

(2015) 04 MAD CK 0093

In the Madras High Court

Case No : W.A. No. 1211 of 2014 and M.P. No. 1 of 2014

Government of India and Others

APPELLANT

Vs

AKS Panwar

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Army Act, 1950 — Section 3(xi), 4(1)
Central Reserve Police Force Act, 1949 — Section 3(1)
Coast Guard Act, 1978 — Section 123, 123(1)
Constitution of India, 1950 — Article 14, 15, 16, 226, 309
Criminal Procedure Code, 1973 (CrPC) — Section 197(2)

Citation : (2015) 04 MAD CK 0093

Hon'ble Judges : Satish K. Agnihotri, J;M. Venugopal, J

Bench : Division Bench

Advocate : G. Rajagopalan, Additional Solicitor General assisted by K. Mohanamurali, for the Appellant; S. Silambanan, Senior Counsel assisted by K. Sathish and Babu Parveen, Profexs Associates, Advocates for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Appellants/Respondents have preferred the present intra Court Writ Appeal as against the order dated 13.08.2014 in W.P. No. 18270 of 2013 passed by the Writ Court.

2. The Writ Court, while passing the impugned order on 13.08.2014 in W.P. No. 18270 of 2013 (filed by the Respondent/Petitioner), in paragraphs 15 to 18, had, inter alia, observed the following:

"15....Therefore, when the Rule is very clear that, in the case of Assistant Commandants, who are Ex. Naval officers, their entire commissioned service shall be counted for promotion to the rank of Deputy Commandant, the misplaced argument of the respondent that the above said provision cannot be applied to the petitioner since he is neither a re-employed officer nor a permanently absorbed officer has to be repelled, as it smacks of arbitrariness

among the officers having been appointed through direct appointment, re-employment and permanent absorption. Hence, it is very clear that the provision of Coast Guard (Seniority and Promotion) Rules, 1987, gives special consideration to the Ex-Naval officers for counting their previous service for promotion to the higher post, therefore, without there being any specific provision denying the said benefit to the direct entry officers like the petitioner, in my considered opinion, the impugned proceedings of the respondent are running contrary to Rule 10(2) of the Coast Guard (Seniority and Promotion) Rules, 1987.

16. Moreover, the request of the petitioner for counting his past services towards seniority and pension as provided in the Coast Guard Recruitment Rules (CGRR) promulgated vide SRO 236, dated 17.09.1982 as amended by SRO 133, dated 14.01.1984 and SRO 69, dated 07.03.1991, was partly considered by the Deputy Director Pers (OA&R), vide his order dated 26.07.2001 granting the benefit of counting his previous services towards pension, but, they have not extended the same for seniority and promotion, therefore, he submitted a representation seeking permission to leave the Coast Guard Service in order to take up civil employment outside, but, the same was rejected. In my view, the said rejection order, denying to count his past services for seniority and promotion, cannot have any justification especially when they took into consideration for granting civil pension.

17. That apart, an amendment brought under SRO 86, dated 12.07.2002 and another amendment brought under SRO 133, dated 17.09.2004 cannot take away the accrued rights of the petitioner for his promotion to the higher post, since the above said amendment came into force after a period of more than 17 years and 19 years of entry into service respectively by the petitioner. It is trite law that any amendment introduced subsequently cannot supersede or over right the accrued rights of the parties, therefore, the said amended rules cannot be adversely applied to the petitioner alone, although the same can be applied to the subsequent recruits.

18. In these facts and circumstances of the case, this Court finds no justification whatsoever in denying the counting of the previous service rendered in the Indian Air Force as stated above for the purpose of promotion and seniority. Therefore, as highlighted above, since the petitioner should have been promoted to the post of Deputy Commandant in December, 1987 itself, instead of 1991, the respondents are directed to promote the petitioner to the post of Deputy Inspector General, Inspector General and further onwards, by taking into account his previous service rendered between 11.12.1981 and 03.01.1984 in the Indian Air Force, as per the seniority with retrospective effect from the dates on which his juniors were promoted, with consequential monetary benefits. The respondents are directed to complete the said exercise within a period of six weeks from the date of receipt of a copy of this order.

and disposed of the Writ Petition without costs.

3. Writ Germane Facts:

(i) The Respondent/Petitioner is currently holding the rank of Commandant and was appointed as Station Flight Safety Officer at Coast Guard Air Station, Chennai-16. He was an Ex NDA, Ex Indian Air Force officer, who after 2 years and 23 days of active military service in the Indian Air Force joined the Indian Coast Guard on 06.01.1985. After joining the Coast Guard and during his basic training projected an application for counting of his military service towards civil pension as guided/directed at that stage. In fact, during July 2001 CDA Pension Allahabad approved counting of his military service from 11.12.1981 to 03.01.1984 towards civil pension by means of an order dated 12.07.2001 (vide letter OF/0303/0110-X dated 26.07.2001).

(ii) The 2nd Appellant/2nd Respondent had not extended the benefits of previous military service towards promotions as provided in the Coast Guard Recruitment Rules (CGRR) promulgated vide SRO 236 dated 17.09.1982 as amended by SRO 133 dated 14.01.1984 and SRO 69 dated 07.03.1991. Indeed, the CGRR were made available under the RTI Act after protracted correspondence/representation for almost 3 years plus and after two/three appeals and hearings at the Central Information Commission. Further, part of the data had not been provided as yet. Therefore, the Petitioner had no opportunity to claim the benefits earlier.

(iii) The 1st Appellant/1st Respondent by means of Gazette Notification SRO 86 dated 03.04.2002 and SRO 133 dated 17.09.2004 altered the promotion policy by applying the military provisions of Performance Appraisal Review Board (PARB) and military merit system of promotion in lieu of the bench mark system followed in CCS thus denying the Respondent/Petitioner further promotions. Also that, he was not promoted to the rank of DIG in the year 2005 and 2006 and submitted requests to take up civil employment outside for approval of the 2nd Appellant/2nd Respondent which was rejected. As a matter of fact, the rejections were based on the inter se seniority between Naval and CG officer promulgated illegally by IDHQ of MoD (Navy) through their letter NA/1109/2005 dated 29.08.2005.

(iv) Also that, the inter se seniority was promulgated by the IDHQ of MoD in total disregard to the existence of MHA letter 17.60/-97-Pers/BSF/Pers-III dated 03.09.1997 giving the dress code and thereby equivalence between the various service under the MHA. Although the Respondent/Petitioner brought this matter to the notice of the 1st Appellant/1st Respondent had neither replied nor corrected the injustice even after projecting number of applications under the RTI Act and per contra, the 2nd Appellant/2nd Respondent issued a show cause notice and a letter of caution through 3rd Respondent to him for submitting the representation to the 1st Appellant.

(v) The Respondent/Petitioner had filed the present Writ Petition for issuance of Writ of Certiorarified Mandamus in quashing the orders of the 3rd Respondent made in Order No. OF/0110/X dated 15.10.2012, and the orders of the 1st

Respondent made in SRO 133 dated 17.09.2004 and SRO 86 dated 03.04.2002 and IDHQ of MoD letter NA/1109/2005 dated 29.08.2005. Further, he had sought for issuance of directions by this Court in directing the Appellants/Respondents to extend the benefits of previous military service to him as per Coast Guard Recruitment Rules (CGRR) and promote him accordingly.

The Appellants Contentions:

4. The Learned Additional Solicitor General for the Appellants contends that the impugned order of the Writ Court dated 13.08.2014 in W.P. No. 18270 of 2013 suffers from an error apparent on the face of record and therefore, it is liable to be set aside.

5. The Learned Additional Solicitor General for the Appellants urges before this Court that the Writ Court failed to appreciate that the seniority and promotion aspects of Coast Guard Officers are governed by Coast Guard (Seniority and Promotion) Rules, 1987 notified through SRO 6E dated 26.02.1987 (which was framed in accordance with Section 123 of the Coast Guard Act, 1978, which provide power to make rules) and consequently erred in observing that since the benefit of previous service of Respondent/Petitioner for the purpose of pension was granted by competent authority in accordance with Rule 19 of CCS (Pension) Rules, 1972, his case was squarely applicable under Rule 10(2) of the Coast Guard (Seniority and Promotion) Rules, 1987.

6. It is represented on behalf of the Appellants that the Writ Court should have appreciated that counting of past service for the purpose of pension under CCS (Pension) Rules does not automatically make the Respondent/Petitioner eligible for counting such service for the purpose of seniority and promotion.

7. The Learned Additional Solicitor General for the Appellants submits that in reality, the Rule 10(2) of the Coast Guard (Seniority and Promotion) Rules, 1987 only speaks as regards the counting of previous service for the purpose of promotion of Defence Service Officers i.e. Army, Navy, Air Force who are permanently absorbed officers and re-employed officers and not about direct entry officers like the Respondent/Petitioner. Moreover, it is also the plea of the Appellants that the mode of entry of direct entry officer vary with permanently absorbed officers and re-employed officers of the Army, Navy and Air Force.

8. The Learned Additional Solicitor General for the Appellants projects an argument that the Writ Court had failed to appreciate that the factual position of the case while mentioning that the previous promotion policy introduced in the year 1982 through SRO 86 which states that in the case of Assistant Commandant who was Ex-Naval Officer, Ex-Army Officer, or Ex-Air Force Officer, 5 years of total service as commissioned officer in the Navy or Army or Air Force along with Coast Guard Service taken together would suffice for promotion to the post of Deputy Commandant, inasmuch as the Respondent/Petitioner was a direct entry officer and accordingly, the promotion of the Respondent/Petitioner was carried out in accordance with Coast Guard (Seniority and Promotion) Rules,

1987 notified through SRO 6E dated 26.02.1987.

9. The Learned Additional Solicitor General for the Appellants brings it to the notice of this Court that the Writ Court had failed to taken into account the plea of the Appellants that in the appointment letter of the Respondent/Petitioner dated 22.12.1984, it was specifically mentioned that the seniority of Respondent/Petitioner in the post of Assistant Commandant would be reckoned with effect from the date of commencement of training in the Naval Academy and inter se seniority based on his position in the order of merit as approved by the Government. Moreover, it was further mentioned that his seniority may be readjusted after the Coast Guard Seniority rules are finalised.

10. The Learned Additional Solicitor General for the Appellants forcefully submits that the service of the Respondent/Petitioner in Indian Air Force was terminated as he was grounded during flying training in Indian Air Force for the period 11.12.1981 to 03.01.1984 was allowed to be counted subsequently for the purpose of pension by the Chief Controller of Defence Accounts (Pension), Allahabad through letter dated 12.07.2001.

11. Continuing further, the Learned Additional Solicitor General for the Appellants contends that the disagreement expressed by the Writ Court against the reasoning of the Appellants in regard to the introduction of Performance Appraisal Review Board vide SRO 86 dated 03.04.2002 amending Rule 7 of Coast Guard (Seniority and Promotion) Rules, 1987 was misplaced and in reality, the said amendment was brought to ensure that there are no major fluctuations in the overall profile of an officer due to difference in style or standard of different appraising officers and other factors.

