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Gauhati High Court

Case No: Writ Petition (C) No. 4880 and 5377 of 2012

Union of India and Others	APPELLANT
Vs	
Swapnaneel Deka and Others	RESPONDENT

Date of Decision: May 14, 2013

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19
- All India Services Act, 1951 - Section 3, 3(1)
- Constitution of India, 1950 - Article 117, 14, 16, 16(1), 16(4)

Citation: (2013) 3 GLD 734 : (2013) 3 GLT 790

Hon'ble Judges: P.K. Musahary, J; Iqbal Ahmed Ansari, J

Bench: Division Bench

Advocate: H.P. Raval, Addl. SG, Mr. R. Sharma, Mr. N.J. Dutta, Mr. D.K. Mishra, Mr. P.K. Tiwari, Mr. D.C. Kabir and Mr. N.J. Dutta, for the Appellant; N. Dutta, Mr. A. Verma, P.S. Deka, GA, Assam, Mr. N. Sarma, GA, Meghalaya, Mr. R. Borpujari, I. Hussain, Assistant SG, Mr. N. Sarma and Mr. A. Nath, for the Respondent

Final Decision: Disposed Off

Judgement

Iqbal Ahmed Ansari, J.
At the root of controversy in both these writ petitions, made under Article 226 of the Constitution of India, lies the amendments to Sub-rule (1) of Rule 4 of The Indian Police Service (Recruitment) Rules, 1954 (hereinafter referred to as the "Recruitment Rules, 1954"), by virtue of the Indian Police Service (Recruitment) Amendment Rules, 2011 (hereinafter referred to as the "Amendment Rules, 2011"), which have been brought into force with effect from 29.08.2011.

(ii) Prior to the coming into force of the Amendment Rules, 2011, the Recruitment Rules, 1954, had been framed by the Central Government, in exercise of its power under

Sub-section (1) of Section 3 of the All India Services Act, 1951 (hereinafter referred to as the "1951 Act"), after holding, in terms of the provisions of Sub-section (3) of the 1951 Act, consultation with the Governments of the States concerned for recruitment

(iii) Immediately preceding introduction of the Amendment Rules, 2011, Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, prescribed two modes of recruitment, namely, (i) by competitive examination as embodied in Rule 4(1)(a) and (ii) by promotion of substantive members of a State Police Service as embodied in Rule 4(1)(b). In short, thus, Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, provided, immediately before the Amendment Rules, 2011, two distinct methods of recruitment to Indian Police Service, namely, (i) by competitive examination and (ii) by promotion of substantive members of a State Police Service.

(iv) By Amendment Rules, 2011, Clause (b) of Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, was amended by sub-dividing Clause (b) into Clause (b) and (c) and prescribing thereunder two distinct methods of recruitment inasmuch as the amended Clause (b) and (c) read, (b) by limited competitive examination, (c) by promotion of members of a State Police Service.

(v) Thus, with the coming into force of the Amendment Rules, 2011, altogether three distinct methods of recruitment were embodied in the Recruitment Rules, 1954, these three methods being (i) by competitive examination as provided in Rule 4(1)(a); (ii) by a limited competitive examination as provided by the amendments incorporated in Rule 4(1)(b); and (iii) by promotion of members of a State Police Service as provided pursuant to the amendment embodied in Rule 4(1)(c).

(vi) By the Amendment Rules, 2011, Rule 8 had been introduced to the Recruitment Rules, 1954, whereby detailed provisions for holding Limited Competitive Examination (in short, "LCE") for recruitment to the Indian Police Service have been made, clarifying therein that LCE shall be conducted, at such intervals, as the Central Government may, in consultation with the Union Public Service Commission (in short, "the UPSC"), determine from time to time. The Regulations, relating to eligibility criteria and other essential conditions of recruitment to the Indian Police Service by taking resort to the LCE, had also been framed and these Regulations had been named and styled as Indian Police Service (Appointment by Limited Competitive Examination) Regulations, 2011, (in short, "the Amendment Regulations 2011), which came into force on 03.03.2012 and which were laid, on 25.04.2012, in the Parliament, in terms of the provisions of Sub-section (2) of Section 3 of the 1951 Act. Pursuant thereto, the UPSC issued an advertisement, on 10.03.2012, inviting applications for holding of the LCE.

(vii) Though prior to the holding of the LCE by the UPSC, the provisions, made by the Central Government introducing LCE as a method of recruitment to the Indian Police Service, had been challenged, in Delhi High Court, by way of a Public Interest Litigation, which had given rise to Writ Petition (C) No. 1610/2012 (Zakat Foundation of India Vs.

Union of India and others), the writ petition was, however, dismissed by the Delhi High Court on 25.04.2012. Subsequent to the decision of the Delhi High Court, LCE was held on 20.05.2012.

(viii) The Amendment Rules, 2011, which provided for LCE, had also been put to challenge, in the Supreme Court, by Writ Petition (C) No. 326/2012; but the Supreme Court dismissed the writ petition on 27.08.2012.

(ix) The introduction of the LCE by the Amendment Rules, 2011, to the Recruitment Rules, 1954, came to be challenged, by way of Original Application (in short, "OA") No. 112/2012, in the Central Administrative Tribunal, Guwahati Bench (hereinafter referred to as the "learned Tribunal"), too, by six officers, who are members of the Assam Police Service, the challenge being, broadly stated, on the ground that the amendments, in question, were wholly illegal inasmuch as the Amendment Rules, 2011, which were purported to have been framed in exercise of the Central Government"s power u/s 3(1) of the 1951 Act could not have been legally framed, for, in order to amend Rule 4 of the Recruitment Rules, 1954, the Central Government ought to have, in the light of the provisions of the 1951 Act read with the Recruitment Rules, 1954, consulted the Joint Cadre Authority (i.e., the "Assam-Meghalaya Joint Cadre Authority), in respect of the State of Meghalaya and the State of Assam, but the same having not been done, the Amendment Rules, 2011, were not tenable in law.

(x) The second ground of challenge, posed to the Amendment Rules, 2011, was that the amendments were devoid of any cogent nexus with the objects sought to be achieved thereunder and that the amendments could not have been made without having, first, made suitable amendments in the Indian Police Service (Fixation of Cadre Strength) Regulation, 1955, and the Indian Police Service (Cadre) Rules, 1954. Yet another ground of challenge, made to the Amendment Rules, 2011, was that the amendment Rules had abridged the scope of promotion of the State Police Service Officers, such as, the applicants in OA No. 112/2012 and persons similarly situated inasmuch as they might become junior to those, who were, in the State Police Service, presently junior to the applicants. The Amendment Rules, 2011, were further challenged on the ground of being irrational, arbitrary, unreasonable, unfair, discriminatory and violative of Articles 14 and 16 of the Constitution of India inasmuch as the upper age and the lower age limits, prescribed for the candidates of the LCE, were, according to the applicants-private respondents, in OA No. 112/12, not based on any validly assignable reasons.

(xi) Though the applicants, in the OA No. 112.2012, had sought for, inter alia, interim directions staying operation of the Amendment Rules, 2011, and the advertisement, dated 10.03.2012, published by the UPSC, the learned Tribunal did not grant any such interim relief except prohibiting declaration of the result of the selection process.

(xii) However, by its order, dated 14.09.2012, the learned Tribunal has accepted the contentions of the applicants, in OA 112/2012, particularly, their contention that the

Amendment Rules, 2011, were wholly illegal, the same having been made without the Central Government having consulted the Assam-Meghalaya Joint Cadre Authority, in respect of the State of Assam and Meghalaya, and that the Amendment Rules, 2011, were arbitrary and discriminatory inasmuch as the right of promotion, which had been conferred on the applicants by virtue of the Recruitment Rules, 1954, stood abridged by the Amendment Rules, 2011, and the amendments were, therefore, violative of Articles 14 and 16.

(xiii) Having, thus, accepted the contentions of the applicants in OA No. 112/2012, the learned Tribunal allowed the OA No. 112/2012 and quashed and set aside the Government Notification, bearing No. GSR 660(E) dated 29.08.2011, issued by the Ministry of Personnel, Department of Personnel & Training, Government of India, whereunder Amendment Rules, 2011, had been framed and bought into force with effect from 03.03.2012.

(xvi) Aggrieved by the decision, so reached, the present two writ petitions, namely, WP(C) 4880/2012 and WP(C) 5337/2012, have been filed, under Article 226 of the Constitution of India, putting to challenge the learned Tribunal''s decision, dated 14.09.2012.

(xvii) It may be carefully noted that while WP(C) 4880/2012 has been instituted by the Union of India, WP(C) 5337/2012 has been instituted by some of those persons, who had, pursuant to the Amendment Rules, 2011, and the consequential advertisement, dated 10.03.2012, published by the UPSC, already participated in the selection process, but who were not made parties to the OA No. 112/2012.

We have heard Mr. H.P. Raval, learned Additional Solicitor General of India, appearing for the writ petitioners in WP(C) 4880/2012 and for the respondent Nos. 7 and 8 in WP(C) 5337/2012. We have also heard Mr. D.K. Mishra, learned Senior counsel, appearing for the writ petitioners in WP(C) 5337/2012, and Mr. N. Dutta, learned Senior counsel, appearing for the private respondents in both the writ petitions, the private respondents being the applicants in OA 112/2012. We have further heard Mr. D. Kabir, learned counsel, appearing for the writ petitioners in WP(C) No. 5337/2012, who had not been impleaded in OA 112/2012, though, as pointed out above, they had already participated in the selection process pursuant to the advertisement, dated 10.03.2012, published by the UPSC.

2. In order to correctly appreciate the various contentions, which were raised in OA 112/2012, and the challenge posed to the decision of the learned Tribunal by the present two writ petitions, certain facts, which are material but not in dispute, need to be, first, taken into account.

BACKGROUND FACTS:

3. The history of the controversy, leading to the present two writ petitions, can be traced to the 1951 Act. At the time of enactment of the 1951 Act, there were two services,

namely, Indian Administrative Service and the Indian Police Service. As there was absence of provisions in Article 312 similar to the ones as included in Article 309, the Government of India was compelled to deal with many of the matters by means of non-statutory executive orders. It was, therefore, felt necessary that Parliament should provide the requisite statutory authority to enable the Government of India to carry on the day-to-day management of the All India Services and also to take and promulgate decisions on matters relating to the recruitment and conditions of service from time to time. With this object in mind, the 1951 Act came into force, with effect from 29.10.1951, in order to (as the Preamble declares) regulate the recruitment and the conditions of service of persons appointed to All India Services common to the Union and the States.

