitution; at any rate, her promotion has not been challenged in any of the Writ petitions. It is not open to any of the Petitioners, several years after the promotion granted to Smt. Hela Dutta, to approach the court and plead that similar treatment must be given to them, though they are not in the same position as Smt. Hela Dutta.

30. In several Writ petitions, the instance of B.K. Nag is referred to as a case of a junior being given promotion overlooking seniors. B.K. Nag became Sub-Inspector of Police on 26.7.79 and was promoted as Inspector of Police on

6.12.85 even though he did not pass Pre-Promotion Examination at that time. That is what is alleged in several Writ petitions. Petitioners allege that undue favouritism was shown to B.K. Nag and to lend legitimacy to the promotion, 1989 Rules were framed.

31. B.K. Nag was granted ad-hoc promotion as Inspector of Police subject to passing the Pre Promotion Examination within the stipulated period. The counter affidavit filed in Civil Rule 142/90 specifically states that he passed the examination subsequently. The counter affidavit also states that the case of B.K. Nag is not comparable as he was given ad-hoc promotion after consulting the Public Service Commission for outstanding service. It was on the advice of the Service Commission that this outstanding merit promotion was regularised by framing 1989 Rules retrospectively. The counter affidavit explained the circumstances in which B.K. Nag exhibited outstanding courage and daring in the discharge of his duties. Such promotion on the ground of outstanding qualities and performance was not in the contemplation of the existing Rules. Therefore, the promotion was regularised by issuing 1989 Rules and dealing with the case under the Rules. Rule 1(2) of the 1989 Rules states that the Rules shall be deemed to have come into force with effect from 8.12.25. According to Rule 3, notwithstanding anything contained in the recruitment Rules an appointing authority may appoint, by giving out of turn promotion to any such post, a person who has distinguished himself by any act of conspicuous (sic) or an act of outstanding direction towards duty on an act of extraordinary resourcefulness in discharge of duty or any other act any discharge of duty otherwise, including outstanding performance in sports, which merit a special recognition. Total number of persons given such appointments and merit promotions under Rule 3 shall not exceed five per cent of the sanctioned strength of the grades or ranks concerned. Total number of persons so promoted or recruited in a calendar year shall be limited to 25 per cent of the total number. On merit promotion of such a person to higher grade or rank, supernumerary post shall be created for him and the lower post from which he was promoted shall be kept in abeyance till his absorption in the higher post or grade.

32. Some of the Writ Petitioners purport to deny the outstanding performance of B.K. Nag. But in the absence of any material in support of the contention, we are inclined to accept the reasons mentioned in the counter affidavit in support of the out of turn promotion granted to B.K. Nag. Some of the Writ petitions contain vague averments of malafide and favouritism, but the allegations are not supported by any material. In the circumstances, we hold that the out of turn promotion given to B.K. Nag in 1985 cannot be challenged at this stage. Rules providing for such out of term promotion on relevant grounds cannot be challenged as violative of Articles 14 and 16 of the Constitution. Such out of turn promotion granted in accordance with the Rules and on consideration of relevant materials, cannot be the foundation for a claim for promotion by others merely on the ground of seniority. Petitioners cannot secure any relief on the basis of the promotion granted to B.K. Nag. Point No. 3 is answered against the Petitioners.

33. POINT No. (4):

Many of the Petitioners contend that 1981 Rules have been framed in contravention of the proviso to Sub-section (1) of Section 66 of the North-Eastern Areas (Re-organisation) Act, 1971, for short "the Act", and the Rules are, therefore, illegal and unenforceable. Therefore, it is contended that all promotions made on the basis of 1981 Rules have to be reviewed and promotions effected afresh under 1962 Rules.

34. Tripura was a centrally administered territory and became State of Tripura by virtue of the provisions of the Act on the appointed day, namely, 21.1.72. Part VIII of the Act deals with the provisions as to service. Sub-Section (1) of Section 67 which alone is relevant for the purpose of this case, reads as follows:

67. Provision as to continuance of officers in same posts:

(1) Every person who, immediately before the appointed day is holding or discharging the duties of any post or office in connection with the administration of the Union territory of Manipur or Union territory of Tripura, shall continue to hold the same post or office in the State of Manipur, or as the case may be, in the State of Tripura and shall be deemed, on and from that day to have been duly appointed to the post or office by the Government of, or other appropriate authority in the State concerned.