12. The Learned Additional Solicitor General for the Appellants strenuously submits that the amendment to Rule 10(2) of the Coast Guard (Seniority and Priority) Rules, 1987 was introduced vide SRO 133 dated 17.09.2004 with a view to restructure the promotion criteria for various ranks, consequent to implementation of V Central Pay Commission's recommendations.

13. The prime stand taken on behalf of the Appellants is that the Writ Court should have considered that the seniority of the directly recruited officer shall be determined solely on the basis of marks obtained during the initial training or departmental examination as the case may be in accordance with Rule 5(3) of Coast Guard (Seniority and Promotion) Rules, 1987. As such, the Respondent/Petitioner cannot be promoted to the rank of the Commandant and above solely on the basis of number of years he had put in service.

14. Apart from the above, the Learned Additional Solicitor General for the Appellants contends that the Writ Court should have borne in mind that the promotion was not automatic or time based and even before the amendment of Rule 7 of Coast Guard (Seniority and Promotion) Rules, 1987 (Vide SRO 133 dated 17.09.2004, the promotion of an officer to the rank of Commandant and above was made on the basis of merit with due regard to seniority, as specified

in Rule 7 of Coast Guard (Seniority and Promotion) Rules, 1987.

15. The Learned Additional Solicitor General for the Appellants emphatically submits that the Writ Court came to the wrong view that an amendment introduced subsequently cannot supersede or override the accrued rights of the parties and therefore, the amended rules cannot be adversely applied to the Respondent/Petitioner alone, although the same can be applied to the subsequent recruits. Furthermore, the Respondent/Petitioner is not the only Coast Guard Officer whose promotion was guided as per the amended provisions in Rule 7 brought by means of SRO 86 dated 03.04.2002.

16. Yet another plea of the Appellants is that the Writ Court should have considered that the representation of the Respondent/Petitioner seeking permission to leave the Coast Guard Service in order to take up civil employment outside was rejected due to fact that the Respondent was not meeting eligibility criteria for the post applied by him. Added further, his second request for NOC for applying outside job was not approved by competent authority as he had not applied for any specific job.

17. According to the Learned Additional Solicitor General for the Appellants, the Coast Guard is not a civil organisation, but is an Armed Force of the Union of India under Ministry of Defence and the promotion rules of Coast Guard Officers were framed under the Coast Guard Act, 1978 as per requirement of the service, but this crucial aspect of the matter was not taken into account by the Writ Court at the time of passing the impugned orders in the Writ Petition.

18. The Learned Additional Solicitor General for the Appellants contends that the Respondent/Petitioner had accepted all the promotions to the rank of Deputy Commandant in 1996 without any objection or challenge before any legal forum and also that, the recruitment rules are published in the official gazette, which is available in public domain.

19. The Learned Additional Solicitor General for the Appellants submits that the Respondent/Petitioner's case is covered under Rule 5(3) of the Coast Guard (Seniority and Promotion) Rules, 1987 and each of the entries viz., Direct Entry, permanent absorption and re-employment constitute a "class" by itself and also having "intelligible differentia" to distinguish each other, but this salient aspect should have been considered by the Writ Court in a proper and realistic fashion.

20. The Learned Additional Solicitor General for the Appellants proceeds to take a stand that the Writ Court should have considered that the experience, qualification and length of service rendered by the permanently absorbed officers are not in par with the direct recruit officer as in the case of Respondent/Petitioner.

21. The Learned Additional Solicitor General for the Appellants draws the attention of this Court that the Respondent/Petitioner had not challenged the decision of the competent authority not to consider his past service for the

purpose of seniority and promotion and the delay in challenging this aspect is not valid in the eye of law.

22. The Learned Additional Solicitor General for the Appellants submits that the Writ Court should have considered its observation that any amendment introduced subsequently could not supersede or override the accrued rights of the parties etc. will bring undesirable repercussions to the extent of policy followed by Coast Guard post amendment of Rule 7 and 10 of the Coast Guard (Seniority and Promotion) Rules, 1987 vide SRO 133 dated 17.09.2004, with regard to promotion of large number of officers who are governed as per the amended rule and promotion were affected on the basis of new rule prospectively applied for all promotions. Besides the above, the Appellants take a plea that the vires of SROs notified through Gazette by the Government of India has not been challenged in the Writ Petition by the Respondent/Petitioner.

23. The Learned Additional Solicitor General for the Appellants contends that the Writ Court had failed to take into consideration of an essential fact that the Respondent/Petitioner had not made any specific request to count his service for the purpose of seniority and promotion in any of his letters till the time he was promoted to the rank of Commandant and has only asked for the same specifically when he was not found fit for promotion to next higher rank of Deputy Inspector General.

24. The Learned Additional Solicitor General for the Appellants submits that the Promotion Board proceedings were conducted in accordance with the Coast Guard Rules and Coast Guard Orders which clearly establish that the Respondent/Petitioner is not entitled to get promotion, having placed low in merits and as such, he is not entitled to claim any relief. Also that, it is the case of the Appellants that the Respondent/Petitioner had accepted the SRO 133 dated 17.09.2004 and SRO 86 dated 03.04.2002 and took part in the 5 attempts and became unsuccessful and had not challenged the same, but challenged the letter dated 15.10.2012 of the 3rd Appellant/3rd Respondent.

25. The Learned Additional Solicitor General for the Appellants contends that the Respondent/Petitioner's appointment order dated 22.12.1984 inter alia mentions that his appointment in the post of Assistant Commandant in the General Duties of the Coast Guard, an Armed Force of the Union of India will be on probation for two years and his seniority may however be readjusted after the Coast Guard Seniority Rules are finalized. As such, it is the stand of the Appellants that the conditions specified in the appointment letter dated 22.12.1984 in respect of the Respondent/Petitioner is binding on him.

26. The Learned Additional Solicitor General for the Appellants cites the decision of the Hon'ble Supreme Court in P.S. Gopinathan V. State of Kerala and others, AIR 2008 Supreme Court 2768 at special page 2777, wherein, in paragraph 32, it is held as follows:

"32. The aforesaid facts clearly make out an acquiescence of the appellant of

accepting order dated 14.1.1992 being treated as temporary appointment order on the post of District and Sessions Judge and he cannot now be permitted to change his position and claim the permanent appointment from 14.1.1992 to claim seniority on the post. Besides this, the High Court has rightly held that in the absence of the challenge to the second appointment order dated 15.7.1992 from the fresh panel dated 21.2.1992, that order will stand, though later in time, and has to be given effect to as an order of appointing the appellant on permanent basis under Rule 6 of the Rules."

Further, in the aforesaid decision, it is observed that "Seniority was considered to be relevant only where merit and ability were approximately equal and therefore, the inter se seniority is not the sole criteria."

27. The Respondent/Petitioner's Pleas:

(i) The stand of the Respondent/Petitioner is that he was eligible to be promoted as Deputy Commandant in December 1987, as Commandant in December 1991 and DIG in 1998 and as IG in 2002 since the requirement was average grades for 5 years for the relevant period should be above the bench mark.

(ii) As regards the promotion to the rank of Director General, the case of the Respondent is that the Appellants had stated that his average grade in the year 2006 was 13.58 and a Coast Guard (NFU) is applicable as per GOI rules/DOP and T guidelines after two years of being cleared for promotions to the rank of DIG in (2008) till a vacancy for the rank of DGCG is available. Apart from that, the Coast Guard service is an organized group A service and that non functional upgradation is applicable and not the MACP.

(iii) The stand of the Respondent/Petitioner is that "ACR grades below the bench mark were not communicated cannot be taken for promotion further the Coast Guard (Seniority and Promotion) Rules, 1987 were amended in the year 2002 and 2004 and the policy of PARB as applicable to all military services was introduced for only two rank that of Commandant (JG) and Commandant in 2002 [SRO 86 of 03.04.2002]. Also that, the PRAB is neither provided in any CCS Rules/Guidelines nor in Coast Guard acts and rules. Since the PRAB is challenged by the Respondent, is sought to be applied in the case of Respondent, he had challenged the same as an illegal.

(iv) According to the Respondent/Petitioner, the Relative merit as applicable to "Military Services" was introduced in 2004 (vide SRO 133 of 17.09.2004) and that the bench marking system is a vacancy based system where the number of vacancy determines the number of candidates to be considered for promotion. (Ratio 1:3 is maintained by restricting the number of candidates). However, the Relative merit system is candidate based where the number of candidates determines the number of vacancies to be released.

(v) The prime grievance of the Respondent/Petitioner is that in the year 2002-2003 he was graded 7.11 and 7.1 and as per the Appellants norms, Serial

No. 2 of the Moderation Table of PARB applies are runs as under:

(vi) In fact, the difference between the present and the past is more than 0.5 and therefore, in column 4 of the table, the variation (iii) is applicable which runs as follows:

(vii) Also, it is to be pointed out on behalf of the Respondent that a maximum change of 0.5 is permitted and as such, any grade between 6.4-6.9 could be selected by the (PARB) Performance Appraisal Review Board. In short, on the past grades of 6.4 the Respondent/Petitioner's grades in 2002-2003 were reduced to 6.5 to match the grades of year 2001-2002. Coming to the third row of the PARB data the Respondent/Petitioner was graded 7.02 and 7.0. In fact, as per norms Sl. No. 2 of the Moderation Table of PARB as stated supra applies. Moreover, it is the contention of the Respondent/Petitioner that GOI had clearly stated that secret marking was abolished and doing PARB secretly is in violation to the order. In pith and substance, the clear-cut case of the Respondent is that drawing of merit list for promotions based on the grades after changing the marks secretly by PARB is incorrect and illegal.

(viii) The categorical stand of the Respondent is that as per para 7(c) of CGO 02/2005 for every three candidates eligible and considered by DPC one vacancy is released and this would ensure a ratio of 1:3 and that the Appellants applied this Rule only in DPC 2005 and later from the DPC that took place in 2006 the number of vacancies released were 1/3rd of the fresh batch of eligible officers considered by the DPC which is in violation of the laid down rules.

(ix) The other plea taken on behalf of the Respondent/Petitioner is that in DPC 2006 only 4 vacancies were available (as per Right to Information Act data) as against the total of 8 vacancies required for 24 eligible officers. Also that, in DPC 2007 based on the number of fresh look only 4 vacancies were required to be released. Likewise, in DPC, 2008 although 8 vacancies were required to be released as per CGO 02/2005 only 5 vacancies were available and should have been released. But based on the fresh look officers only 3 vacancies were released. As such, 7 officers in 2007 and 5 officers in 2008 even though eligible and next in the merit could not be promoted due to non availability of vacancies/ wrong release of vacancies by the Appellants thereby losing one chance for no fault of theirs.

(x) The next stand taken on behalf of the Respondent is that the Rules were amended in the year 2009 vide CGO 02/2009 and as per the new rule for every three fresh candidates, one vacancy is to be released. In fact, the ratio shifted above 1:3 and depending upon the size of fresh batch it is maintained anywhere between 1:5 and 1:8 which is against the norms of relative merit.