4. Section 3 of the 1951 Act is titled as Regulation of Recruitment and Conditions of Service. Sub-section (1) of Section 3 provides that the Central Government may, after consultation with the Governments of the States concerned, including the State of Jammu and Kashmir, and by notification in the Official Gazette, make rules for regulating recruitment and the conditions of service of persons appointed to All India Service.

5. In exercise of powers conferred by Sub-section (1) of Section 3 of the 1951 Act, the Central Government, after consultation with the Governments of the States concerned, made the Indian Police Service (Recruitment) Rules, 1954, which are, as already indicated above, being referred to as the Recruitment Rules, 1954. Besides the Recruitment Rules, 1954, the Central Government also, in exercise of its powers conferred by Sub-section (1) of Section 3 of the 1951 Act, made the Indian Police Service (Cadre) Rules, 1954, and the All India Service (Joint Cadre) Rules, 1972.

6. What may, now, be noted is that the Recruitment Rules, 1954, envisaged, initially, two modes of recruitment, namely, (i) by competitive examination, and (ii) by promotion of substantive members of a State Police Service.

7. A third mode of recruitment was introduced into the Recruitment Rules, 1954, way back on 11.03.1968, in exercise of the Central Government''s power under Sub-section (1) of Section 3 of the 1951 Act. The necessity of the third mode of recruitment was felt, when a large number of Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of India, who were commissioned during Indo-China war of 1962 and who were subsequently released from the service of the Armed Forces of India after cessation of Indo-China war of 1962, became jobless, culminating into unrest and resentment amongst such officers. In order to, therefore, provide employment/rehabilitation opportunities to such officers, the Central Government, vide Ministry of Home Affairs Notification No. 1, dated 01.10.1966, introduced a new rule, namely, Rule 7A, in the Indian Police Service (Recruitment) Rules, 1954, which, as already indicated above, are being referred to as the Recruitment Rules, 1954, whereby provisions were made for recruitment by selection of persons from among released Emergency Commissioned Officers and Short Service Commissioned Officers.

8. Because of introduction of Rule 7A in the Recruitment Rules, 1954, the Central Government subsequently amended Rule 4 of the Recruitment Rules, 1954, with effect from 29.01.1966 vide Ministry of Home Affairs, Government of India Notification No. 1/2/67-AIS(I)-B, dated 11.03.1968, by substituting Rule 4(1)(aa) and, upon being so amended, the said Rule stood as follows:

4. Method of recruitment to the Service:--

(1) Recruitment to the Service, after the commencement of these rules, shall be by the following methods, namely:--

(a) by a competitive examination;

(aa) by selection of persons from among the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union @ "who were commissioned on or after the 1st November, 1962 but before the 10th January, 1968, or who had joined any pre-Commission training before the latter date, but who are commissioned on or after the date" and who are released in the manner specified in sub-rule (1) of rule 7A.

(b) by promotion of substantive members of a State Police Service.

(Emphasis added)

9. As the days rolled by, the suitable, amongst the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of India, were selected and recruited to the Indian Police Service by taking resort to the provisions of Rule 4(1)(aa) of the Recruitment Rules, 1954. With the object being fulfilled, Rule 4(1)(aa) came to be finally deleted by virtue of the Government of India Notification No. 14015/51/96-AIS-IB, dated 31.12.1997.

10. Consequently, the Recruitment Rules, 1954, once again, provided two modes of recruitment, namely, (i) by competitive examination; and (ii) by promotion of substantive members of a State Police Service.

11. By virtue of the Amendment Rules, 2011, which, as already indicated above, came into force with effect from 29.08.2011, a third mode of recruitment by Limited Competitive Examination, which is being referred to as LCE, had been introduced by making necessary amendments in Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, by insertion of a Clause (b) of Sub-rule (1) Rule 8 and it was the newly introduced mode of recruitment by LCE, which, as already indicated above, had came to be challenged in OA No. 112/2012.

12. As the OA No. 112/2012 has been allowed by the learned Tribunal, we have, before us, the present two writ petitions challenging the learned Tribunal''s order, dated

14.09.2012, whereby the learned Tribunal has set aside and quashed, we have already pointed above, the introduction of LCE by the Amendment Rules, 2011.

13. It is also noteworthy that before the learned Central Administrative Tribunal, Guwahati Bench, could render its decision in OA No. 112/2012, the Supreme Court, as already mentioned above, dismissed the Writ Petition (Civil) No. 326/2012 on 27.08.2012, whereby the Amendment Rules, 2011, had been put to challenge. While dismissing the writ petition, the Supreme Court pointed out that the petitioners, in WP(C) No. 326/2012, had not disclosed as to how they were adversely affected by the impugned amendments and that the persons, who had passed the Limited Competitive Examination (i.e., LCE) conducted by the UPSC in the month of May, 2012, and the personality test held on 06.08.2012, had not been impleaded as party respondents and without hearing these persons, no relief could be provided and that the petitioners should have had, first, availed the remedy by filing an application u/s 19 of the Administrative Tribunals Act, 1985.

14. Notwithstanding the fact that those, who had already passed written examination, held in the month of May, 2012, and who "had already appeared in the personality test, held on 06.08.2012, were not been impleaded as party-respondents to the OA No. 112/2012, the learned Central Administrative Tribunal has nevertheless allowed the OA No. 112/2012 and, as already indicated above, set aside and quashed the impugned Amendment Rules, 2011, whereby LCE, as a third mode of recruitment, had been introduced and the Amendment Regulations, 2011, stood notified, on 03.03.2012, embodying therein various eligibility criteria for recruitment by means of LCE.

15. As the petitioners in WP(C) No. 5337/2012 had not been made parties to OA No. 112/2012, they, having participated in the newly selected process of LCE, have been adversely affected by the impugned decision of the learned Tribunal, their writ petition, namely, WP(C) 5337/2012, is as much relevant as the writ petition, which the Union of India has filed and which has given rise to WP(C) No. 4880/2012.

16. While the petitioners, in the writ petition, namely, WP(C) No. 4880/2012, filed by the Union of India are hereinafter referred to as the "State petitioners", the petitioners, in WP(C) No. 5337/2012, are hereinafter referred to as the "private petitioners"; whereas the applicants, in OA No. 112/2012, are hereinafter referred to as the applicants-private respondents.

17. Before proceeding further and entering into the merit of the present two writ petitions and the legality, validity and correctness of the impugned order, dated 14.09.2012, passed, in OA No. 112/2012, we may, perhaps, need to point out, once again, that the constitutional validity of the Amendment Rules, 2011, which came into effect on 29.08.2011, was challenged in OA No. 112/2012 along with the validity of the Amendment Regulations, 2011, framed by a notification, dated 03.03.2012, and the advertisement, dated 10.03.2012, published by the UPSC for filling up the posts by

limited competitive examination, i.e., LCE.

18. The learned Central Administrative Tribunal has, as already mentioned above, allowed the OA and struck down the impugned Amendment Rules, 2011, and set aside the advertisement, dated 10.03.2012, by its impugned order, dated 14.09.2012. The grounds, on which the learned Central Administrative Tribunal has interfered with the impugned rules and the advertisement, are as under:

(a). The Joint Cadre Authority was not consulted;

(b). Inclusion of the additional category of officers as a feeder category to Indian Police Service is devoid of any cogent nexus with the object sought to be achieved;

(c). Upper age limit and lower the limit prescribed for limited competitive examination are discriminatory;

(d). Rule 4(1)(b) of the Indian Police Service (Recruitment) Rules confers right on the applicant for being considered for promotion to the Indian Police Cadre. Abridgement of such a right is discriminatory,

(e). Chances to be considered for promotion of the applicant would be bleak as per the amendment rules; and

(f). In the opinion of the learned Tribunal, therefore, the amendments are absolutely arbitrary, unreasonable, unfair, discriminatory and violative of Article 14 and 16 of the Constitution.

19. Considering the fact that both these writ petitions, made under Article 226 of the Constitution of India, have put to challenge the learned Tribunal''s decision, in OA No. 112/2012, arrived at on 14.09.2012, it necessarily implies that the petitioners seek from this Court a writ in the nature of certiorari for the purpose of correction of the records of the Tribunal by setting aside the order, dated 14.09.2012, passed by the learned Tribunal.

20. Let us, therefore, take into account the various grounds on which the learned Tribunal has chosen to interfere with the impugned amendments introduced by the Amendment Rules, 2011.

Was consultation, in the present case, with the Joint Cadre Authority imperative before making amendments of Indian Police Service (Recruitment) Rules, 1954 or, in other words, whether the Amendment Rules, 2011, were bad in law for having been made in exercise of the Central Government''s power conferred by Section 3(1) of All India Service Act, 1951, but without consulting the Joint Cadre Authority?

21. In view of the fact that it was the scheme of LCE, introduced by making amendment in Clause (b) of Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, which had generated

the heat and led the applicants-private respondents herein to institute OA No. 112/2012, let us, in order to clearly understand as to what change the amendments had brought about in Clause (b) of Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, reproduce Sub-rule (1) of Rule 4 before it (i.e., Sub-rule (1) of Rule 4) underwent amendments by the impugned Amendment Rules, 2011.

22. Before making of the Amendment Rules, 2011, Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, read as under:

Method of recruitment to the service: 4(1) Recruitment to the Service, after the commencement of these rules, shall be by the following methods, namely:--

4(1)(a) by a competitive examination;

4(1)(aa) [Deleted]

4(1)(b) by promotion of substantive members of a State Police Service.

23. Before coming to the change introduced by the impugned Amendment Rules, 2011, it is, once again, necessary to point out that Rule 4(1(aa) was introduced, as already indicated above, on 11.03.1968, in order to accommodate a large number of Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of India, who were commissioned during Indo-China war of 1962 and who were subsequently released from the service of the Armed Forces of India after cessation of Indo-China war of 1962, and, in course of time, when suitable ones from amongst the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of India had already been selected and recruited by taking resort to the provisions of Rule 4(1)(aa) of the Recruitment Rules, 1954, Rule 4(1)(aa) came to be deleted by the Government of India"s notification, dated 03.12.1997, leaving Rule 1(a) and Rule 1(b) intact. With the deletion of Rule 1 (aa), Rule 1(a) and Rule 1(b) of the Recruitment Rules, 1954, read as under:

4(1)(a) by a competitive examination;

4(1)(aa) [Deleted]

4(1)(b) by promotion of substantive members of a State Police Service.

24. The impugned Amendment Rules, 2011, had, as already indicated above, divided Clause (b) of Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, into two parts, by laying down two distinct modes of recruitment, namely, (i) by limited competitive examination and (ii) by promotion of members of a State Police service.