Members of the police force of the erstwhile Union territory of Tripura were holding any post or office or discharging the duties of any post or office in connection with the administration of the Union territory of Tripura. Hence this provision will govern the police officers under Tripura administration.

35. Section 62 of the Act deals with the provision relating to service in Manipur and Tripura. It reads thus:

62, Provision relating to service in Manipur and Tripura - Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the Administrator of the Union Territory of Manipur, or the Administrator of the Union territory of Tripura (including a person who has been placed on deputation by the Administrator concerned with any other authority), shall, unless otherwise directed by an order of the Central Government, be deemed to have been allocated for service as from that day in connection with the affairs of the State of Manipur or as the case may be, of the State of Tripura:

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.

The purport of the section is that every person serving in connection with the affairs of the Union under the administrative control of the Administrator of the Union territory of Tripura on the appointed day shall be deemed to have been allocated for service as from that day in connection with the affairs of the State

of Tripura. Members of the police force of the erstwhile Union territory of Tripura cannot be regarded as persons serving in connection with the affairs of the Union. They are not governed by Section 62 of the Act. They are governed by Section 67 of the Act.

36. Sub-section (1) of Section 66 states, inter alia, that nothing in Sections 62 to 66 shall be deemed to effect on or after the appointed day the operation of the provisions of Chapter 1 of Part XIV of the Constitution in relation to determination of conditions of service of persons serving in connection with the affairs of the State of Manipur, Meghalaya or Tripura or the Union territory of Mizoram. The proviso to sub-section (1) reads thus:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Manipur or the State of Tripura u/s 62 or to the State of Meghalaya under sub-section (1) of Section 64 or Section 65 or to the Union under Sub-section (2) of Section 64 shall not be varied to his disadvantage except with the previous approval of the Central Government.

[Emphasis supplied]

37. Petitioners allege that in framing 1989 Rules the previous approval of the Central Government had not been obtained. The State has not denied this averment and has not taken the stand that such previous approval was obtained. A right to be considered for promotion is a condition of service though mere chance of promotion is not a condition of service. The Rule which affects chance of promotion cannot be regarded as varying condition of service.

38. Let us assume for the purpose of argument that requirement of service of three years in the 1962 Rules is a condition of service and further assume that the same has been varied to the disadvantage of the Petitioners by the 1981 Rules. There is no dispute that but for the proviso to Section 66(1) of the Act. State Government is competent to vary the conditions of service, subject of course to Article 14 of the Constitution. The question is whether the proviso to Section 66(1) will apply to officers of the police force of the Union territory of Tripura prior to 21.1.72. The proviso applies only to persons serving in connection with the affairs of the Union under the administrative control of the Administrator, as contemplated in Section 62 of the Act. The proviso does not and cannot apply to members of the police force of the Union territory of Tripura, who are governed by Section 67 of the Act. Section 62 of the Act speaks of "allocation" of persons serving in connection with the service of the Union to the service of the State of Tripura. Members of the police force of the Union territory of Tripura, who are not serving in connection with the affairs of the union are not deemed to have been allocated to the State of Tripura by virtue of Section 62 of the Act. They are persons holding or discharging the duties of any post or office in connection with the administration of Union territory of Tripura who, by virtue of Section 67 of the Act, shall continue to hold the same post or office in the

state of Tripura and shall be deemed to have been duly appointed to such post or office by the competent authority. There is no protection available to officers governed by Section 67 similar to the protection contemplated in the proviso to Section 66(1) of the Act. We, therefore, hold, even assuming that there has been variation of condition of service to the disadvantage of the Petitioners by promulgation of 1981 Rules, proviso to Section 66(1) is not applicable to them and the previous approval of the Central Government was not necessary for the 1981 Rules. The Rules do not violate the proviso to Section 66(1) of the Act. The point is answered accordingly.