(xi) To put it succinctly, the plea of the Respondent is that when the ratio of relative merits was altered only in 2009 by CGO 02/2009, the Appellants had not explained as to how this ratio was adopted or practised even before introduction of CGO 02/2009. Insofar as the order issued by IDHQ of MoD (Navy) on

29.08.2005 is concerned, the same is based on the discussions held during the NAVGUARD meeting between the DGCG and VCNS (Navy) and that the NAVGUARD meeting is not an authorised or a legal/quasi legal committee and further, it is not the authorised body of the Government of India empowered to discuss such matters and indeed, it has made unequals as equals. Furthermore, since there is no authority legal or otherwise available either with the CGE or the IDHQ of MoD (Navy) to make any equivalency any order passed by the NAVGUARD Board in respect of the inter se seniority is illegal. Also, the letter equated junior ranks in the Navy with senior ranks in CG (by grade pay) and created/equated non-existent ranks in the Coast Guard. Further, there is no rank of junior DIG and Senior DIG in Coast Guard and as a matter of fact, the letter creates a new rank structure in the Coast Guard which is not existent in the Coast Guard and in violation of the Coast Guard Act and Rules. Therefore, the IDHQ of MoD (Navy) letter of August 2005, needs to be set aside being discriminatory.

(xii) On the side of the Respondent/Petitioner, an emphatic stand is taken that the powers to approve application of military rules in civil services are not available with the MoD. Also that the Appellants are not authorised/empowered to implement the military rules in a civil/non-military service and therefore, they cannot approve application of SRO 86 of 2002 and SRO 133 of 2004 and as such, the said SROs are illegal and all promotions undertaken using the PARB and relative merit are illegal. Further, the IDHQ of MoD letter of August 2005, PARB (SRO 86 of 2002) and Relative merit (SRO 133 of 2004) are to be quashed as being discriminatory, secretive and defence policy not provided in any CCS rules/guidelines.

28. The Learned Senior Counsel for the Respondent/Petitioner submits that the Respondent/Petitioner had joined the CG service in the civil post of Assistant Commandant on 06.01.1985 when CGRR 1992 were in force and accordingly, the concessions in promotion were available to all Ex-Army, Ex-Navy and Ex-Air Force commissioned officers and at that time, the Coast Guard (Seniority and Promotion) Rules were not even formulated/were non-existent. Also, it is represented on behalf of the Respondent/Petitioner that the Coast Guard Recruitment Rules (CGRR) for the rank of Assistant Commandant to DIG were formulated in 1982 vide SRO 236 dated 17.09.1982 and that of the rank of DGCG were promulgated in 1991 SRO 69 dated 07.03.1991.

29. The Learned Senior Counsel for the Respondent brings it to the notice of this Court that the Coast Guard (Seniority and Promotion) Rules for ranks from Assistant Commandant to IG were promulgated in 1987 vide SRO 6E dated 26.02.1987 and added further, when the CG (S&P) Rules, 1987 amended the concessions in promotions available to the permanently absorbed and re-employed officers it had not altered the availability of concessions so far as the direct entry officers with previous commissioned service were concerned. The said CG (S&P) Rules, 1987 does not have the provisions for dealing with cases

involving the promotions of Direct Entry Officers with previous commissioned service (Military Service) as such they are not applicable in such cases.

30. The Learned Senior Counsel for the Respondent contends that while the mode of entry to a particular rank may be different at the time of induction into service the benefits remain unchanged so far as promotions are concerned under the CGRR, 1982. At this stage, the Learned Senior Counsel for the Respondent points out that the first batch of CG Direct Entry Officers were promoted to Deputy Commandant in the year 1986 as per Rule 10 of Condition of Service Rules, 1986 that is as per CGRR, 1982. That apart, the said CG (S&P) Rules were promulgated in the year 1987 while the Respondent/Petitioner had already in service (joined in January 1985) and further he had objected to the said rules and brought out the lacuna as soon as the said rules were promulgated in the year 1987.

31. The Learned Senior Counsel for the Respondent/Petitioner filed the present Writ Petition because of the fact that the Appellants/Respondents promoted the Respondent/Petitioner as per CG (S&P) Rules, 1987 in total disregard to the CGRR, 1982 and in reality, the CG (S&P) Rules, 1987 are not applicable in the Direct Entry Officers with previous commissioned service.

32. The Learned Senior Counsel for the Respondent proceeds to contend that the Rule 10 of the Condition of Service Rules, 1986 clearly enjoins that all promotions would be carried out as per the Recruit Rules for each rank viz., CGRR, 1982. Further, the service of the Respondent/Petitioner was terminated as per IFA Rules since he was not willing to continue in any other branch of Air Force and wanted to join the Coast Guard.

33. In this connection, the Learned Senior Counsel for the Respondent draws the attention of this Court that in terms of CCS Pension Rules, the previous service was not to be counted even for the purpose of pension if the Respondent/Petitioner's service was terminated as a result of disciplinary action, default, failure, omission or commission.

34. The Learned Senior Counsel for the Respondent submits that the Coast Guard Act, 1978 does not provide for applying Military rules especially in HR related matters. Also, it is contended that the PARB system is highly discriminatory as it is applicable for promotion to the rank of Commandant and DIG only and is not applicable in promotions below or above these ranks.

35. The Learned Senior Counsel for the Respondent contends that if the Respondent/Petitioner was given his due promotions as per CGRR, 1982, the rules applicable to him, then, he would have attained the rank of IG in December 2001 and both the Rules would not have affected his case.

36. The Learned Senior Counsel for the Respondent submits that one Dr. P. Palari, Ex-DGCG was re-employed in CG in 1981 as Deputy Commandant and was promoted in the year 1984 to the rank of Commandant taking the benefits of

previous commissioned service into account as per the provisions of the CGRR, 1982. In this regard, on the side of the Respondent/Petitioner, it is contended that the Appellants are to explain as to how the benefits of previous commissioned service were permitted/applicable to Dr. P. Palari Ex DGCG because of the reason that Rule 10(2), b of the said CG (S&P) Rules, 1987 does not permit such benefits to the re-employed officers.

37. The Learned Senior Counsel for the Respondent strenuously contends that as per GOI orders, a bench mark of very good is required for promotion to the rank of Commandant and above. Added further, it is represented on behalf of the Respondent that the Respondent/Petitioner is the only Direct Entry Officer with previous commissioned service presently available in Coast Guard and as per CGRR 1982 he is entitled to the concessions in promotions. Moreover, the prime stand taken on behalf of the Respondent is that accrued rights in his favour cannot be changed because of subsequent change in rules and as on date there is not other case similar to that of the Respondent/Petitioner available in CG. The core plea taken on behalf of the Respondent is that the 1987 Rules and the amendments brought about in the year 2002 and 2004 do not cover the promotions of Direct Entry Officers with previous commissioned service.

38. The Learned Senior Counsel for the Respondent submits that the CGRR, 1982 terms and conditions of CG personnel, Rule 19 confirm the counting of previous military service for pension. At this juncture, the Learned Senior Counsel for the Respondent contends that the Respondent/Petitioner is governed by CGRR 1982 and in fact, clause 5 of CG (Seniority and Promotion) Rules does not govern the benefits of previous military service for the purpose of promotions to higher ranks. On the other hand, it only governs the inter-se seniority between the three types of entries at the time of induction in a particular rank. Besides this, the promotion to higher ranks is governed by Rule 10 of CG (Seniority and Promotion) Rules, 1987. In short, according to the Respondent/Petitioner, Rule 5 and Rule 10 as mentioned supra, relating to promotion deal with two different aspects of seniority viz., inter-se seniority with other officer at the time of entry in service and allowing seniority for promotions (the benefits of previous military service for promotions). As such, it is contended on behalf of the Respondent that counting of previous military service is accounted for in Rule 10 independently and the same does not attract the ingredients of Rule 5 of the said promotion Rules, 1987.

39. The Learned Senior Counsel for the Respondent/Petitioner submits that the Appellants had acted in an arbitrary and discriminatory manner against the rules and regulations to deny the Respondent of his due promotions inspite of high credentials. Therefore, the Respondent is entitled to the retrospective promotion with retrospective effect but he will be satisfied if promotion is given with retrospective effect with only notional pay without arrears.

40. The Decisions/Citations relied on the side of the Respondent/Petitioner:

(i) In the decision *Sat Pal Sharma and Another Vs. State of Punjab and Others*, AIR 1968 P&H 499 : (1969) 1 ILR (P&H) 23 it is held as follows:

"Delay which is accompanied by negligence is merely one of the factors that come in for consideration in the exercise of judicial discretion of a High Court, and there being no rules providing any defined period of limitation within which a petition under Article 226 is to be made, the Court is not compelled to dismiss a writ petition, howsoever meritorious may it otherwise be, merely on the ground that the petitioner is guilty of laches. The power and jurisdiction conferred on a High Court Article 226 is wide enough with no limitation provided on it in the Article. It is a discretionary jurisdiction conferred for ends of justice, and the attribute that the discretion is a judicial one inheres in it. Where a Single Judge dismisses a petition under Article 226 of the Constitution on the ground of delay and the aggrieved party goes in Letters Patent Appeal, though the appellate Bench would normally be reluctant to interfere with the order, there is nothing to preclude the appellate Court from interfering with the same if it is satisfied that there are strong reasons for interfering with the exercise of the said discretion."

(ii) In the decision of the Hon"ble Supreme Court in *Akhilesh Prasad V. Union Territory of Mizoram*, AIR 1981 Supreme Court 806, it is observed and held as follows:

"The expression "Armed Forces of the Union" occurring in S.197(2) cannot be said to be governed by a definition occurring elsewhere (either in Cr.P.C. or any other statute). Therefore it must be given its ordinary meaning which would not certainly be limited to the inclusion of only the military, naval and air forces of the Union. The contents of Entry 2 in List I of the Seventh Schedule to the Constitution of India clearly envisages armed forces other than the three well known forces of State namely the naval, military and air forces. S. 3(1) of the Central Reserve Police Force Act also makes it clear that the Central Reserve Police Force is a part of the "Armed Forces of the Union" Just because the Central Reserve Police Force is a reserve force it does not follow that it is not a regularly operating force. It squarely falls within the expression "Armed Forces of the Union" as used in S. 197(2)."

(iii) In the decision of the Hon"ble Supreme Court in *Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others*, AIR 1987 SC 1858 : (1984) 49 FLR 173 : (1984) 2 LLJ 362 : (1984) 1 SCALE 651 : (1984) 3 SCC 281 : (1984) 3 SCR 623 : (1984) 2 SLJ 54 : (1984) 16 UJ 667 , it is held as follows:

"Rule 4(ii) of the Punjab Government National Emergency (Concessions) Rules, 1965, as amended by the Haryana Government Gazette Notification No. GSR 77/Const/Art. 309/Amend/(1)/76D/-22nd March, 1976 and the Notification No. GSR182/Const/Art. 309/Amend/(2)/76 dated 9th August, 1976 amending the definition of the expression " military service" in Rule 2 are ultra vires the Constitution.