25. Thus, with the amendment, so introduced by the impugned Amendment Rules, 2011, Rule 4(1) would, now, if valid, read as under:

Method of recruitment to the service: 4(1) Recruitment to the Service, after the commencement of these rules, shall be by the following methods, namely:--

4(1) by a competitive examination.

4(1)(aa) [deleted]

4(1)(b) by limited competitive examination.

4(1)(c) by promotion of members of a State Police Service.

26. We may also hasten to point out, once again, that the circumstances, whereunder Rule 4(1)(aa) came to be deleted, have already been pointed out above.

27. A comparative reading of Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, prior to the amendment thereof by the impugned Amendment Rules, 2011, vis-ï¿½-vis Sub-rule (1) of Rule 4 as contained in the impugned Amendment Rules, 2011, would clearly show that while Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, had prescribed, immediately preceding the impugned Amendment Rules, 2011, two modes of recruitment, namely, (a) by a competitive examination and (b) by promotion of substantive members of a State Police Service; the impugned Amendment Rules, 2011, have, now, made valid 3(three) modes of recruitment possible, these 3(three) modes of recruitment being (a) by a competitive examination; (b) by limited competitive examination; and (c) by promotion of members of a State Police Service.

28. It is, however, pertinent to note, now, that it was not the amendment of Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, by virtue of the Amendment Rules, 2011, prescribing LCE as one of the modes of recruitment, which had made the applicants-private respondents herein aggrieved and taken them to the learned Tribunal. Far from this, it is the applicants-private respondents'' interpretation of Sub-rule (2) of Rule 4 of the Recruitment Rules, 1954, which had really led the applicants-private respondents to the learned Tribunal.

29. No wonder, therefore, that challenging the validity of the amendments of Rule 4(1)(b) of the Recruitment Rules, 1954, made by the impugned Amendment Rules, 2011, the petitioners contended, in OA No. 112/2012, and they have also contended before this Court that the impugned Amendment Rules, 2011, are invalid inasmuch as the introduction of the LCE as one of the modes of recruitment is in breach of Sub-rule (2) of Rule 4 of the Recruitment Rules, 1954.

30. In support of their above contention, the applicants-private respondents had contended before the learned Tribunal and they contend before this Court, too, that introduction of LCE as a third mode of recruitment is bad in law, because the Central Government, before making the amendments in Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, by the impugned Amendment Rules, 2011, ought to have consulted, but has

not consulted, the Joint Cadre Authority, though required by Sub-rule (2) of Rule 4 of the Recruitment Rules, 1954.

31. In order to sustain their objection to the Amendment Rules, 2011, the applicants-private respondents, as already indicated above, refer to, and rely upon, Sub-rule (2) of Rule 4 of the Recruitment Rules, 1954, which read as under:

4(2) Subject to the provisions of these rules,

(a) the method or methods of recruitment to be adopted for the purpose of filling up any particular vacancy or vacancies as may be required to be filled during any particular period of recruitment, shall be determined by the Central Government in consultation with the Commission and the State Government concerned;

(b) the number of persons to be recruited by each method shall be determined on each occasion by the Central Government in consultation with the State Government concerned.

32. Coupled with the above, referring to Rule 2(f) of the Recruitment Rules, 1954, the applicants-private respondents contend that the expression "State Government concerned", in relation to a Joint Cadre, means the Joint Cadre Authority and a Joint Cadre, in the light of Rule 2(b) of the Recruitment Rules, 1954, means a Joint Cadre as defined in the Indian Police Service (Cadre) Rules, 1954, which is hereinafter referred to as the Cadre Rules, 1954.

33. There is no doubt, as contended by the applicants-private respondents, that the expression "State Government concerned", in relation to Joint Cadre, means a Joint Cadre Authority. This is clearly reflective from Rule 2(f) of the Recruitment Rules, 1954, which states as under:

2(f) "State Government concerned", in relation to a Joint Cadre, means the Joint Cadre Authority.

34. If Rule 4(2) of the Recruitment Rules, 1954, is read, in the light of clause (f) of Rule 2, what becomes clear is that Sub-rule (2) of Rule 4 of the Recruitment Rules, 1954, requires the Central Government to consult, apart from the Commission (i.e., UPSC), the Joint Cadre Authority in relation to a Joint Cadre.

35. As the States of Assam and Meghalaya have a Joint Cadre, the consultation, in the light of clause (a) of Sub-rule (2) of Rule 4, would mean consultation with the Joint Cadre Authority.

36. The learned Tribunal took the view that the Amendment Rules, 2011, were bad in law, because the Central Government had not consulted the Joint Cadre Authority in the context of Assam and Meghalaya, though such a consultation was, in the light of the

provisions of Sub-rule (2) of Rule 4 of the Recruitment Rules, 1954, necessary.

37. For taking the above view, the learned Tribunal has pointed out that Rule 2(f) of the Recruitment Rules, 1954, prescribes that the expression "State Government concerned", in relation to Joint Cadre, means Joint Cadre Authority and, as such, prescription of Section 3 of the All India Services Act, 1951, has not been complied with inasmuch as consultation with the Joint Cadre Authority had not taken placed in the present case, though so required. The relevant observations, appearing in this regard, at para 24 of the impugned order of the learned Tribunal, read as under

24. It is well understood rule of law sanctified by the Hon"ble Supreme Court in the case of Narbada Prasad Vs. Chhaganlal and Others, that if a thing is to be done in a particular manner, it must be done in that manner or not at all and other modes of compliance are excluded. Indisputably, Joint Cadre Authority was not consulted. Section 3 of the All India Services Act, 1951, prescribes regulation of recruitment and conditions of service. It is stipulated in sub-section (1) of Section 3 that the Central Government may, after consultation with the Governments of the State concerned and by notification in the official Gazette make rules for regulation of recruitment and the conditions of service of persons appointed to an All India Service. In the IPS (Recruitment) Rules, 1954, Rule 2(f) prescribes "State Government concerned", in relation to a Joint Cadre, means the "Joint Cadre Authority". As such, as per prescription of Section 3 of the All India Services Act, 1951, consultation with the Joint Cadre Authority in the context of Assam-Meghalaya is a necessary requirement. While incorporating the present amendment, this requirement was not complied with for the reasons best known to the respondents. The rule cannot be sacrificed at the alter of administrative convenience or celerity. For convenience and justice, as Lord Atkin felicitously put it, are often not on speaking terms. When consultation is mandatory, its infraction renders the action illegal.

(Emphasis added)

38. In order to determine if what the learned Tribunal has concluded is or is not correct, it is imperative that the provisions, embodied in Section 3 of the All India Services Act, 1951, which is being referred to as the "1951 Act", be taken note of. Section 3 is, therefore, reproduced below:

3. Regulation of recruitment and conditions of service.

(1) The Central Government may, after consultation with the Governments of the States concerned, including the State of Jammu and Kashmir and by notification in the Official Gazette make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All-India Service.

(1-A) The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to

prejudicially affect the interests of any person to whom such rule may be applicable.

(2) Every rule made by the Central Government under this section and every regulation made under or in pursuance of any such rule, shall be laid., as soon as may be after such rule or regulation is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in such rule or regulation or both Houses agree that such rule or regulation should not be made, the rule or regulation thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(Emphasis is added)

38a. Though, at a little latter stage of this judgment, we would revert, once again, to the provisions embodied in Section 3 of the 1951 Act, it needs to be noted, for the present, that Section 3 of the 1951 Act requires the Central Government to consult the "Government of the State concerned" in order to make Rules for regulation of recruitment and conditions of service of persons appointed to an all India service. The expression used in Section 3, namely, "Governments of the States concerned", is quite distinct and different from the expression "State Government concerned", which expression appears in Sub-rule (2) of Rule 4 of the Recruitment Rules, 1954. The two expressions, namely, "Governments of the States concerned" and "State Government concerned", are not one and the same. While the State Government concerned is an expression, which appears in the Recruitment Rules, 1954, and it has been defined, with the help of Rule 2(f), as Joint Cadre Authority in relation to a Joint Cadre, the expression, "Governments of the States concerned", is used in Section 3 of the 1951 Act without prescribing or describing therein that the expression, "Governments of the States concerned", would mean, in a case of Joint Cadre, a Joint Cadre Authority.

39. The expression "State Government concerned", which appears in the Recruitment Rules, 1954, has to be, therefore, read by limiting its meaning, as defined by Rule 2(f), to the Recruitment Rules, 1954, and the said expression, namely, "State Government concerned", cannot be extracted from Recruitment Rules, 1954, and implanted in place of the expression, "Governments of the States concerned", which expression has been used in Section 3 of the All India Services Act, 1951 (i.e., the 1951 Act).

40. We may pause here to point out that the Recruitment Rules, 1954, stand born in exercise of the power conferred on the Central Government by Section 3 of the 1951 Act and not vice versa. Consequently, the expression "State Government concerned", appearing in the Recruitment Rules, 1954, has to be read, while interpreting the Recruitment Rules, 1954, and the interpretation, attributed to the expression, "State

Government concerned", cannot be imported and read into Section 3 of the All India Services Act, 1951, which uses an entirely different expression, namely, "Governments of the States concerned".

41. The Joint Cadre Authority in the case of a Joint Cadre, is, therefore, required to be consulted by the Central Government, in the light of the provisions of the Recruitment Rules, 1954, when the Central Government is requited to determine the method or methods of recruitment, which it has to adopt for the purpose of filling up of any particular vacancy or vacancies, which may be required to be filled during any particular period of recruitment Clause (b) of Sub-rule (2) of Rule 4 of Recruitment Rules, 1954, further lays down that the number of persons to be recruited by each method shall be determined, on each occasion, by the Central Government in consultation with the State Government concerned.

42. Thus, Sub-rule (2) of Rule 4 of the Recruitment Rules, 1954, does not empower the Central Government to prescribe any new method or methods of recruitment other than ones, which may stand already prescribed in Sub-rule (1) of Rule 4 of the Recruitment Rules, 1954, by the Central Government in exercise of its power u/s 3 of the 1951 Act upon consultation with the "Governments of the States concerned".

43. The power to prescribe mode or methods of recruitment, in the light of the provisions of Section 3 of the 1951 Act, vests in the Central Government, though this power has to be exercised after consulting the "Governments of the States concerned". Within the prescribed methods of recruitment, what method has to be resorted in order to fill up a particular vacancy, on a given occasion, is for the Central Government to decide after consulting the UPSC and also the "State Government concerned", which expression, in relation to a Joint Cadre, would obviously mean Joint Cadre Authority.

44. The Joint Cadre Authority, as already indicated above, came into existence by framing of Rules pursuant to Sub-section (1) of Section 3 of the 1951 Act, the rule being All India Services (Joint Cadre) Rules, 1972. Thereafter, other connected rules were amended by incorporating and defining the word Joint Cadre Authority.