39. POINT No. (5):

Though the new rules were promulgated in 1981, these Writ petitions, except one, have been filed on 1989, 1990, 1991 or 1992. The earliest batch of promotions of persons allegedly junior to the Petitioners were made in 1985. According to the Petitioners, since juniors were promoted in 1985 they should be promoted from such dates. Petitioners have not satisfactorily explained the delay in approaching the court for a period of 5 to 7 years. Various Petitioners have urged one or two grounds to explain the delay. One is that in the exigencies of service they could not get proper advice about their rights and the other is that juniors were also promoted by virtue of the court Judgment dated 26.5.88 in the earlier batch of writ petitions and other Writ petitions. It cannot be that the court Judgment has furnished cause of action for the Petitioner to approach the court. Petitioner's main contention is that their right of promotion even to vacancies arising or posts created after 1981 Rules is governed by 1962 Rules. That was a contention open to them any time after the promulgation of 1981 Rules. Petitioners occupying positions like Sub-Inspector of Police and Assistant Sub-Inspector of Police cannot be treated as ignorant persons, who could not obtain legal advice in time. In filing the writ petitions during the period 1989 to 1992, Petitioners are guilty of delay and laches. Intervention by the court after the lapse of such a long period will unsettle settled positions and also require creation of quite a large number of supernumerary posts. Therefore, they cannot obtain relief at the hands of the court. Civil Rule 1/84 filed on the basis that 1962 Rules continued to apply to the Petitioner therein and relying on the instance of Smt. Hela Dutta and others is also belated. We do not think endless representations, assuming that such representations were submitted, can help the Petitioners. The point is answered against the Petitioners.

40. POINT No. (6);

Civil Rule 29 of 1979 was filed by an Assistant Sub-Inspector of Police, who passed the departmental examination but did not qualify in live interview. He alleged that persons similarly situated had been promoted and claimed the same benefit for himself. The court accepted that he had been subjected to hostile (sic) and directed the Respondents to promote him with effect from the date on which his junior was promoted. The instances of promotion granted to others were cited in the supplementary affidavit to which no reply had been submitted. It

can, therefore, be said that the pleadings in the case justified the relief being granted to the Petitioner therein. We do not understand the decision as laying down a principle that wherever a junior is granted promotion irregularly or contrary to Rules, all his seniors should be granted promotion, irrespective of vacancies or posts being available, particularly where persons who seek the relief could have challenged the promotion granted to the juniors but deliberately refrained from doing so.

41. Civil Rule 104 of 1985 was filed by an Assistant Sub-Inspector of Police, who passed the departmental examination required for promotion to the rank of Sub-Inspector of Police and was not granted promotion on account of pendency of departmental proceeding, His grievance was that even after termination of the departmental proceedings he was not considered for promotion on the basis of uncommunicated A.C.Rs. The court held that he should be promoted to the post with effect from the date on which the D.P.C. met but failed to include him in the select list. This decision does not apply to the facts of any of the cases which we are considering.

42. Civil Rule 232 of 1981 relates to a dispute regarding date of birth. This decision has also no bearing on the question arising for consideration in the present cases. Point answered accordingly.

43. POINT No. (7):

The Writ petitions under consideration have been filed by Sub-Inspectors of Police seeking retrospective promotion under 1962 Rules as Inspectors of Police. In some of the writ petitions it is contended that Petitioners' promotion to the post of Sub-Inspectors of Police was delayed on the ground of failure to pass the departmental examination or interview. They contend that there was no legal provision for basing selection to the post of Sub-Inspector of Police on result of examination. They also rely on the Judgment in Civil Rule 29/79 which we have already adverted to. The Judgment does not help them. It is true that 1979 Rules relating to the post of Sub-Inspector of Police required pass in departmental examination for selection and promotion as Sub-Inspector of Police. Police Regulation of Bengal was applicable before the promulgation of 1979 Rules, We find that the Bengal Regulation contemplated pass in qualifying departmental examinations interview, personality test and scrutiny of service records. The contention in Civil Rule 236/90 and other Writ petitions that there was no legal provision for (sic) examination is unsustainable. Point answered accordingly.

44. In the result, the petitions substantially fail. The only relief which can be granted in this batch of Writ petitions is to direct the State Government to verify the number of vacancies existing in the cadre of Inspectors of Police on 12.2.1981, verify which of the vacancies were filled up subsequently by virtue of Judgment of court and if any vacancies remain, to consider the Petitioners, subject to eligibility, under 1962 Rules and pass appropriate order in accordance with law.

The Writ petitions are disposed of with the aforesaid direction, which is to be implemented within six months from today.