Thus, the persons who joined the army during the emergency as commissioned

officers and who after serving the Indian Army for more than five years were appointed in the service of the Haryana Government as temporary Assistant Engineers against the posts reserved for the ex-emergency commissioned officers were to be given seniority by counting period of military service. Immediately on appointment as temporary Assistant Engineers they became entitled to get their seniority fixed giving them the benefit of their military service. The Haryana Government could not take away the accrued rights of such persons by making amendment of the rules with retrospective effect by adding proviso to R.4(ii) taking away the benefit of counting military service towards seniority or by making amendment in the definition of the expression "military service" in Rule 2 restricting the benefits of military service up to 10th of January, 1968, (1980) 3 Serv LR 338 (Punj and Har), Reversed: 1983 Lab IC 391 (SC) Followed; 1969 Lab IC 100 (SC) Distinguished."

(iv) In the decision of the Hon"ble Supreme Court in Dhan Singh and others Vs. State of Haryana and others, AIR 1991 SC 1047 : (1991) 62 FLR 131 : (1990) 4 JT 735 : (1991) LabIC 683 : (1991) 99 PLR 658 : (1990) 2 SCALE 1216 : (1991) 2 SCC 190 Supp : (1990) 3 SCR 423 Supp : (1991) 1 UJ 267 , it is observed and held as follows:

"Amendment of R.2 confining the military service for those who joined during the operation of emergency between 26-10-1962 and 10-1-1968 and denying the same benefit of service to those who joined prior to the proclamation of the emergency is not unreasonable and arbitrary based on no classification and thus violative of Art. 14 of the Constitution of India. The young persons who have joined the military service during the national emergency and those who were already in service and due to exigencies of service had been compelled to serve during the emergency form two distinct classes. The persons who joined the army before the proclamation of emergency had chosen the career voluntarily and their service during emergency was as a matter of course. They had no option or intention of joining the government service during the period of emergency as they were already serving in the army. The persons who enrolled or commissioned during the emergency, on the other hand, had on account of the call of the nation joined the army at that critical juncture of national emergency to save the motherland by taking a greater risk where danger to the life of a member of the armed forces was higher. They include persons who could have pursued their studies, acquired higher qualifications and joined a higher post and those who could have joined a higher post and those who could have joined the government service before attaining the maximum age prescribed and thereby gained seniority in the service. Foregoing all these benefits and avenues, they joined the army keeping in view the needs of the country and assurances contained in conditions of service in executive instructions. The latter form a class by themselves and they cannot be equated to those who joined the army before the proclamation of the emergency. Benefits had been promised to such persons who heeded to the call of the nation at that critical juncture. Older man by joining the military service lost chance of joining other government service

and when he joins such service on release from the army younger man had already occupied the post. To remove the hardship, the benefit of military service was sought to be given to those young persons who were enrolled/commissioned during the period of emergency foregoing their job opportunities. The differentia is, therefore, intelligible and has a direct nexus to the objects sought to be achieved. The rule therefore, cannot be challenged as discriminatory or arbitrary. Such of those persons who have joined the army before the proclamation of the emergency are not, therefore, entitled to the benefit of military service as per the Emergency Concession Rules.

Further, the State could amend the 1965 Rules and withdraw the concession in exercise of the power conferred under Art. 309 of the Constitution. It is open to the State to lay down any rule for determining seniority in service and the Court cannot interfere unless it results in inequality of opportunity among the employees belonging to the same class. When a rule is challenged as denying equal protection, the question for determination by the Court is not whether it has resulted in inequality but whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation or inequality of protection does not per se amount to discrimination within the inhibition of equal protection clause under Art. 14. To attract the attention of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the Legislature has in view."

(v) In the decision of the Hon"ble Supreme Court in Hav Bhagat Singh and Others Vs. State of Haryana and Another, AIR 1996 SC 1705 : (1996) 2 SCALE 851 : (1996) 8 SCC 649 : (1996) 3 SCR 433 : (1996) 1 UJ 848 , it is held as follows:

"Military service as originally defined (i.e. prior to amendment on 4-8-76) meant service, enrolled or commissioned, in the armed forces rendered during the period of operation of the Emergency. (The Emergency was that proclaimed in 1962). By the amended provision military service meant only the service that was rendered by a person who was enrolled or commissioned in the armed forces during the period the Emergency remained in force. The amendment, therefore, curtailed the definition of military service and excluded therefrom those who had been enrolled or commissioned before the proclamation of the Emergency and had served during its operation. The definition of "military service" as amended on 4-8-1976 by the State of Haryana does not suffer from the vice of discrimination.

The Rules offered benefits to those who joined State Government service after having been in military service during the Emergency. It was open to the State to withdraw the offer, but not qua those who had already accepted the offer and joined the State Government service. By introducing amendment in 1976 the State Government did not withdraw the offer wholly but restricted it to those

who had enrolled or were commissioned in the armed forces during the Emergency. The State Government was entitled to do so. There is a clear and intelligible difference between those who had already chosen the armed forces as a career when the Emergency was declared and those who, in response to the nation's call, joined the armed forces after the Emergency was declared. It was in the country's interest at that critical juncture to make service in the armed forces attractive and compensate those who would otherwise have chosen other vocations. The grant of benefits to the latter class while denying them to the former class is in no way arbitrary or discriminatory. The Rules did not confer an indefeasible right on all persons who have served in the armed forces during the Emergency. Only those of them who had joined the State Government's service while the unamended Rules operated acquired a vested right, by reason of their having accepted the offer made thereby, which could not be defeated by the amendment."

(vi) In the decision of the Hon'ble Supreme Court in *Sukhdev Singh Gill Vs. State of Punjab and Others*, (2000) 87 FLR 951 : (2000) 2 JT 253 Supp : (2000) 7 SCALE 259 : (2000) 8 SCC 492 : (2001) SCC(L&S) 49 : (2000) 4 SCR 292 Supp, it is held as follows:

"Rule 2 of the Punjab Rules of 1965 requires that the military service which would be counted as service must be service as an "enrolled" or "commissioned" officer in the "three wings" of the Indian Armed Forces (including the service as Warrant Officer). The words, "three wings" used in Rule 2 has to be understood in the light of S. 3(xi) of the Army Act, 1950 which denies, the words, "the Forces" as the regular forces, namely, the Army, Navy and Air Force or any part of any one or more of them. The Punjab Rules permitting computation of "military service" therefore, restricts the benefit of military service only to those Officers who are enrolled or commissioned in the three principal wings of the Armed Forces, namely, Army, Navy and Air Force and it was not intended to extend to any other Armed Force to which the provisions of the Indian Army Act are extended under S. 4(1) of the Army Act, 1950.

Thus, even though the service in General Reserve Engineering Force (GREF) can be said to belong to the "Armed Forces" for purposes of the Army Act and Art. 33 of the Constitution of India, and even assuming that appellant working as Superintendent in GREF was enrolled or commissioned in the GREF, still his service could not be treated as service rendered in the "three principal wings" of the Armed Forces, namely, Army, Navy and Air Force. The appellant is, therefore, not entitled to count his service in the GREF for the purpose of seniority in the provincialised service under the State of Punjab. The Punjab Rules of 1965 are thus not applicable to the appellant."

41. The Learned Senior Counsel for the Respondent cites the order of this Court in W.P. Nos. 30240 of 2003 etc. batch dated 22.09.2006 (between S.K. Chaudhary V. Union of India and others), whereby and whereunder, in paragraphs 11 to 13 and 16, it is observed as follows:

"11. Mr. G. Rajagoplan, learned Senior Counsel appearing for the petitioner relied on the decision reported in (Sarat Kumar Dash and others Vs. Biswajit Patnaik and others) 1995 Supp (1) Supreme Court Cases 434 mentioned supra and submitted that in the case of merit with due regard to seniority, the assessment of comparative merit of all eligible candidates and selecting the best out of them has to be made, then, the seniority has no role to play. The petitioner, having secured the highest mark, he should have been preferred than the 6th respondent, but the 6th respondent was selected on the ground that he is senior than the petitioner, which is contrary to the then Rule. The Coast Guard Service is following numerical grading system. The Government has fixed sum of promotion potential and promotion quotient equivalent to 13.50 to 14.99 as "very good". Keeping in view of the benchmark assessment, the eligible officers in the zone of consideration were considered fit or unfit for further promotion. The selective list is thereafter drawn from amongst those considered for promotion in the order of their inter-se seniority.

12. It is seen from the records that one Krishnamoorthy, who is senior to the petitioner has secured more marks than the petitioner as well as the respondents 3 to 6 in WP No. 30240 of 2003 and he was found fit, but not selected. Similarly, the petitioner has secured higher marks than the 6th respondent and though he was found fit, he was not selected on the ground that he is not senior than the respondents 3 to 6.

13. The records placed shows that select list was drawn in order of their inter-se seniority only. The grading is decided by taking the average of marks awarded for five years, two grading categories were adopted namely "very good" (13.50 to 14.99) and "outstanding" (15.00 and above). The respondents 3 to 6 have come into the grading of "very good" and taking into consideration that they were seniors and accommodated in the existing four vacancies. The files produced before this Court by the respondents/department shows that they have followed the grading given by the Government, evolved criteria for giving marks on the basis of the said grading, hence, this Court hold that in DPC 2003, the principle merit with due regard to seniority has been correctly applied. In view of the above discussion, this Court is of the view that WP No. 30240 of 2013 is devoid of merits.

....

16. The Government of India is the largest employer rendering numerous services, technical and otherwise. In order to have more or less a uniform code for promotion and selection and to avoid bias, prejudice and stand scrutiny in Court of law for its justness and fairplay, Rules and orders issued by it. It is stated that the respondents/department has been following the DOT&P instructions, while conducting promotion boards for promotion to the selective ranks, zone of consideration etc., Following the instructions of DOP&T, benchmark was fixed with reference to last five years confidential reports. In the absence of statutory Rules, the respondents/department applied DOT&P instructions for

grading categories, hence this Court is of the view that applying DOT&P instructions is valid."

42. The Learned Senior Counsel for the Respondent refers to the Division Bench Judgment of this Court in W.A. No. 1390 and 1391 of 2006 dated 09.03.2009 (between S.K. Choudhary V. Union of India) (in which one of us is a Member M. VENUGOPAL, J.) wherein in paragraphs 19 to 22, it is observed and held as under:

"19. From the perusal of the entire materials placed on record, it is seen that everything has been orchestrated only with a malafide intention of denying due promotion to the appellant, since he started questioning the action of the official respondents in not promoting him and even made his superior/the second respondent to address a "letter of apology" to him for issuing the show-cause notice. When admittedly, the appellant is within the zone of consideration and further when there are no adverse remarks or disciplinary proceedings against the appellant and when there are sufficient number of vacancies, the appellant was denied promotion only with a malafide intention, for which no proper explanation is coming forth from the respondents. The stand of the official respondents that the appellant was considered but could not be promoted since more meritorious candidates were found, cannot be accepted in view of our detailed discussion regarding the discrepancies in assessing the merits of the candidates and in view of the established fact that the official respondents are ill-disposed of towards the appellant and further in view of the more glaring fact that there were sufficient number of posts to promote the appellant as on 18.08.2003, when his batchmates were promoted.