45. What is of immense importance to note is that Section 3(1) of the 1951 Act was not amended in order to make Joint Cadre Authority as an authority required to be consulted by the Central Government, while flaming rules in exercise of its powers conferred by Section 3(1) of the 1951 Act. Logically speaking, therefore, Section 3(1) of the 1951 Act casts no obligation on the Central Government to consult Joint Cadre Authority.

46. The learned Tribunal fell into serious error in reading the definition of the expression, "Joint Cadre Authority", while determining the question as to whom the Central Government is required to consult at the time of framing rules in exercise of its powers u/s 3(1) of the 1951 Act. The learned Tribunal also fell into error in omitting to notice the fact that Rule 2(f) of the Recruitment Rules, 1954, was added after framing of the All India

Services (Joint Cadre) Rules, 1972, and that the definition of the expression, "Joint Cadre Authority", as contained in Rule 2(f) of the Recruitment Rules, 1954, was added and no corresponding change was introduced, even thereafter, into the provisions of Section 3(1) of the 1951 Act.

47. While dealing with the above aspect of the case, it is also noteworthy that Rule (2) of the Recruitment Rules, 1954, which embodies various definitions, including the definition of "Joint Cadre", clearly states that the definitions are to be read as given in these rules unless the context otherwise requires.

48. The expression Joint Cadre Authority, which appears in the Recruitment Rules, 1954, (which is a delegated piece of legislation) cannot be read into the statutory provisions of Sub-section (1) of Section 3 of the All India Services Act, 1951 (i.e., the 1951 Act") for, such a reading would amount to amendment of Section 3 of the All India Services Act, 1951, which is impermissible in law inasmuch as such an amendment can be made only by a competent legislature, namely, the Parliament, and not by a process of interpretation, which is, otherwise also, alien to the rules of interpretation of parent as well as delegated legislations.

49. It needs to be borne in mind that the Recruitment Rules, 1954, have been made by the Central Government in exercise of its power conferred by Section 3(1) of the parent enactment, namely, All India Services Act, 1951, and the presently impugned Amendment Rules, 2011, have also been made by the Central Government in exercise of its power conferred by Section 3(1) of the same parent enactment, namely, All India Services Act, 1951. For the purpose of making the Recruitment Rules, 1954, the Central Government was, as we have already discussed above, required to consult the "Governments of the States concerned" and not the Joint Cadre Authority. Similarly, for the purpose of the amendments, in question, namely, Amendment Rules, 2011, consultation with "Governments of the States concerned" was required and no consultation with the "State Government concerned" was required, which, in the light of the Recruitment Rules, 1954, in relation to a Joint Cadre, means a Joint Cadre Authority.

50. To put it a little differently, Rule 4(2) of the Recruitment Rules, 1954, as rightly pointed out by Mr. Raval, learned ASG, has very limited scope inasmuch as Rule 4(2) of the Recruitment Rules, 1954, has to be resorted to by the Central Government at the time of adopting the method or methods of recruitment, which may have already been prescribed, for the purpose of filling up of any vacancy or vacancies during a given period of recruitment.

51. The learned ASG is also correct in his submission that Sub-rule (2) of Rule 4 of the Recruitment Rules, 1954, mandates a consultation, which is wholly distinct and different from the consultation envisaged in Section 3(1) of the 1951 Act inasmuch as consultation, as envisaged by Section 3(1), is while making Rules and/or Regulations for the purpose of formulating the process of recruitment and conditions of service, while consultation, in

respect of Rule 4(2), would limit itself to the filling up of vacancies by adopting the method or methods of recruitment, which may have been prescribed by making Rules and Regulations by the Central Government in exercise of its power conferred by Section 3(1) of the 1951 Act.

52. Thus, though the expression "consultation" appears in the Recruitment Rules, 1954, as well as Section 3 of the 1951 Act, consultees are quite distinct and different inasmuch as consultation, spoken of by Section 3 of the 1951 Act, does not envisage consultation with the Joint Cadre Authority and it is for this reason that two distinct expressions have been used in the parent enactment, namely, the 1951 Act, on the one hand, and the sub-ordinate legislation, namely, the Recruitment Rules, 1954, on the other, the parent Act, namely, the 1951 Act, using the expression "Governments of the States concerned" and the subordinate legislation, namely, the Recruitment Rules, 1954, using the expression "State Government concerned".

53. The above position becomes clearer from the fact that while consultation with the "Governments of the States concerned", as spoken of by Section 3(1), does not envisage any "consultation" with the UPSC, Sub-rule (2) of Rule 4 of the Recruitment Rules, 1954, does envisage "consultation" by the Central Government not only with the "State Government concerned", but also with the UPSC.

54. In short, the term, State Governments concerned, defined by Rule 2(f) of the Recruitment Rules, 1954, as Joint Cadre Authority, in relation to a Joint Cadre, is limited in its scope and application to the Rules alone and does not extend to the parent legislation, i.e., the 1951 Act.

55. Resultantly, therefore, the definition, which Rule 2(f) of the Recruitment Rules, 1954, attributes to the expression "State Government concerned", cannot be referred to, or relied upon, while interpreting the expression "Governments of the States concerned", which appears in Section 3(1) of the 1951 Act This inference is strengthened from the fact that Clause (b) of Sub-rule (2) of Rule 4 of the Recruitment Rules, 1954, provides that the number of persons be recruited by each method shall be determined, on each occasion, by the Central Government in consultation with the UPSC and the State Government concerned.

56. In fact, the Cadre Rules, 1954, which the applicants-private respondents have relied upon, is, one may point out, once again, framed by the Central Government by virtue of the powers conferred on it by Section 3(1) of the 1951 Act after consultation with the "Governments of the States concerned" and not with the "State Government concerned", which expression has a specific meaning attributed to it by virtue of Rule 2(f) of the Recruitment Rules, 1954.

57. In answer to the question, posed above, one, therefore, cannot but hold that no "consultation" in making the impugned Amendment Rules, 2011, was required to be

made by the Central Government with the UPSC and/or the Joint Cadre Authority, wherever a Joint Cadre Authority exists. Far from this, "consultation", in the light of the provisions of Section 3(1) of the 1951 Act, was needed, for framing the impugned Amendment Rules, 2011, with the "Governments of the States concerned" and none else.

58. We, now, advert to yet another aspect of "consultation", which has been passionately advanced before us on behalf of the applicants-private respondents. In this regard, we may point out that though the learned Tribunal has not discussed if any consultation with the State Governments was done in the present case and, if so, whether such consultation was effective or not, Mr. N. Dutta, learned Senior counsel, has sought to assail the Amendment Rules, 2011, on the ground that the Central Government did not even consult the Governments of the States concerned in the true letter and spirit of Sub-section (1) of Section 3 of the 1951 Act.

59. Strictly speaking, when it had not been raised before the learned Tribunal and the learned Tribunal, too, has not dealt with the question as to whether any consultation with the State Government had taken place before bringing into force the impugned Amendment Rules, 2011, it is not necessary for us to deal with this aspect of the case.

60. Be that as it may, in order to effectively dispose of the writ petitions, we have heard the learned counsel for the parties concerned on the question if any consultation had taken place between the Central Government and the "Governments of the State Governments", in terms of Sub-section (1) of Section 3 of the 1951 Act, before the Amendment Rules, 2011, were framed and, if so, whether such consultation was effective and adequate?

61. While considering the above aspect of the case, it needs to be borne in mind that the word "consultation" has been used in the Constitution as well as in statutes and in delegated legislations in different contexts. No uniform meaning can be attributed to the word "consultation" appearing in all the provisions of the Constitution, statutes, rules and regulations. The word "consultation" is seen to bear different meaning in different situations.

62. As an illustration, one may refer to Article 117 and Article 233 of the Constitution of India. In the case of appointment of a judicial officer or of a Judge of the High Court or of persons to be appointed to a judicial tribunal, consultation has been, by and large, construed as mandatory; whereas the word, "consultation", in some cases, has also been construed as directory. Mr. D.K. Mishra, learned Senior counsel, is not incorrect, in this regard, when, in order to show that the word, consultation, cannot have the same meaning in all situations, refers to, and relies upon, the cases of N. Kannadasan Vs. Ajoy Khose and Others, Chandramouleshwar Prasad Vs. The Patna High Court and Others, Supreme Court Advocates-on- Supreme Court Advocates-on-Record Association and another Vs. Union of India, , State of U.P. Vs. Manbodhan Lal Srivastava, and the Indian

63. In N. Kannadasan (supra), the Supreme Court has observed, at paragraph 50 and 156, as follows:

50. A Chief Justice of a High Court, thus, before making recommendations for his appointment in terms of Section 16 of the Act, must satisfy himself that the recommendee has/had those basic qualities. While making recommendations the Chief Justice performs a constitutional duty. If while discharging his duty, he finds a former Judge to be ineligible, the question of his being considered for appointment would not arise. If such a person cannot be recommended being unfit or ineligible to hold the post, it would not be correct to contend that despite the same he fulfils the eligibility criteria. Whether the condition "has been a Judge" is not necessary to be construed for the purpose of Article 217 of the Constitution of India, it is required for the purpose of interpreting Section 16 of the Act as to whether he should be recommended for being appointed as a Chairman of the State Commission.

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156. It is difficult to accept the submission of Mr. K.K. Venugopal that such "consultation" would not be "concurrence" as like the Collegium in the matter of making recommendation for appointment of Judges of the Supreme Court and the High Courts where the view of the Collegium shall have the primacy. For appointment as President of the State Commission, the Chief Justice of the High Court shall have the primacy and thus the term "consultation" even for the said purpose shall mean "concurrence" only.

(Emphasis is added)

64. From the case of N. Kannadasan (supra), what can be clearly gathered is that "consultation" was interpreted to mean concurrence.

65. In Chandramouleswar Prasad (supra), the Supreme Court observed, at paragraph 7, as under:

7. The question arises whether the action of the Government in issuing the notification of October 17, 1968 was in compliance with Article 233 of the Constitution. No doubt the appointment of a person to be a District Judge rests with the Governor but he cannot make the appointment on his own initiative and must do so in consultation with the High Court. The underlying idea of the article is that the Governor should make up his mind after there has been a deliberation with the High Court. The High Court is the body which is intimately familiar with the efficiency and quality of officers who are fit to be promoted as District Judges. The High Court alone knows their merits as also demerits. This does not mean that the Governor must accept whatever advice is given by the High Court but the Article does require that the Governor should obtain from the High Court its views on

the merits or demerits of persons among whom the choice of promotion is to be limited. If the High Court recommends A while the Governor is of opinion that B''s claim is superior to A''s it is incumbent on the Governor to consult the High Court with regard to its proposal to appoint B and not A. If the Governor is to appoint B without getting the views of the High Court about B''s claims vis-ï¿½-vis A''s to promotion, B''s appointment cannot be said to be in compliance with Article 233 of the Constitution. The correspondence noted above which passed between the High Court and the Secretariat from 28th September, 1968 to 7th October, 1968 shows that whereas the High Court had definitely taken the view that Misra as the senior Additional District and Sessions Judge should be directed to take charge from Chakravarty, the Government was not of the view that according to the records in its appointment department Misra was the senior officer at Shahabad among the Additional District and Sessions Judges. Government never suggested to the High Court that the petitioner was senior to Misra or that the petitioner had a better claim man Misra''s and as such was the person fit to be appointed temporarily as District and Sessions Judge. Before the notification of October 17, 1968 Government never attempted to ascertain the views of the High Court with regard to the petitioner''s claim to the temporary appointment or gave the High Court any indication of its own views with regard thereto excepting recording dissent about Misra''s being the senior officer in the cadre of Additional District and Sessions Judges at Arrah. Consultation with the High Court under Article 233 is not an empty formality. So far as promotion of officers to the cadre of District Judges is concerned the High Court is best fitted to adjudge the claims and merits of persons to be considered for promotion. The Governor cannot discharge his function under Article 233 if he makes an appointment of a person without ascertaining the High Court''s views in regard thereto. It was strenuously contended on behalf of the State of Bihar that the materials before the Court amply demonstrate that there had been consultation with the High Court before the issue of the notification of October 17, 1968. It was said that the High Court had given the Government its views in the matter, the Government was posted with all the facts and mere was consultation sufficient for the purpose of Article 233. We cannot accept this. Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his mind which is not communicated to the proposer the direction to give effect to the counter proposal without anything more, cannot be said to have been issued after consultation. In our opinion, the notification of October 17, 1968 was not in compliance with Article 233 of the Constitution. In the absence of consultation the validity of the notification of October 17, 1968 cannot be sustained.

(Emphasis is added).

66. From the decision in Chandramouleswar Prasad (supra), it is clear that ''consultation'' requires exchange of information and views between the persons involved in the process of ''consultation''.

67. In Supreme Court Advocates-on- Supreme Court Advocates-on-Record Association and another Vs. Union of India, , the word "consultation", appearing in Article 217, has been construed as "short of concurrence". The relevant observations, appearing at para 125, 197 and 450, read as under:

125. A five-Judge Bench of this Court in Chandramouleshwar Prasad v. Patna High Court while interpreting the word "consultation" as appearing in Article 233 of the Constitution has observed as follows:

Consultation with the High Court under Article 233 is not an empty formality. So far as promotion of officers to the cadre of District Judges is concerned the High Court is best fitted to adjudge the claims and merits of persons to be considered for promotion. The Governor cannot discharge his function under Article 233 if he makes an appointment of a person without ascertaining the High Court"s views in regard thereto. It was strenuously contended on behalf of the State of Bihar that the materials before the Court amply demonstrate that there had been consultation with the High Court before the issue of the notification of October 17, 1968. It was said that the High Court had given the Government its views in the matter; the Government was posted with all the facts and there was consultation sufficient for the purpose of Article 233. We cannot accept this. Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter-proposal in his mind which is not communicated to the proposer, the direction to give effect to the counter-proposal without anything more, cannot be said to have been issued after consultation.

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197. The foregoing considerable deliberation leads to an inexorable conclusion that the opinion of the Chief Justice of India in the process of constitutional consultation in the matter of selection and appointment of Judges to the Supreme Court and the High Courts as well as transfer of Judges from one High Court to another High Court is entitled to have the right of primacy. In sum, the above logical conclusion and our social sense dictate:

Like the Pope, enjoying supremacy in the ecclesiastical and temporal affairs, the CJI being the highest judicial authority, has a right of primacy, if not supremacy, to be accorded to his opinion on the affairs concerning the Temple of Justice". It is a right step in the right direction and that step alone will ensure optimum benefits to the society.

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450. It is obvious, that me provision for consultation with the Chief Justice of India and, in the case of the High Courts, with the Chief Justice of the High Court, was introduced because of the realisation that the Chief Justice is best equipped to know and assess the

worth of the candidate, and his suitability for appointment as a superior Judge; and it was also necessary to eliminate political influence even at the stage of the initial appointment of a Judge, since the provisions for securing his independence after appointment were alone not sufficient for an independent judiciary. At the same time, the phraseology used indicated that giving absolute discretion or the power of veto to the Chief Justice of India as an individual in the matter of appointments was not considered desirable, so that there should remain some power with the executive to be exercised as a check, whenever necessary. The indication is, that in the choice of a candidate suitable for appointment, the opinion of the Chief Justice of India should have the greatest weight; the selection should be made as a result of a participatory consultative process in which the executive should have power to act as a mere check on the exercise of power by the Chief Justice of India, to achieve the constitutional purpose. Thus, the executive element in the appointment process is reduced to the minimum and any political influence is eliminated. It was for this reason that the word "consultation" instead of concurrence" was used, but that was done merely to indicate that absolute discretion was not given to anyone, not even to the Chief Justice of India as an individual, much less to the executive, which earlier had absolute discretion under the Government of India Acts.

(Emphasis is added)

68. As already indicated above, the Supreme Court, in Supreme Court Advocates-on-Record Association (supra), while interpreting the word "consultation", held that the word "consultation", appearing in Article 233 of the Constitution, conveys short of concurrence.

69. However, while interpreting the word "consultation" the Supreme Court, in State of U.P. Vs. Manbodhan Lal Srivastava, held that the word "consultation", appearing in Article 320(3), is not mandatory. The relevant observations, made in Manbodhan Lal Srivastava (supra), read as under

7. Article 320 does not come under Chapter I headed "Services" of Part XIV. It occurs in Chapter II of that part headed "Public Service Commissions". Articles 320 and 323 lay down the several duties of a Public Service Commission. Article 321 envisages such "additional functions" as may be provided for by Parliament or a State Legislature. Articles 320 and 323 begin with the words "It shall be the duty....", and then proceed to prescribe the various duties and functions of the Union or a State Public Service Commission, such as to conduct examinations for appointments; to assist in framing and operating schemes of joint recruitment; and of being consulted on all matters relating to methods of recruitment or principles in making appointments to Civil Services and on all disciplinary matters affecting a civil servant. Perhaps, because of the use of the word "shall" in several parts of Article 320, the High Court was led to assume that the provisions of Article 320(3)(c) were mandatory, but in our opinion, there are several cogent reasons for holding to me contrary. In the first place, the proviso to Article 320, itself, contemplates that the President or the Governor, as the case may be, "may make

regulations specifying the matters in which either generally, or in any particular class of case or in particular circumstances, it shall not be necessary for a Public Service Commission to be consulted." The words quoted above give a clear indication of the intention of the Constitution makers that they did envisage certain cases or classes of cases in which the Commission need not be consulted. If the provisions of Article 320 were of a mandatory character, the Constitution would not have left it to the discretion of the Head of the Executive Government to undo those provisions by making regulations to the contrary. If it had been intended by the makers of the Constitution that consultation with the Commission should be mandatory, the proviso would not have been there, or, at any rate, in the terms in which it stands. That does not amount to saying that it is open to the Executive Government, completely to ignore the existence of the Commission or to pick and choose cases in which it may or may not be consulted. Once, relevant regulations have been made, they are meant to be followed in letter and in spirit and it goes without saying that consultation with the Commission on all disciplinary matters affecting a public servant has been specifically provided for, in order, first, to give an assurance to the Services that a wholly independent body not directly concerned with the making of orders adversely affecting public servants, has considered the action proposed to be taken against a particular public servant, with an open mind; and secondly, to afford the Government unbiased advice and opinion on matters vitally affecting the morale of public services. It is, therefore, incumbent upon the Executive Government, when it proposes to take any disciplinary action against a public servant, to consult the Commission as to whether the action proposed to be taken was justified and was not in excess of the requirements of the situation.

(Emphasis added)

70. In the Indian Administrative Service (S.C.S.) Association, U.P. and Others Vs. Union of India (UOI) and Others, the meaning of the word "consultation" came up for consideration, because in the new seniority Rules, namely, the Indian Administrative Services (Regulation of Seniority) Rules, 1987, a proviso was added under Rule 3(3)(ii), which read as follows:

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier Select List.

71. The Supreme Court, in Indian Administrative Service (S.C.S.) Assn. (supra), noticed that the draft of the 1st Amendment Rules, which was circulated to the State Governments, omitted to circulate the newly added proviso. It was, in such a situation, submitted by the petitioner, in Indian Administrative Service (S.C.S.) Assn. (supra), that the Rule was bad, because no "consultation" with the Governments of the States was done before incorporating the proviso in the new seniority Rules.

72. Rejecting the above contention, the Supreme Court laid down the law governing the circumstances, whereunder "consultation" would be mandatory or directory. The relevant observations, appearing at paragraphs 26 and 27, being relevant, are reproduced below:

26. The result of the above discussion leads to the following conclusions:

(1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.

(2) When the offending action affects fundamental rights or to effectuate built-in insulation, as fair procedure, consultation is mandatory and non-consultation renders the action ultra vires or invalid or void.

(3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.

(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken be put to notice of the authority or the persons to be consulted; have the views or objections, take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstances it amounts to an action "after consultation".

(6) No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances whether the action is "after consultation"; "was in fact consulted" or was it a "sufficient consultation".

(7) Where any action is legislative in character, the consultation envisages like one u/s 3(1) of the Act, that the Central Government is to intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central Government or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft bill or rules, amendments or additions

in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation. Rules or Regulations being legislative in character, would tacitly receive the approval of the State Governments through the people''s representatives when laid on the floor of each House of Parliament. The Act or the Rule made at the final shape is rendered void or ultra vires or invalid for non-consultation.

27. The proposal for amending the New Seniority Rules in the draft was only for inviting discussion and suggestions on the scope and ambit of the proposed law and the effect of the operation of the First Amendment Rules. Keeping the operational effect in view, the proposed amendment could be modified or deleted or altered. The Central Government is not bound to accept all or every proposal or counter-proposal. Consultation with the Ministry of Law would be sufficient. Thereby the Central Government is not precluded to revise the draft rules in the light of the consultation and advice. The Central Government had prior consultation with the State Governments concerned and the Law Department.

(Emphasis is added)

73. A bare perusal of the law laid down by the Supreme Court, in Indian Administrative Service (S.C.S.) Assn. (supra), leaves no room for doubt that consultation, as envisaged by Section 3(1) of the 1951 Act, is not mandatory, because the Rules and the Regulations, framed under the said provisions of the 1951 Act, have to be laid before each House of Parliament and such Rules and Regulations have, therefore, legislative character.