20. The learned single Judge, has completely believed the data furnished by the respondents regarding the confidential reports of the candidates. If the said data so furnished by the respondents is true, as the appellant has secured only an average of 12.72 bench mark, he must have been adjudged as "unfit" by the respondents, as in the case of Mr. S. Sonak. But, it is not at all the case of the respondents. As has been repeatedly observed by us, the respondents, have throughout maintained that the appellant, having completed eight years of service, became eligible for consideration for promotion to Deputy Inspector General rank and further from the counter at para No. 14, it is clear that there are vacancies to promote the appellant. The above discrepancies in the rankings of the candidates have not at all been taken into consideration by the learned single Judge. As has already been pointed out supra, it is clear that the official respondents, particularly the respondent, have acted in a malafide manner as against the interest of the appellant, and were successful in denying the due promotion to the appellant.

21. Though the appellant has claimed that he should be granted promotion from 29.06.2001, i.e. the date on which he became eligible for promotion, it is to be pointed out that in the DPC conducted in September, 2001, the earlier batch candidates were promoted. In the year 2002, no DPC was conducted. Therefore,

he is eligible to be promoted only from the date when his batchmates were promoted, ignoring the appellant, i.e. from the year 2003. Therefore, we direct that the appellant must be promoted to the cadre of Deputy Inspector General from the date when his batchmates (1) K.C. Pande, (2) M.A. Thalha, (3) K.B. Nautiyal and (4) S.C. Tyagi were promoted by the DPC conducted on 18.08.2003.

22. It has been brought to our notice that pending these proceedings, the appellant has opted for voluntary retirement. Therefore, the respondents 1 to 3 in W.A. No. 1391 of 2006 are directed to treat that the appellant was also promoted to the cadre of Deputy Inspector General from the date on which his batchmates (1) K.C. Pande (2) M.A. Thalha (3) K.R. Nautiyal and (4) S.C. Tyagi were promoted by the DPC conducted on 18.08.2003 and retired in the cadre of Deputy Inspector General and confer on him all such consequential benefits and settle all his consequential and terminal benefits within eight weeks from today."

43. Moreover, he cites the order dated 16.09.2010 of the Central Information Commission, New Delhi (between A.K.S. Panwar V. Indian Coast Guard) wherein an order was passed not directing the CPIO to disclose the ACRs of the appellant or, for that matter, that of other officers, who were considered for promotion during the relevant years etc.

44. Further, the Learned Senior Counsel for the Respondent refers to the order in W.P. (C) No. 2310/2005 dated 19.09.2011 (between Commandant Shamsher Singh V. Union of India and others), wherein a direction was issued for holding of review DPC as of 09.10.2004 to make recommendation for the 3rd post which had fallen vacant as on 1.1.2004 and would consider such officers who were in the zone of consideration and eligible as of 09.10.2004 and thereafter make a recommendation by applying the criteria for promotion as per un-amended Rule 7 as contained in the 1987 Rules etc.

45. He also refers to the order dated 04.09.2014 in W.P. (C) 10726/2009 (between DIG K.P.S. Raghuvanshi V. Union of India and others), wherein in paragraphs 37, 40 and 41, it is observed as follows:

"37. We have carefully considered the respective submissions of the parties and gone through the records including the Annual Confidential Reports relevant for the present case. The records unambiguously support the case of the petitioner that the existing ACR criteria as set out in CGO 02/2005 was amended clandestinely. For the first time, the Coast Guard Headquarters submitted the amended CGO 02/2009 on 18.05.2009 for information to MoD. Surprisingly, though the proposal was forwarded only for information, it was accorded post facto approval by the Joint Secretary (Navy)/MoD on 19.06.2009. Indubitably, the proposal for amendment of CGO 02/2005 was originally rejected at the level of Defence Secretary, i.e., on 16.04.2009 (notings reproduced herein above). Indubitably also, the MoD had then directed the CGHQ to follow the CGO 02/2005 and conduct the DPC expeditiously. Since the said proposal was originally rejected at the level of Defence Secretary, the "post facto" approval

granted by the Joint Secretary (Navy)/MoD on 19th June, 2009 was without any authority and an attempt to ride rough shod over the orders passed by the Defence Secretary. No reason has been assigned by the Respondents as to why the Defence Secretary was not made part of the decision making process to amend the CGO 02/2005.

40. The aforesaid law laid down in Rangaiah's case (supra) was followed by the Supreme Court in the decisions reported in P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others, AIR 1988 SC 2068 : (1988) 3 JT 570 : (1989) LabIC 46 : (1988) 2 SCALE 588 : (1988) 2 SCR 805 Supp : (1988) 2 UJ 697 , N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, AIR 1990 SC 1233 : (1991) 5 JT 282(1) : (1990) 2 LLJ 456 : (1990) 1 SCALE 659 : (1990) 3 SCC 157 : (1990) 2 SCR 239 : (1990) 1 UJ 670 , A.A. Calton Vs. Director of Education and Another, AIR 1983 SC 1143 : (1983) 1 LLJ 502 : (1983) 1 SCALE 316 : (1983) 3 SCC 33 : (1983) 2 SCR 598 : (1983) 1 SLJ 454 , P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others, AIR 1988 SC 2068 : (1988) 3 JT 570 : (1989) LabIC 46 : (1988) 2 SCALE 588 : (1988) 2 SCR 805 Supp : (1988) 2 UJ 697 , N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, AIR 1990 SC 1233 : (1991) 5 JT 282(1) : (1990) 2 LLJ 456 : (1990) 1 SCALE 659 : (1990) 3 SCC 157 : (1990) 2 SCR 239 : (1990) 1 UJ 670 , A.A. Calton Vs. Director of Education and Another, AIR 1983 SC 1143 : (1983) 1 LLJ 502 : (1983) 1 SCALE 316 : (1983) 3 SCC 33 : (1983) 2 SCR 598 : (1983) 1 SLJ 454 , State of Rajasthan Vs. R. Dayal and Others, (1997) 3 JT 198 : (1997) 2 SCALE 341 : (1997) 10 SCC 419 : (1997) SCC(L&S) 1631 : (1997) 2 SCR 108 : (1997) 1 UJ 479 .

41. In a decision rendered by a Coordinate Bench of this Court in W.P. (C) 2310/2005 and W.P. (C) 12179/2006 Commandant Shamsheer Singh Malik v. UOI and Ors. On September 19, 2011, relying upon the aforesaid decisions the Division Bench held that the legal principle which emerges therefrom is that the normal rule is that the vacancy which had arisen prior to the amendment of the rules would be governed by the unamended rules and not by the amended rules. Referring to the decisions of the Supreme Court reported as Dr. Ramulu and another, etc. Vs. Dr. S. Suryaprakash Rao and others, AIR 1997 SC 1803 : (1997) 2 JT 80 : (1997) 1 SCALE 613 : (1997) 3 SCC 59 : (1997) SCC(L&S) 625 : (1997) 1 SCR 287 : (1997) AIRSCW 1152 : (1997) 3 Supreme 215 and State of Punjab and Others Vs. Arun Kumar Aggarwal and Others, (2007) 6 SCALE 593 : (2007) 10 SCC 402 : (2008) 2 SCC(L&S) 377 : (2007) 6 SCR 8 : (2008) 1 SLJ 37 , however, the Division Bench added a caveat by stating that though this was the normal rule it would be otherwise if the amending rule is made retrospective in operation or a conscious decision is taken to fill up the existing vacancies as per the amended rule. In Ramulu case (supra), it was held that the vacancies which had arisen before the amendment of the Recruitment Rules would be governed by the amended Rules and not by the unamended Rules for the reason that a conscious decision had been by the Government not to fill up the vacancies in terms of the existing Recruitment Rules and till the

amendment of the existing Rules was effected. The relevant observations in Ramulu case are as under:-

" 12. The same ratio was reiterated in Union of India v. K.V. Vijeesh (SCC paras 5 and 7). Thus, it could be seen that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date. Shri H.S. Gururaja Rao, contends that this Court in Y.V. Rangaiah v. J. Sreenivasa Rao had held that the existing vacancies were required to be filled up as per the law prior to the date of the amended Rules. The mere fact that Rules came to be amended subsequently does not empower the Government not to consider the persons who were eligible prior to the date of amendment. It is seen that the case related to the amendment of the Rules. Prior to the amendment of the Rules. Prior to the amendment of the Rules two sources were available for appointment as Sub-Registrar, namely, UDC's and LDC's.

Subsequently, Rules came to be amended taking away the right of the LDC's for appointment as Sub-Registrar. When the vacancies were not being filled up in accordance with the existing Rules, this Court had pointed out that prior to the amendment of the Rules, the vacancies were existing and that the eligible candidates were required to be considered in accordance with the prevailing Rules. Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules. As a proposition of law, there is no dispute and cannot be disputed. But the question is whether the ratio in Rangaiah case would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force. It is true, as contended by Mr. H.S. Gururaja Rao, that this Court has followed the ratio therein in many a decision and those cited by him are P. Ganeshwar Rao v. State of A.P., P. Mahendran v. State of Karnataka, A.A. Calton v. Director of Education, N.T. Devin Katti v. Karnataka Public Service Commission, Ramesh Kumar Choudha v. State of M.P. In none of these decisions, a situation which has arisen in the present case had come up for consideration. Even Rule 3 of the General Rules is not of any help to the respondent for the reason that Rule 3 contemplates making of an appointment in accordance with the existing Rules."

46. The Learned Senior Counsel for the Respondent/Petitioner cites the decision of the Hon'ble Supreme Court in Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, AIR 1974 SC 259 : (1974) LabIC 165 : (1974) 1 LLJ 221 : (1974) 1 SCC 317 : (1974) 2 SCR 216 , whereby and whereunder, it is observed and held as follows:

"It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. It

may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui viva for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like."

Discussions:

47. It is not in dispute that the Respondent/Petitioner prior to joining in Coast Guard, he was employed in the Indian Air Force from 11.12.1981 to 03.01.1984. Indisputably, he is a Direct Entry Officer in the civil post of Assistant Commandant on 06.01.1985, who joined in the Coast Guard after one year of leaving Indian Air Force following the normal recruitment procedure. Moreover, he is neither a re-employed officer nor a permanently absorbed officer.

48. As a matter of fact, the Respondent/Petitioner, in his letter dated 26.05.1986 addressed to the Director General Coast Guard, New Delhi, had made a request to count his service in the Indian Air Force as per existing rules. Further, he had stated that the break in service may kindly be condoned since he had not received any gratuity from the Indian Air Force. A reply affidavit from the 2nd Appellant/2nd Respondent dated 04.06.1986 was given to the Respondent/Petitioner inter alia stating that his previous commissioned service in the Air Force, if at all, may be counted for the purpose of pension but it will not be counted for seniority in the service and further, he was informed to forget about getting any seniority on the basis of his previous service of Air Force. Further, he was informed that his request atleast would help in getting the benefit of his previous service for the purpose of pension.