74. Sub-para (7) of Para 26, which appears in the Indian Administrative Service (SCS) Association (supra), precisely deals with the ambit of consultation envisaged by Section 3(1) of the 1951 Act and, in this regard, the Supreme Court has, in no uncertain words, laid down that the rules are required to be laid before each of the two Houses of the Parliament so that the State Governments, through peoples'' representatives, have their views known. Consequently, the rule, which is finally made, in such a case, is not rendered void or ultra vires or invalid for non-consultation.

75. The word ''consultation'' has, therefore, been used in different context and no uniform meaning can be given to the word ''consultation'', for, the meaning of the word ''consultation'' would vary depending upon the situation and the context in which the word ''consultation'' appears in the Constitution or in an enactment or rule or regulation.

76. In the present case, apart from the fact that the Union of India has clearly shown that there has been, in terms of the provisions of Sub-section (1) of Section 3 of the 1951 Act, deliberations and ''consultations'' with the Governments of the States concerned, even lack of such ''consultation'' would not have rendered the impugned Amendment Rules, 2011, or, for that matter, the impugned Regulations, 2011, void or ultra vires or invalid, when the same have already been laid on the floor of the Parliament and, more

particularly, when the Government of Assam chose not to offer any comment either in favour of the proposed amendments, which stand incorporated in the Amendment Rules, 2011, and which, now, provide for LCE, nor did the Government of Assam voice its objection against the amendments, which were proposed to be made in this regard, though the Governments of Tamil Nadu, West Bengal, Bihar, Chhattisgarh, Madhya Pradesh, Goa, Meghalaya and Arunachal Pradesh had opposed the introduction of the impugned method of recruitment, i.e., LCE, to the Indian Police Service. When a State Government chooses not to offer its comment to a proposed amendment in a case of present nature, it logically follows that the State Government found no comment necessary to make in response to the proposed amendments. In such circumstances, the Central Government cannot be blamed for having incorporated the amendments in the form of the impugned Amendment Rules, 2011.

77. Mr. Raval, learned ASG, has considerable force in his submission that the requirement of consultation, as envisaged by the Recruitment Rules, 1954, will not colour the requirement of consultation as contemplated by the 1951 Act. The learned ASG is also correct in his submission that the 1951 Act will colour the Recruitment Rules, 1954, made under the 1951 Act, and not vice versa.

78. "Consultation", as contemplated by Section 3(1) of the 1951 Act, with the Governments of the States concerned, is directory and, hence, the views of the State Government concerned could not have been binding on the State Government. Consequently, the consultation, as contemplated by Section 3(1) of the 1951 Act, with the Governments of the States concerned, is not mandatory.

79. At any rate, the framing of the Amendment Rules, 2011, did not require any "consultation" with the Joint Cadre Authority and though "consultation", for the purpose of framing the Amendment Rules, 2011, was required to be done with the State Governments, the same was only directory and, in the case at hand, there was, in the facts and attending circumstances of the present case, requisite "consultation" with the State Governments, particularly, State of Assam; more so, when the Amendment Rules, 2011 as well as the Amendment Regulations, 2011, have both been laid on the floor of the Houses of the Parliament

80. The finding, therefore, of the learned Tribunal that the impugned Amendment Rules, 2011, were bad in law on the ground of non-consultation with the Joint Cadre Authority is wholly misconceived in law and the grievance expressed before this Court, on behalf of the applicants-private respondents, that there was no effective "consultation" with the State Governments either before the Amendment Rules, 2011, was framed is also devoid of any force. Situated thus, we are unable to persuade ourselves to concede to the argument advanced by Mr. N. Dutta, learned Senior counsel, that the Amendment Rules, 2011, are bad in law, because the framing of the Rules suffers from the omission to consult the State Governments, particularly, the Government of Assam.

81. Let us, now, deal with the learned Tribunal''s conclusion that the inclusion of the additional category of officers as a feeder category of Indian Police Service, by resorting to LCE, is devoid of any cogent nexus with the object sought to be achieved.

82. The question, therefore, which has, now, arisen for determination is: Whether inclusion of the additional category of officers, as a feeder category of Indian Police Service, by adopting the scheme of LCE, is devoid of any cogent nexus with the object sought to be achieved?

83. While considering the question as to what led the Government of India to take resort to a Limited Competitive Examination (LCE) for the purpose of making recruitment to the Indian Police Service, it needs to be noted, as discernible from the pleadings of the parties and the materials on record, that the Union of India was confronted with a grave situation, the situation being that, while there was increase in the incidents of terrorism, because of Maoist movement, on the one hand, there was, on the other, shortage of IPS officers, particularly, at the level of Superintendents of Police and the Deputy Inspectors General of Police. The Ministry of Home Affairs, (hereinafter referred to as the ''MHA''), Government of India, constituted a one Man Committee to study the problems and suggest solutions. The Committee was constituted by Sri Kamal Kumar, IPS (Retd.), who undertook the study of the problem with the assistance of Prof. S. Ramadas, Indian School of Business, Hyderabad, as Human Resource Consultant.

84. The said one man Committee advised scientific methodology for the study, which included collection of relevant data from the States and the Central Police Organisation on the existing ground situation of shortage as well as their expansion plan and its analysis amongst others.

85. In order to obtain basic information or data from the States, a detailed questionnaire was sent to the Chief Secretaries to all the State Governments in India on 1.4.2009. Having received the data, the one man Committee identified the causes leading to shortage in the IPS manpower and considered measures to fill up the posts, which were lying vacant in the direct recruitment quota. The Committee also considered the other range of options, such as, augmentation of intake through Civil Services Examination by way of direct recruitment, appointment of professionals on contract/deputation basis, induction through limited competitive examination, etc., and, then, worked out a recruitment plan.

86. One of the chief causes of shortage of IPS officers, as revealed by the Committee''s report, was that the IPS cadre strength, in most of the States, fell too short of the actual ground level requirement. There being no periodic review of the cadre strength as required by the relevant rules, the State Governments, mostly to meet the growing needs of policing in internal security tasks and, many a time, also to merely enhance the promotional prospects of their officers, had been creating inordinately large number of ''ex cadre posts''.

87. The study, conducted by Committee, also revealed that in quite a few cases, officers from the State Police Service were occupying even the cadre posts meant for the IPS, though this was in gross violation of the Indian Police Service (Cadre) Rules, 1954. The Committee observed that ironically, the bulk of ex cadre posts burdened the mainstream police force, which had been continuing indefinitely as part of the State Deputation Reserve making a mockery of the Indian Police Service (Fixation of Cadre Strength) Regulations and the principles underlining therein.

88. The Committee, known as "Kamal Kumar Committee", submitted its report in October, 2009, and recommended that besides enhancing the intake in the recruitment of IPS Officers through Civil Services Examination, the option of a Limited Competitive Examination (LCE) for intake into the IPS, to the extent of about 70 officers, for about a period of seven years, be resorted to.

89. Amazingly enough, the study revealed that the State Governments had been merrily manning the ex cadre posts by their State Police Service officers by using them as State Deputation Reserve. The Committee, therefore, concluded, in no uncertain words, that the existence of an inordinately large number of ex cadre posts, over and above the authorised strength of State Deputation Reserve, has been a huge impediment in meaningful determination of the rate of recruitment of-IPS officers. For instance, in Goa, the Committee found that only two IPS Superintendents of Police were available and posted against, surprisingly enough, two ex cadre posts, while the posts of district Superintendent of Police were occupied by no IPS officers, but by the officers from the State Police Reserve. The Committee, therefore, amongst others, concluded that the solution to the problem of shortage in IPS cadre strength calls for a thorough review of the existing ex cadre posts, which need to be immediately encadred.

90. The Committee accordingly recommended, as mentioned above, that besides enhancing the intake in the recruitment of IPS officers through Civil Services Examination, the option of a Limited Competitive Examination for intake into the IPS to the extent of about 70 officers for a period of 7 years be resorted to. The Committee suggested amendments to the Indian Police Service (Recruitment) Rules, 1954, for filling up vacancies in the post of IPS through the Limited Competitive Examination. The summary of recommendations of Kamal Kumar Committee, contained at Para 10.3 of Chapter 10 thereof, suggested the recruitment plan to meet acute shortage of IPS officers. The relevant portion of the recommendations is reproduced below:

10.3. Recruitment Plan.

(6) In the process of recruitment of a large number of IPS officers to meet the acute shortages, any compromise with the quality of recruitment of training of new inductees has to be avoided. A balance should also be struck between (i) the need to fill up the vacancies with urgency, and (ii) the consideration of avoiding problems of cadre management and career progression of officers, in future.

(7) A combination of the following three sources of recruitment would be preferable, to meet the shortage:

(i) Maximal augmentation of IPS seats in the annual Civil Services Examination, for the entire period of 2009-2010.

(ii) Limited Competitive Examination for directly recruited Dy. SPs of States and their equivalent in CPOs, with a minimum of 5 years of service and below 35 years of age and

(iii) Appointment of professionals from specialized fields, such as, IT, Communications, Finance and HR Management, on contract basis, for fixed periods or on deputation from other organizations, to release IPS officers for the jobs needing police professionals.

(8) The intake through the Civil Services Examination will need to be limited to 130 in a year, in the interest of quality of training as also to avoid problems of cadre management in future.

91. The suggestions/proposals of Kamal Kumar Committee were sent by MHA to the Department of Personnel and Training, State/Union territories, Union Public Service Commission and Ministry of Law for their comments. The UPSC, initially, expressed certain reservations on implementation of proposals/suggestions of the Committee. Many of the State Governments, supported by their Home Department, also communicated to the Central Government their opposition to the introduction of the new method of recruitment for the Indian Police Service. Among the State Governments, which opposed the introduction of the new method of recruitment to the IPS, were the Governments of Tamil Nadu, West Bengal, Bihar, Nagaland, Tripura, Karnataka, Kerala, Chhattisgarh, Madhya Pradesh, Goa, Meghalaya and Arunachal Pradesh. The Government of Assam was also consulted in the matter, but it did not formally express its views in the matter to the Government of India. Apart form the State of Assam, there were few other State Governments, which did not express any view on the proposals submitted by the said Committee. Thus, out of the State Governments consulted, some had opposed, some had not expressed any opinion and some had agreed to the proposals.

92. Thereafter, the Government of India, in exercise of its powers, u/s 3(1) of the All India Services Act, 1951, made the Indian Police Service (Recruitment) Amendment Rules, 2011, to amend the Indian Police Service (Recruitment) Rules, 1954, providing for recruitment by Limited Competitive Examination in consultation with the UPSC. These Amendment Rules, 2011, were introduced by Notification No. GSR 660 E dated 29.08.2011, issued by the Ministry of Personnel, Public Grievances and published in the Gazette of India (Extra-Ordinary) dated 03.09.2011.

93. The policy decision, as transpires from the scheme of LCE, reveals that the Central Government''s decision to induct battle-ready officers having 5 (five) years of experience from the State Police, para-military forces and the armed forces, into the Indian Police Service, arose out of the Maoist movement. By no means, such a policy can be described

as arbitrary.

94. Though Mr. Dutta, learned Senior counsel, appearing for the applicants-private respondents, have referred to the case of Nandini Sundar and Others Vs. State of Chhattisgarh, there can be, really, no comparison between the two, namely, the LCE, on the one hand, and the creation of a force, which had been considered in Nandni Sundar"s case (supra). In Nandni Sundar"s case (supra), ill-trained and ill-equipped young men of villages were asked to face the well-trained Maoists, who were equipped with modern and sophisticated arms. These young men were not even paid salary, but honorarium. No wonder, therefore, that in the fact situation of the case, the Court held, in Nandni Sundar"s case (supra), the scheme of using ill-trained and ill-equipped young men of the villages as unconstitutional.

95. As a practice, the Courts do not, ordinarily, interfere with policy decisions of the State unless the policy decision is unconstitutional, irrational, arbitrary, mala fide or against law. The reference, made by Mr. Raval, learned ASG, to the case of Union of Union of India and others Vs. S.L. Dutta and another, is not wholly misplaced inasmuch as it has been observed and held, in S. L. Dutta S. L. Dutta (supra), as follows:

15. Additional Solicitor General also drew our attention to the decision of this Court in Col. A.S. Sangwan v. Union of India. In that case the court was concerned with the competing claims of the petitioner, Col. Sangwan, and respondent 3, namely, Col. A.S. Sekhon to be promoted as Brigadiers in the Directorate of Military Farms. A submission was made that once a policy had been made in exercise of the general executive power of the Union of India and made known and acted upon, it would be arbitrary to depart from it overnight by making a fresh selection without an antecedent reformulation of policy and making that policy known to the concerned sector in the army.

16. Mr. Datar, learned counsel for respondent 1 did not dispute that, normally, it was not for the court to consider the wisdom or appropriateness of a particular policy, particularly in cases where expert knowledge was required in the formulation of the policy and considering the appropriateness of the policy. It was, however, submitted by him that once a policy was settled the government was bound to follow that policy and that, if the policy had to be changed, this could be done only on a proper consideration of the relevant material and could not be resorted to for ulterior purposes or mala fide nor could the policy be changed arbitrarily. He placed reliance on the judgment of this Court in case of A.S. Sangwan, discussed earlier. What is, however, significant is that in that very judgment this Court held (see para 4 of the aforesaid report) that a policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and the imperatives of national considerations. That judgment, therefore, is of no avail to the appellant.

17. It was urged by Mr. Datar that, in the present case, by the change of policy the chances of an Air Vice-Marshal from the Navigation Stream of the Air Force to get promoted to the post of an Air Marshal were severely curtailed as the number of posts available to them for promotion was reduced to two apart from the two rotational posts. It was urged by him that this could, in law, be regarded as a change in the conditions of service of the officers in the Navigation Stream in the Air Force. We are not able to accept this contention. In our opinion, what was affected by the change of policy were merely the chances of promotion of the Air Vice-Marshals in the Navigation Stream. As far as the posts of Air Marshals open to the Air Vice-Marshals in the said stream were concerned, their right or eligibility to be considered for promotion still remained and hence, there was no change in their conditions of service.

18. It was next submitted by learned counsel that no minutes of what transpired at the meeting of the Air Marshals which approved the change of policy, were produced before the court and hence, the court was not in a position to decide whether the change of policy was justified. He contended that it was significant that one Air Marshal from the Navigation Branch had opposed the change in the policy. It was also pointed out by him that, at one stage, the Government of India was not willing to adopt the change of policy but had changed its mind later on and the reasons for this change were not on record. It was submitted by him that these circumstances showed that the change of policy was arbitrary. It was urged by him that the impugned judgment of the High Court was correct, as it was based on these considerations. He, however, made it clear that he was not pressing any allegation of mala fide which might be contained in the petition. In our opinion, the High Court was in error in making the impugned order. As has been laid down more than once by this Court, the court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable material in the fixing of policy are of a highly technical or scientific nature. A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation Stream of the Flying Branch in the Air Force qua the other branches would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which judges and the lawyers of courts can hardly be expected to have much knowledge by reasons of their training and experience. In the present case there is no question of arbitrary departure from the policy duly adopted because before the decision not to promote respondent I was taken, the policy had already been changed. The question is, therefore, whether this change can be said to be arbitrary or mala fide. As we have already pointed out, we are not in a position to hold that this change of policy was not warranted by the circumstances prevailing. As the matter was considered at some length by as many as 12 Air Marshals and the Chief of Air Staff of Indian Air Force, it is not possible to say that the question of change of policy was not duly considered. Mere non-availability of the minutes setting out the discussion, is of no relevance. In fact, it would perhaps be detrimental to the interest of

the country if these matters were not kept confidential. We cannot assume that what was discussed at this meeting was not relevant to the decision regarding the change of policy. It may be that at one time the Ministry of Defence was not agreeable to accept the proposal for this change of policy but on further consideration accepted it. However, this could well show that before accepting the change of policy the Ministry of Defence and the experts attached to it gave full consideration to the requirements of the change. We cannot on the basis of this circumstance alone hold that the change of policy was arbitrary.

(Emphasis added)

96. In Indian Rly. Service of Indian Railway Service of Mechanical Engineers Association and Others Vs. Indian Railway Traffic Service Association and Another, the Supreme Court reiterated its view, as had been expressed earlier in a catena of its decisions, that the Court hardly interferes with matter of policy of the Government. The relevant observations of the Supreme Court, in Indian Rly. Service of Mechanical Engineers Assn. (supra), read as under

11. This Court had constantly taken the view that the Court hardly interferes with matters of policy of the Government. In support of this, cases in R.R. Verma v. Union of India, K. Nagaraj v. State of A.P. and Union of India v. S.L. Dutta are cited.

19. In the light of this background, when we examine the order of Tribunal, we find it had erred in interfering with a scheme. It is well-settled in law that the Government has got a right to notify the scheme. It has equally a right to issue amendments. Therefore, it could amend the scheme including the provisions relating to the predominant factor from 6 to 37.5%. This is a matter of policy. This Court had taken the view in Union of India v. Tejram Parashramji Bombhate that no court or tribunal could compel the Government to change its policy involving expenditure. Again in Asif Hameed v. State of J&K in paragraph 19, page 1906 this Court observed thus:

When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court " sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

20. Unfortunately, the Tribunal has transgressed its limits while questioning the correctness of a policy. We are afraid that the Tribunal has failed to appreciate that Rule

8 is an independent provision. Appendix I and Item 9 thereof to the scheme only indicate that it will also apply to the posts which may be created in future. The same formula is retained as Item 12 in the amendment dated February 26, 1988.

(Emphasis added)

97. We may also pause here to point out that there can be variety of methods or modes of recruitment and it falls within the domain of the Executive to decide as to what mode or method of recruitment is proper or necessary for recruitment to a particular service. Ordinarily, therefore, the High Court will not interfere with the choice of the mode or the method of recruitment to a given service unless the choice is found to be impinging upon the constitutional provisions or upon the mandate of law. A reference, in this regard, may be made to the case of K. Narayanan and others Vs. State of Karnataka and others, wherein the Supreme Court has held as under:

6. Article 309 of the Constitution empowers the appropriate Legislature to frame rules to regulate recruitment to public services and the post. "Recruitment" according to the dictionary means "enlist". It is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well-known methods of recruitment. Even appointment by transfer is not unknown. But any rule framed is subject to other provisions of the Constitution.

(Emphasis added)

98. Reference may also be made to the case of State of Andhra Pradesh and Another Vs. V. Sadanandam and Others, wherein the Supreme Court categorically held that the matters, relating to the mode of recruitment and the category from which the recruitment to a service should be made, are all matters relating to policy decision and are exclusively within the domain of the Executive and that the judicial bodies are not supposed to sit in judgment over the wisdom of the Executive in choosing the mode of recruitment or the category from which a recruitment should be made. The relevant observations, made by the Supreme Court, in V. Sadanandam (supra), read as under:

17. We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to other zones being transferred on promotion to offices in other zones. In drawing such conclusions, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive. As already stated, the question of filling up of posts by persons belonging to other local categories or zones is a matter of administrative necessity and exigency. When the Rules

provide for such transfers being effected and when the transfers are not assailed on the ground of arbitrariness or discrimination, the policy of transfer adopted by the Government cannot be struck down by Tribunals or courts of law.

(Emphasis added)

99. It is not in dispute that presumption always runs in favour of constitutionality of a given legislation or a given subordinate piece of legislation and heavy burden is cast on the person, who alleges unconstitutionality of any legislation or subordinate legislation.

100. Naturally, therefore, the Supreme Court, in Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, held as under:

53. In State of U.P. v. Babu Ram Upadhya this Court held that rules made under a statute must be treated, for all purposes of construction or obligations, exactly as if they were in that Act and are to the same effect as if they were contained in the Act and are to be judicially noticed for all purposes of construction or obligations. The statutory rules cannot be described or equated with administrative directions. In D.K.V. Prasada Rao v. Government of A.P. the same view was laid down. Therefore, the directions are incorporated and become part of the Act itself. They must be governed by the same principles as the statute itself. The statutory presumption that the legislature inserted every part thereof for a purpose and the legislative intention should be given effect to, would be applicable to the impugned directions.

(Emphasis is added)

101. From the above observations, made in Peerless General Finance and Investment Limited (supra), it becomes clear that the Court shall construe the rules, framed under a statute, in the same manner as is done in the case of a statute treating the rules as a part of the statute.

102. We, now, turn to the learned Tribunal"s conclusion that the age limits, prescribed for LCE, is discriminatory. The learned Tribunal, in this regard, has concluded that the upper age limit of 35 years, prescribed by the Amendment Rules, 2011, read with Regulation, 2011, is arbitrary inasmuch the fixing of age limits is not based on any intelligible criteria and has no nexus with the object sought to be achieved. The learned Tribunal has also concluded that those eligible officers, who are below the age of 35 years, will get extra advantage compared to those, who are above 35 years of age.