49. The Respondent/Petitioner, not being content with the reply dated 04.06.1986 of the 2nd Appellant/2nd Respondent, again sent a letter dated 17.06.1987 and sought for counting his previous service in Air Force for accommodation and pension and the same was forwarded through proper channel. In fact, the Deputy Commandant, Supply Officer, Commanding Officer, CGAS, Chennai had addressed a communication on 27.04.1994 to the Director General of Coast Guard Headquarters, New Delhi, among other things, mentioning that the Officer was not issued any service certificate/book but enclosed his release POR and the course report from Air Force academy for further necessary action.

50. It comes to be known that the 2nd Appellant/2nd Respondent through communication dated 03.11.1997 addressed to the Commander, Coast Guard Region (East), Chennai had stated that the case of the Respondent/Petitioner (0110-X) regarding counting of former service rendered in Indian Air Force for the period from 11.12.1981 to 03.01.1984 towards current engagement for pensionary benefits was examined in consultation with audit authorities i.e., CDA (Navy) Mumbai, had observed from the certificate of verification of military

service issued by Air Head Quarters, New Delhi duly countersigned by CDA (AF) New Delhi that the service of the Officer was terminated before the pension was earned and they had also stated that the officer was appointed in Coast Guard as a fresh candidate and as such the counting of his former service from 11.12.1981 to 03.01.1984 was not acceptable in Audit.

51. It transpires that the Coast Guard, New Delhi, in its letter dated 26.07.2001, addressed to the Commander, Coast Guard Region (West), Mumbai, had stated that the service rendered by the Respondent in Indian Air Force for the period from 11.12.1981 to 03.01.1984 was allowed to be counted towards pension by Chief Controller of Defence Accounts (Pension), Allahabad vide their letter No. GI/C/Counting/253/Army/V dated 12.07.2001 and that the officer was pleased to be informed accordingly with a copy of CCDA (P) Allahabad letter attached.

52. The Respondent/Petitioner, after keeping quiet for nearly 11 years, projected a representation dated 21.05.2012, among other things, making a request that his promotions be reviewed and readjusted as per para 5 of the table and accordingly be promoted. For better appreciation of the subject matter in issue, the said table is extracted hereunder:

"5. According to the RR promulgated vide the above referred SRO 69 dated 07 Mar 91, SRO 236 of 17 Sep 82 as amended by SRO 133 dated 14 Jun 84 and the provisions of the Coast Guard (Seniority and Promotion) Rules 1986 (pre revised my promotion to various ranks should have been as per table given below.

53. In effect, in the aforesaid letter/representation dated 21.05.2012, the Respondent had, in paragraph 6, stated the following:

"6. A closer look at the above chart will indicate the following:

(i) My promotions were to be independent of the promulgated promotions profile of a direct entry GD Officers both in terms of Qrs and time period required.

(ii) My promotion profile could not have followed the normal course of promotions profile followed by a direct entry Coast Guard GD officer due to the difference in QRs and time lines promulgated vide the RR.

(iii) Since there is a different time line for promotion promulgated for GD officers with commissioned service, it stands to reasons then, that I would have been promoted to various ranks as per promulgated time period unaffected and irrespective of the delays that took place in the promotion of the other GD officers.

(iv) The amendments in the promotion rules in 2004 would not have affected my promotions at any stage and that I would have followed the pre revised promotion rules at all stages and for all my promotions."

54. The 3rd Appellant/3rd Respondent, for the representation of the Respondent/Petitioner dated 21.05.2012, in the letter dated 15.10.2012 addressed to the Commanding Officer of ICGAS, Chennai had, inter alia, stated that the

Respondent/Petitioner was appointed in Coast Guard as Assistant Commandant (GD) on 06.01.1985 as a Direct Entry (GD) Officer and further, he was neither a re-employed officer nor a permanently absorbed officer at the time of his appointment. Further, it was mentioned that only in the year 2001 that the service rendered by the Respondent/Petitioner in the Indian Air Force for the period from 11.12.1981 to 03.01.1984 was counted towards pension by PCDA (P) Allahabad as per applicable norms and added further, since the officer was recruited as direct entry (GD) Officer, he is not entitled for benefit applicable to re-employed/permanent absorbed officers. In short, the Respondent/Petitioner's request in this regard was not admissible under any rules and accordingly, the competent authority had rejected his representation being devoid of merits.

The Legal Position on Administrative Instructions:

55. It is to be pointed out that where administrative instructions and statutory rules are silent on particular aspect, then, an executive order can be issued to cover that silent area as per decision of the Hon"ble Supreme Court in Dr. (Mrs.) Sandhya Jain Vs. Dr. Subhash Garg and Another, AIR 2000 SC 29 : (1999) 8 JT 321 : (1999) 6 SCALE 588 : (1999) 8 SCC 449 : (2000) SCC(L&S) 66 : (1999) 4 SCR 12 Supp : (2000) 2 SLJ 92 : (2000) 1 UJ 267 : (1999) AIRSCW 4145 : (1999) 8 Supreme 709 .

56. It is to be noted that the administrative instructions are usually contained in circulars or memorandum issued by the authorities from time to time. However, it can exist in any informal fashion.

57. In fact, the binding character of such instructions is also a necessary implication of fair and good administration and courts have invoked the equitable principle of promissory estoppel for their enforcement as per decision of the Hon"ble Supreme Court in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., (1968) 2 SCR 366 .

58. Indeed, the executive instructions can supplement a statutory rule or cover areas to which the rule does not extend. That apart, administrative instructions or circulars to fill up gaps in the statutory rules and regulations can only be issued by an authority which had the competency to make the rules and regulations as per decision in Parmeshwar Prasad Vs. Union of India and Others, AIR 2001 SC 2982 : (2002) 92 FLR 19 : (2001) 9 JT 275 : (2001) LabIC 3993 : (2001) 7 SCALE 507 : (2002) 1 SCC 145 : (2002) 1 SLJ 333 : (2001) AIRSCW 4465 : (2001) 7 Supreme 875 .

59. Moreover, one must be aware of executive or administrative instructions usually comprise directions or norms or policy matters issued by the State in exercise of its executive power in contra distinction to its legislative or judicial power as per decision in Subhash Chand Jain Vs. Delhi Electricity Supply Undertaking and Others, AIR 1981 SC 75 : (1980) LabIC 1189 : (1979) 3 SCC 786 : (1979) 11 UJ 183 .

60. As a matter of fact, if policy guidelines are issued relatable to executive power, it is axiomatic that having enunciated principle of general application having communicated it to all concerned, the administration issuing the same is bound by it. The authority of course can change the policy but until that has done bound to adhere it as per decision of the Hon''ble Supreme Court in Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others, (1993) 4 JT 387 : (1993) 3 SCALE 218 : (1993) 4 SCC 25 : (1993) 1 SCR 321 Supp .

61. Also that, when a qualification has been prescribed for a post that cannot be obliterated by posting those who did not have qualification against those who have qualification as per decision of the Hon''ble Supreme Court in Subhash Chand Jain Vs. Delhi Electricity Supply Undertaking and Others, AIR 1981 SC 75 : (1980) LabIC 1189 : (1979) 3 SCC 786 : (1979) 11 UJ 183 .

62. Furthermore, an administrative order or instruction which is intended to confer certain rights or benefits will be treated as binding and enforceable as per decision of the Hon''ble Supreme Court in Union of India (UOI) Vs. K.P. Joseph and Others, AIR 1973 SC 303 : (1973) 1 SCC 194 : (1973) 2 SCR 752 : (1973) 1 SLJ 1 .

63. Moreover, Courts will not interfere where the retrospective operation does not cause any prejudice as per decision in Union of India (UOI) and Others Vs. L.V. Vishwanathan, (1997) 9 JT 89 : (1997) 7 SCALE 16 : (1998) 1 SCC 479 : (1998) SCC(L&S) 312 : (1997) 5 SCR 112 Supp . Added further, the subsequent administrative instructions can alter the original administrative instructions as per decision of the Hon''ble Supreme Court in Union of India V. Majji Jangammayya and others, AIR 1977 Supreme Court 757.

Glimpse of Case Laws on Promotion:

64. At this stage, this Court to prevent an aberration of Justice and to promote substantial cause of Justice, cites the following decisions:

(a) In the decision of the Hon''ble Supreme Court in Gangadhar Kar V. Durgacharan Panda and others, 1995 Supp (3) Supreme Court Cases 133, it was held that "promotion cannot be given with retrospective effect from the date when the employee was not born in the cadre and such promotions cannot adversely affect the interest of others already in the cadre. But where in doing equitable justice it was required to give retrospective promotion, such promotion entails seniority from the date of proforma promotion and accordingly his right to further promotion with effect from the date when junior was promoted upheld."

(b) In the decision of the Hon''ble Supreme Court in C.P. Kalra Vs. Air India through its Managing Director, Bombay and Others, (1995) 1 LLJ 164 : (1994) 1 SCC 454 Supp , it is held that "Generally Courts do not interfere with the details of a promotional policy etc."

(c) In the decision of the Hon''ble Supreme Court in Y. Ramanjaneyulu Vs. State

of A.P. and Others, AIR 1985 SC 928 : (1985) 1 SCALE 655 : (1985) 2 SCC 723 : (1985) 3 SCR 569 : (1985) 1 SLJ 544 : (1985) 17 UJ 766 , it is held that "If promotion is denied to an employee in violation of rules and the affected employee seeks judicial review of such denial after considerable lapse of time, the Court might not be inclined to give him specific relief of promotion or deemed promotion and instead could direct monetary compensation to be paid".

(d) In the decision of the Hon"ble Supreme Court in Government of Andhra Pradesh and Others Vs. A.P. Jaiswal and Others, AIR 2001 SC 499 : (2000) 8 SCALE 181 : (2001) 1 SCC 748 : (2001) SCC(L&S) 316 : (2001) AIRSCW 101 : (2000) 8 Supreme 575 , it is held that "even if the reviewing Court holds that a particular employee or group of employees were withheld to seniority over another, it would not straight away direct the promotion of former when the service conditions did not provide for an absolute right to promotion from stage to stage."

(e) In the decision of the Hon"ble Supreme Court in State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, AIR 2000 SC 2306 : (2000) 5 JT 389 : (2000) 4 SCALE 417 : (2000) 9 SCC 94 : (2000) SCC(L&S) 845 : (2000) AIRSCW 2389 : (2000) 4 Supreme 197 , wherein in paragraph 26, it is held as follows:

"26. It appears that the High Court totally lost sight of the fact that in his petitions filed from time to time Brij Bihari Prasad Singh had not impleaded any of his seniors as party-respondents. In the absence of persons likely to be affected by the relief prayed for, the writ petitions should have normally been dismissed unless there existed specific reasons for non-impleadment of the affected persons. Neither was any reason assigned by the writ petitioner nor did the Court feel it necessary to deal with this aspect of the matter. Ignoring such a basic principle of law has resulted in the supersession of 168 Inspectors and 407 Deputy SPs. The Writ Petition filed by Brij Bihari Prasad Singh being totally misconceived, devoid of any legal force and prayers made being in contravention of the rules applicable in the case deserved dismissal, which was unfortunately not done with the result that the interests of many seniors have been threatened, endangered and adversely affected. The appeal of the State has, therefore, to be allowed by setting the impugned judgment."

(f) In the decision of the Hon"ble Supreme Court in State of Mysore Vs. C.R. Sheshadri and Others, AIR 1974 SC 460 : (1974) LabIC 362 : (1974) 1 LLJ 301 : (1974) 4 SCC 308 : (1974) 3 SCR 87 : (1974) 6 UJ 146 , it is held as follows:

"The power to promote an officer belongs to the Executive and judicial power may control or review Government action but cannot extend to action as if it were the Executive. The Court may issue directions but leave it to the Executive to carry it out. The judiciary cannot promote or demote officials but may demolish a bad order of Government or order reconsideration on correct principles. If the rule of promotion is one of sheer seniority it may well be that

promotion is a matter of course. On the other hand if seniority-cum-merit is the rule, promotion is problematical. In the absence of positive proof of the relevant service rules, it is hazardous to assume that by efflux of time the petitioner would have spiralled up to Deputy Secretaryship. The latter part of the High Court's order is therefore set aside."

(g) In the decision of the Hon^{ble} Supreme Court in *Life Insurance Corporation of India and Others Vs. Jagmohan Sharma and Others*, (1998) 80 FLR 833 : (1998) 7 JT 387 : (1998) 9 SCC 219 : (1998) SCC(L&S) 528 , at special page 220, in paragraph 6, it is observed as follows:

"6. In the facts, as noticed by the learned Single Judge, in our opinion, the appropriate direction would have been to the appellants to consider the case of Respondent 1 for his promotion to the post of Assistant Divisional Manager/Senior Branch manager from the date his juniors from amongst Respondents 5 to 67 in the writ petition were promoted on the same criteria on which those respondents were promoted. We, therefore, modify the direction of the learned Single Judge, as noticed above, and direct that the appellants shall consider the case of Respondent 1 for his promotion with effect from the date his juniors from amongst Respondents 5 to 67 in the writ petition were promoted and if found fit for promotion, to grant to him all the consequential benefits. The consideration of Respondent 1 for promotion shall be on the same basis and on such material as was considered for promoting Respondents 5 to 67. The needful shall be done by the appellant within three months. The order of the Division Bench dismissing the LPA shall also, thus, stand modified accordingly. The appeal is allowed and disposed of to the extent indicated above. No costs."

(h) In the decision of the Hon^{ble} Supreme Court in *Dr. M.C. Gupta and Others Vs. Dr. Arun Kumar Gupta and Others*, (1979) LabIC 296 : (1979) 2 SCC 339 : (1979) 2 SCR 853 , it is, among other things, observed as follows:

"...Even then the court, while enforcing the rule of law, should give due weight to the opinions expressed by the experts and also show due regard to its recommendations on which the State Government acted. If the recommendations made by the body of experts, keeping in view the relevant rules and the regulations, manifest due consideration of all the relevant factors, the Court should be very slow to interfere with such recommendations."

(i) In the decision of the Hon^{ble} Supreme Court in *Indian Airlines Corporation Vs. Capt. K.C. Shukla and Others*, (1992) 65 FLR 934 : (1992) 5 JT 565 : (1993) 1 LLJ 215 : (1992) 2 SCALE 587 : (1993) 1 SCC 17 : (1992) 1 SCR 811 Supp : (1993) 2 SLJ 2 : (1992) 2 UJ 796 at special page 18, it is held as follows:

"Adjusting equities in exercise of extraordinary jurisdiction is one thing but assuming the role of selection committee is another. The Court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. Not that it is powerless to do so and in a case where after removing the illegal part it is found that the officer was not promoted or selected

contrary to law it can issue necessary direction. But it would be going too far if the Court itself evaluates fitness or otherwise of a candidate, as in this case. In the present case the selection for promotion was based on interview and Annual Confidential Reports. The High Court erred in granting alternative relief by reducing the interview percentage and then working out proportionally the marks obtained by respondent on ACR evaluation and interview and directing to promote him as by this method he would secure the minimum required. This cannot be accepted as proper exercise of jurisdiction under Article 226."

(j) In the decision of this Court in *R. Ponnusamy Vs. The Registrar, Anna University and Another*, (1992) 1 MLJ 540 , it is observed and held as follows:

"It is well settled that the right under Article 16 of the Constitution is only to that a person should be considered for the appointment and he cannot insist that he should be appointed. The second respondent has been considered by the Selection Committee and the Selection Committee consisted of Educationists and Academicians, well versed in subjects, and it is not for this Court, to sit in appeal to interfere with the decision of the Selection Committee with regard to the suitability of the candidate for that particular post. I am of the view that none of the decisions cited by the learned counsel for the petitioner can have any relevance to the facts of the case on hand as I have stated above. In this Case, it is very clear that for the post of Lecturer in Geology, a Doctorate Degree or research work of an equally high standard in the field of specialisation relating to that post and a good academic record with at least second class Master's Degree in a relevant subject from an Indian University or an equivalent degree from a foreign University are required and if a candidate possessing a Doctorate degree or equivalent research work is not available or is not considered suitable, a person possessing a good academic record (Weightage being given to M.Phil or equivalent degree or research work of equality) will be appointed. The second respondent has got research work to his credit and high standard in the field of specialisation relating to that post i.e., Photogeology. As such in my view when a person like the second respondent, who has got better qualifications, which is essential as mentioned in clause 13 of the information and instructions to candidates, is appointed, the petitioner can have no grievance. Only if the second respondent has not got that specialisation. The petitioner can rely upon the M.Phil qualification he has got, as rightly pointed out by the learned counsel for the University. M.Phil qualification of the petitioner is not relevant to the subject for which the appointment is made. As such, there is no need to interfere with the order of appointment made by the University selecting the second respondent for that post. In educational matters, it is for the Authorities concerned to decide about the suitability of the candidate and it is not for the court sitting under Article 226 of the Constitution of India to decide such issue, unless there is infringement of fundamental right and also violation of Arts. 15 and 16 of the Constitution. I do not see any violation of Arts. 15 and 16 of the Constitution. On the facts of the case, the appointment made in this case is perfectly legal.

65. In fact, no one has a vested right to be promoted. Besides this, a person must be eligible for promotion having regard to the qualification prescribed for the post before he can be considered for promotion as per decision in *R. Prabha Devi and Others Vs. Government of India*, through Secretary, Ministry of Personnel and Training, Administrative Reforms and Others, AIR 1988 SC 902 : (1988) 1 JT 488 : (1988) 2 LLJ 56 : (1988) 1 SCALE 453 : (1988) 2 SCC 233 : (1988) 3 SCR 147 : (1988) 3 SLJ 140 : (1988) 1 UJ 602 . As such, it is the duty of the Court concerned to consider whether the aspirant fulfil the requisite qualifications as per decision in *Chandigarh Administration Vs. K.K. Jerath*, AIR 1995 SC 299 : (1994) 6 JT 315 : (1994) 4 SCALE 319 : (1994) 3 SCC 582 Supp : (1994) 4 SCR 35 Supp .

66. It cannot be forgotten that whether an employee has a right to promotion has to be determined with reference to relevant statutory provisions by which his service is governed. No wonder, it is the prerogative of an employer to prescribe qualification. When an expert qualification is fixed by the competent authority, ordinarily Courts will not interfere, as per decision of the Hon"ble Supreme Court in *O.P. Lather and Others etc. Vs. Satish Kumar Kakkar and Others*, AIR 2001 SC 821 : (2001) 88 FLR 997 : (2001) 2 JT 280 : (2001) 1 SCALE 608 : (2001) SCC(L&S) 528 : (2001) 1 SCR 827 : (2001) AIRSCW 619 : (2001) 2 Supreme 22 .

67. It is to be remembered that in legal proceedings challenging the promotional process which could prejudicially affect the promotions already granted such affected promotions were necessary persons and in their absence the issues could not be adjudicated upon as per decision of the Hon"ble Supreme Court in *Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others*, AIR 2004 SC 1459 : (2004) 1 LLJ 1061 : (2004) 1 SCALE 149 : (2004) 2 SCC 76 : (2004) SCC(L&S) 337 : (2004) 1 SCR 19 : (2004) 2 UJ 900 : (2004) AIRSCW 404 : (2004) 1 Supreme 207 .

68. Decisions on Delay and Latches:

(a) In the decision of the Hon"ble Supreme Court in *M/s. Samant and Another Vs. Bombay Stock Exchange and Others*, AIR 2001 SC 2117 : (2001) 1 JT 381 Supp : (2001) 3 SCALE 561 : (2001) 5 SCC 323 : (2001) 2 UJ 1118 : (2001) AIRSCW 1838 : (2001) 3 Supreme 583 at special page 2119, it is, among other things, observed as follows:

"9. In the light of the averments made in the writ petition, counter affidavit filed on behalf of the respondent no. 1 and looking to the correspondence, it is clear that the appellants were aware of their being declared as defaulters in the month of March, 1987 itself. The same is evident even from the first paragraph of their own letter dated 31.3.1987. They chose to file writ petition only on 26.10.1990. No doubt in the meantime they had made several representations to various authorities. The plea of the appellants for revocation of the action declaring them as defaulters was rejected on 09.04.1987. A notice declaring them as defaulters

had been affixed on the notice board. Prior to 27.03.1987 they had surrendered their office room No. 209, Second floor, Jeejeebhoy Tower to the Stock Exchange to enable it to pay off their dues to the Stock Exchange, if any, to the member brokers for defective deliveries of shares, to the clearing house and also to the erstwhile clients. In the circumstances, the High Court was justified in dismissing the writ petition on the ground of delay and laches particularly so when rights were created in favour of thirty party namely, Vijay C. Shah by selling membership as early as on 29.1.1990 pursuant to the resolution dated 21.04.1989. These appellants did not take any effective steps either to get the stay of the operation of the notice dated 25.03.1987 declaring them as defaulters and similarly they did not take steps to pursue to get any interim order to stop sale of membership. Merely because the appellants went on making representations to the authorities who could not grant them any relief or that they were not sure about the legal position as to the maintainability of writ petition against the respondent no. 1, in our view, are not the grounds to justify the delay and laches on the part of the appellants in filing the writ petition. Nothing prevented them to take such course as was available to them in law without any loss of time...."

(b) In the decision of the Hon"ble Supreme Court in Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others, AIR 1984 SC 971 : (1984) 2 CompLJ 59 : (1984) 40 CTR 184 : (1984) 2 ECC 208 : (1984) 16 ELT 171 : (1985) 155 ITR 560 : (1984) 1 SCALE 480 : (1984) 3 SCC 362 : (1984) 3 SCR 180 : (1984) 16 UJ 539 , it is held as follows:

"There is no period of limitation prescribed by law in respect of petitions filed under Article 226. Whether relief should be granted to a petitioner under Article 226 where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article 226, it is appropriate ordinarily to construe any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable. This rule, however, cannot be a rigid formula. Each case has to be judged on its own facts and circumstances touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite party or to the general public etc."

(c) In the decision of the Hon"ble Supreme Court in P.S. Sadasivaswamy Vs. State of Tamil Nadu, AIR 1974 SC 2271 : (1974) 29 FLR 433 : (1974) LabIC 1431 : (1975) 1 SCC 152 : (1975) 2 SCR 356 : (1974) 6 UJ 654 , whereby and whereunder, in paragraph 2, it is, inter alia, held as follows:

"....A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case

where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. He consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

(d) In the decision of the Hon"ble Supreme Court in State of Orissa Vs. Lochan Nayak (Dead) by Lrs., (2003) 1 JT 622 Supp : (2003) 6 SCALE 268 : (2003) 10 SCC 678 : (2003) 2 SCR 63 Supp , it is held that "The respondent filed a petition against an order only in 1992 and held that due to inordinate delay in filing the petitions, the High Court ought not to have entertained the writ petition."

(e) In the decision of the Hon"ble Supreme Court in S. Veerakumar Vs. State Bank of India, (2004) 1 LLJ 138 : (2003) WritLR 777 , it is held as follows:

"Concedingly, the petitioner has been paid gratuity as per the scheme which the petitioner has received immediately after retirement without any demur. Though the petitioner has demitted office on 31.07.1991, the present writ petition has been filed only on 21st of February 2000 after a lapse of eight long years. The petitioner is obviously guilty of laches and the present attempt is to resurrect the claim which is stale and already barred by limitation. The writ petition is highly belated and the petitioner is guilty of laches and consequently on this short ground the writ petition is liable to be rejected."

(f) In the decision of the Hon"ble Supreme Court in G.C. Gupta and Others Vs. N.K. Pandey and Others, AIR 1988 SC 268 : (1987) 2 JT 448 : (1987) 2 SCALE 1314 : (1988) 1 SCC 316 : (1988) 2 SCR 185 , it is observed that "The delay of 17 years is fatal". Also that, in the aforesaid decision, it is held that "each person ought to be entitled to sit back and consider that his appointment and promotion effected long time ago would not be set aside after the lapse of time."

Principle of Acquiescence:

69. It is to be relevantly pointed out that one cannot brush aside the principle underlying the "Doctrine of Acquiescence" to the effect that the negligence or omission on the part of the applicant to assert his right, had caused prejudice to the adverse party, as per decision of the Hon"ble Supreme Court in Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, AIR 1969 SC 329 : (1969) 1 SCR 808 .

70. A cursory perusal of Rule 19 of CCS (Pension) Rules, 1972 speaks of "Counting of Military service rendered before civil employment". Therefore, it can safely be concluded that Rule 19 of CCS (Pension) Rule, 1972 is to be applied for

the purpose of counting of his service for pensionable service. In the instant case on hand, the Respondent's previous service in the Air Force was considered for the purpose of pension as per orders dated 26.07.2001 passed by the 2nd Appellant/2nd Respondent.

71. It is to be borne in mind that vide SRO 86 dated 03.04.2002 was issued by the Central Government by amending the Rule of Coast Guard (Seniority and Promotion) Rules, 1987 by exercising the powers under Section 123 of the Coast Guard Act, 1978. Likewise, SRO 133 dated 17.09.2004 amending the Coast Guard (Seniority and Promotion) Rules 1987 was issued by the Central Government in exercise of the powers conferred by sub-section (1) of Section 123 of the Coast Guard Act, 1978. The Respondent/Petitioner had not challenged these two aforesaid SROs at the earliest point of time and in fact, remained unsuccessful in his five endeavours.

72. One cannot brush aside a very vital fact that the Respondent/Petitioner's letter dated 26.05.1986 relating to his request for counting his previous service was replied by the Appellants on 04.06.1986 rejecting his claim and further, he was advised to pursue his case relating to previous service in Air Force for the purpose of pension. Again he sent a letter dated 17.06.1987 and made a request for counting his previous service in Air Force for accommodation and pension and ultimately he was informed on 03.11.1997 by the 2nd Appellant/2nd Respondent that the CDA (Navy), Mumbai had observed from the certificate of verification of military service issued by Air Headquarters, New Delhi etc. that his service was terminated before the pension was earned and further, he was appraised of the fact that he was appointed in Coast Guard as a fresh candidate and as such the counting of his former service from 11.12.1981 to 03.01.1984 was not acceptable in audit. Undoubtedly, the Respondent/Petitioner was informed by the 2nd Appellant/2nd Respondent as per letter dated 26.07.2001 that his former military service from 11.12.1981 to 03.01.1984 would count in full towards his civil pension.

73. At this stage, it is useful to mention that Rule 10 of the Coast Guard (Seniority and Promotion) Rules, 1987 deals with "Qualification for Promotions". The ingredients of Rule 10(2)(b) of the said Rules, 1987 enjoins as under:

"(b) Re-employed.-In the case of re-employed officers their service from the date of re-employment shall be counted for promotion purposes."

Therefore, in the instant case on hand, admittedly, the Respondent/Petitioner's former service in Indian Air Force was terminated before the pension was earned by him, as seen from the contents of the letter dated 03.11.1997 of the Deputy Director Pers/OA&R for Director General addressed to the Commander, Coast Guard Region (East), Chennai. Only for a limited purpose viz., civil pension, the Respondent/Petitioner's former service rendered in Indian Air Force from 11.12.1981 to 03.01.1984 was to be counted in full as per letter dated 12.07.2001 of the Chief Controller of Defence Accounts (Pension), Allahabad.

74. For a fuller and better appreciation of the subject matter in issue, it is worthwhile for this Court to extract the pre-revised criteria and revised criteria for promotion as per Rule 10 of Annexure-II of Coast Guard (Seniority and Promotion) Rules, 1987 which runs as follows:

75. According to the Appellants, in terms of the new promotion criteria, the Respondent/Petitioner was eligible for promotion to the rank of DIG in the year 2005 because of the reason that he had completed 3 years as Commandant with total 20 years of service with effect from 01.01.1995. But he was not considered as he was not in the zone of consideration as only 5 vacancies were available and 16 officers were considered by applying the principle/formula of 3 officers being considered against one vacancy subject to batch integrity in terms of Coast Guard Order 02/2005. Furthermore, he was considered for promotion to the rank of DIG from 2006 onwards but he was not promoted in the 2005 prescribed "Looks" (attempts) due to his relative low merit. In fact, his ACRs for the concerned period were reviewed by the PARB along with other officers of the rank of Commandant and the deviation in the ACT gradings were moderated by taking into account his past profile and demonstrated past performance. In this connection, the tabular details of the DPC are projected as under:

76. It is to be remembered that in the year 2004, consequent to implementation of V Central Pay Commission Recommendations, the Coast Guard officers cadre was restructured and a new rank of a Commandant (JG) was introduced in between the ranks of Deputy Commandant and Commandant. Therefore, Rules 5, 7 and Rule 10 of the Coast Guard (Seniority and Promotion) Rules, 1987 was amended, in terms of SRO 133 dated 17.09.2004.

77. At this juncture, it is relevant for this Court to make a pertinent mention that the recruitment rules relating to Coast Guard Officers (published in the Gazette of India vide SRO 236 dated 17.09.1982) speaks of Serving Assistant Commandants with 6 years experience are eligible for promotion to the rank of Deputy Commandant. Subsequently, the Coast Guard (Seniority and Promotion) Rules, 1987 was published in SRO 6E dated 26.02.1987. In reality, Rule 10 concerning "Qualification for Promotion" was framed after recruitment of the Respondent/Petitioner in service and the same was in force till 2004. Also that, the said SRO refers to the eligibility criteria for Coast Guard officers. The Respondent as a direct entry Assistant Commandant was promoted as Deputy Commandant after completion of 6 years on 17.12.1991 and was promoted as a Commandant in the year 1996. By virtue of SRO 98 dated 09.07.1988, the Rules 4 and 10 of the Coast Guard (Seniority and Promotion) Rules, 1987 were amended and the Performance Appraisal Review Board system was brought into force by means of Amendment Notification vide SRO 86 dated 03.04.2002, in and by which, the following sub para was inserted after sub para (4) of para 7 of the Coast Guard (Seniority and Promotion) Rules, 1987.

"(5) All reports of Coast Guard Officers of the rank of Commandant (JG) and Commandant will undergo a "Performance Appraisal Review" at CGHQ by a

Performance Appraisal Review Board (PARB) with a view to analyse instances of wide deviations from their previous overall career profile."

78. Suffice it for this Court to point out that filing of the present Writ Petition by the Respondent/Petitioner nearly after 11 years, after receipt of an order dated 26.07.2001 passed by the 2nd Appellant/2nd Respondent (pertaining to his former Indian Air Force service period to be counted for pension purpose alone) has not been satisfactorily explained to the subjective satisfaction of this Court.

79. Be that as it may, on a careful consideration of respective contentions and in the light of detailed qualitative and quantitative discussions as mentioned supra and also this Court, taking note of the overall assessment of the entire facts and circumstances of the present case in a comprehensive and conspectus manner, comes to a resultant conclusion that the Respondent/Petitioner's service rendered in Indian Air Force for the period from 11.12.1981 to 03.01.1984 was rightly ordered to be counted in full towards his pension, through letter dated 12.07.2001 of the Chief Controller of Defence Accounts (Pension), Allahabad and in fact, his service in Indian Air Force was terminated before the pension was earned by him. Further, in view of the fact that he was appointed in Coast Guard as a fresh candidate, his plea for counting of former service in Indian Air Force for the period from 11.12.1981 to 03.01.1984 for the purpose of seniority and promotion rightly was not accepted by the Appellants. Moreover, the Respondent/Petitioner was informed by the Appellants in this regard through an order dated 26.07.2001 and after remaining in lull for nearly 11 years, he projected another representation on 21.05.2012 making a request to count his previous service in Air Force and this was rejected by the Coast Guard Regional Headquarters (East), through letter dated 15.10.2012. Further, in view of the fact that under Section 123(1) of the Coast Guard Act confers powers on the Central Government to make Rules, the SRO 133 dated 17.09.2004 and SRO 86 dated 03.04.2002 are certainly in order and they cannot be interfered with. Also that, the Letter No. NA/1109/2005 dated 29.08.2005 on the subject of "Inter-se Seniority between Naval and Coast Guard Officers" cannot be found fault with. Consequently, the Respondent/Petitioner is not entitled to claim any of the relief's sought for by him in the Writ Petition. Therefore, we hold that the views taken by the Learned Single Judge, in allowing the Writ Petition, are not legally tenable in the eye of Law and accordingly, this Court sets aside the order dated 13.08.2014 in W.P. No. 18270 of 2013. Resultantly, the Writ Appeal succeeds.

80. In the result, the Writ Appeal is allowed, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.