103. The question, therefore, is: Whether the prescribed upper age limit of 35 years is arbitrary and/or discriminatory?

104. While considering the question posed above, it is of utmost importance to note that the Regulation, 2011, has prescribed, as a condition of eligibility, that a candidate must not have attained the age of 35 years on the 1st August, 2011, subject to relaxation of

period of 1 year for Other Backward Classes and relaxation for a period of 2 years for candidates belonging to the Scheduled Caste or the Scheduled Tribes.

105. Coupled with the above, the Regulation, 2011, also makes it a condition of eligibility that the candidate shall have completed 5 years of continuous and actual service as Deputy Superintendent of Police in a State under the State Police Service or Assistant Commandant under Central Paramilitary Force, namely, Central Reserved Police Force, Border Security Force, Indo Tibetan Police, Central Industrial Security Force and Sashastra Seema Bal or officer of the rank of Captain or Major or equivalent in the Army.

106. What is, now, of paramount importance to note is that qualification on the basis of age is not per se unreasonable unless one can show that the age, prescribed in a given case, is arbitrary, irrational, unreasonable or malafide.

107. Whatever age is prescribed, there can always be argument for or against the prescribed age. Those, who may not fall within the prescribed age, may always claim discrimination. This, by itself, would not make the prescribed age arbitrary or discriminatory unless the prescribed age is found to be arbitrary or discriminatory.

108. In Gautam Kapoor Vs. State of Rajasthan and Another, a Full Bench of the Rajasthan High Court held, inter-alia, that classification, on the basis of age, cannot be regarded unreasonable unless it is shown that the same is arbitrary and unreasonable.

109. In Gautam Kapur (supra), J.S. Verma, as his Lordship, then, was, speaking for the Full Bench, observed as under:

6. It is not necessary to burden our decision unnecessarily with authorities since it is settled that classification on the basis of age is a reasonable classification unless the age prescribed is arbitrary and unreasonable as pointed out earlier by us, the minimum age of 17 years for entry into a medical college cannot be called unreasonable or arbitrary since the argument itself concedes that it is not ordinarily possible to pass the qualifying examination below the age of 16 years. For framing the general rule it is the normal and not the exception which has to be taken into account. We find that a Division Bench of this Court, in Surendra Kumar Jain and Others Vs. Central Board of Secondary Education, Ajmer and Others, upheld the validity of a provision prescribing the minimum age of 14 years for appearance at the High School examination and 16 years for appearance at the intermediate examination. A similar argument based on Article 14 of the Constitution was repelled. It was also pointed out that since the lower limit for age was prescribed for all candidates appearing at that examination, the provisions could not be treated as discriminatory. Similar view was taken in Ms. Kuntal Gupta vs. Board of Education, Rajasthan, (1967 Raj Lw 157), while upholding the validity of a regulation prescribing the minimum age of 16 years for appearing in the higher secondary examination. Kan Sing, J., while rejecting the similar arguments, observed as follows:

Therefore, if examinations are taken to be the milestones in the progress of one''s education and if the taking of education is made to depend upon the maturity of mind and body that a person develops with his or her age, then one cannot say that classification based on age for the taking of an examination is not rational or that it is not in keeping with the underlined object of the enactment., System of examinations is integral part of imparting of education and the education of person is inevitably judged on the basis of an examination that one has passed. Furthermore, the existence of me ban for taking the examinations is bound to induce the students and their parents or guardians in the long run to so plan their education that the course will be completed only by the time they reach the prescribed age and in this way, the underlying object of inducing healthy growth of students in body and mind may vary well be achieved.

With respect, we are in full agreement with these observations of Kan Sing, J. which are very apposite.

(Emphasis is added)

110. Unless, therefore, in the light of the decision in Gautam Kapur (supra), the prescribed age, for recruitment to a service, is found to be arbitrary and/or unreasonable, the age, prescribed for the service by the Executive, cannot be interfered with by the Court.

111. In the present case, the applicant-respondents have completely failed to show as to why the prescribed age of 35 years shall be regarded as arbitrary or so unreasonable that the learned Tribunal ought to have interfered with the prescribed upper age limit of 35 years.

112. Bearing in mind what is indicated above, we may, for a moment, turn to the case of Indian Council of Legal Aid and Advice, etc. etc. Vs. Bar Council of India and another, wherein it was held that the maximum age of 48 years, prescribed by the Bar Council of India for applying for license to practise, is unreasonable and had no nexus with the object sought to be achieved. The ground for fixation of 48 years of age by the Bar Council was to prevent entry of those persons, who, after joining service, would want to join the profession either on retirement on superannuation or on premature retirement and such persons, because of their personal influence, solicit briefs, etc. from the clients. The Supreme Court held that if that is the object, then, how one prevents a person, who joins the bar and, then, gets into a service by getting his license suspended, but subsequently, rejoins the bar after his retirement or premature retirement In that view of the matter, the Supreme Court struck down the age prescribed by the Bar Council of India.

113. In the present case, it is submitted that Rule 9 of the Assam Police Service Rules, 1967, as well as other State Police Service Rules provide age for direct recruitment to the State Police Service from 21 years to 38 years (inclusive of relaxation), while the

prescribed age, for direct recruitment to Indian Police Service, is 21 to 30 years. The object of the impugned amendment is to provide combat ready head of the district police force and such a person should be comparatively young.

114. Coupled with the above, the authorities concerned considered five years of experience, in the State Police Service or paramilitary service or service in the army, sufficient for making the officer eligible to appear in the Limited Competitive Examination (i.e., LCE) for recruitment to the Indian Police Service.

115. Thus, when five (5) years of experience of an officer is added to the maximum age prescribed for recruitment to the Indian Police Service, i.e., 30 years, the simple arithmetic shows 30 + 5 = 35 years. The officer, who got into the State Police Service, at the age of 21 years of age, shall be eligible, at the age of 26 years, for recruitment, by promotion, to the Indian Police Service.

116. Hence, the trained officers shall be available for recruitment by LCE at a young age of 26 - 35 years. The Government of India considered this age limit to be perfect for meeting the requirement to face the situation created due to Maoist movement and it is, therefore, absolutely incorrect to hold that the maximum age of 35 years has no nexus with the object sought to be achieved. By no means, any fault can be found with the prescribed age and experience and the learned Tribunal acted, in our considered view, illegally in holding that the maximum age, prescribed for the service of this category, is discriminatory; more particularly, when we notice that in order to arrive at this conclusion, no cogent reason has been assigned by the learned Tribunal.

117. Mr. N. Dutta, learned Senior counsel, appearing for the applicant-respondents, has referred to the Kamal Kumar Report, particularly, to Pr. 4.3, at page 21, wherein the said Committee suggested that the maximum age should be 45 years. The competent authority, while accepting the report, for the reasons stated above, however, prescribed 35 years as the maximum age for entry into the service by Limited Competitive Examination (i.e., LCE). When the minimum qualifying length of service is five years and the maximum age at which one enters the service is 30 years and requirement of young officers is pressing hard to head the combat forces, 35 years was found to be good enough and we see no reason to hold that the age or experience, prescribed by the Amendment Rules, 2011, is bad in law, unreasonable, irrational or mala fide.

118. Though it was contended by the applicant-private respondents before the learned Tribunal that a person may not become Deputy Superintendent of Police, in the Assam Police Force, within a period of five years, the learned Tribunal has not given any comment on this aspect of the case of the applicant-private respondents. It is, however, necessary to note that apart from the fact that the post of Deputy Superintendent of Police is a post, which may be filled up by direct recruitment, none of the applicant-private respondents is a person, who is yet to complete 5 years of experience in the post of the Deputy Superintendence of Police. On the ground of experience, therefore, none of the

applicants-private respondents can be said to be ineligible and, hence, they cannot be regarded as aggrieved persons so far as the prescribed experience is concerned.

119. Reverting to the question of upper age limit, which has been prescribed in the present case, the Union of India has rightly pointed out that the object of introducing LCE is to receive combat ready trained officers, who are physically fit and, hence, when the upper age limit of 35 years was prescribed after due application of mind, the age, so prescribed, cannot be said to be unreasonable, arbitrary or illegal, particularly, when the object is to fill up the post of Superintendent of Police, as soon as possible, with trained and effective man power.

120. While considering the upper age limit of 35 years and holding the age so prescribed as discriminatory and holding that the LCE, as conceived, reduces the chances of promotion of the applicant-private respondents, the learned Tribunal, in the impugned order, at para 23, observed and quoted as under:

23. The activities of the Government have a public element and, therefore, fairness and equality must be observed in their exercise. The Government, unlike an ordinary individual, cannot Choose to exclude persons by discrimination. The process of selection in IPS is an integrated process. At every stage in the process, certain rights are created in favour of one or the other of the candidates. Rule 4(1)(b) of the IPS (Recruitment) Rules, 1954 confers right on the applicants for being considered for promotion to the IPS cadre. The abridgment of such rights is discriminatory. It appears from the perusal of the IPS (Recruitment) Rules, 2011 that inclusion of the additional category of officers as feeder category for appointment to IPS is devoid of any cogent nexus with the object sought to be achieved thereunder. Upper age limit and lower age limit prescribed for limited competitive examination are discriminatory. Those eligible officers, who are below the age of 35, will get extra advantage comparing to those who are above 35 years of age. As such, the provision is discriminatory. The chances to be considered for promotion of the applicants would be bleak as per the amended rules. Therefore, in our opinion, the impugned amendment is absolutely arbitrary, unreasonable, unfair, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

(Emphasis is added)

121. From the above observations, it is not discernible as to how the learned Tribunal came to the conclusion that the applicant-respondents have a right to be considered for promotion under Rule 4(1)(b) of the Recruitment Rules, 1954, and how their right, if any, stood abridged by the prescription of LCE as a mode of recruitment. This apart, without assigning any reason as to why the Central Government''s requirement of combat ready young officers is untenable in law, the learned Tribunal held that the prescribed upper age limit is bad in law and reduces chances of promotion of the applicants-respondents.

122. Apart from the fact that "chance of promotion" cannot be equated with the right to be considered for promotion, it is also noteworthy that unless the object, which the Union of India aims to achieve, can be said to be bad in law and unless the prescribed upper age limit of 35 years can be held to be without any reasonable basis and/or contrary to the object, which is sought to be achieved, interference with the prescribed age limit and/or requisite experience would be impermissible in law.

123. It has been rightly submitted by the learned Additional Solicitor General that the prescribing of age limit or prescribing of cut off age for recruitment to a service is a policy decision, wherein some persons would always fall on the other side of the divide, but this does not give the aggrieved person any legal basis to challenge the cut off. The learned Additional Solicitor General is not wrong, when he refers, in this regard, to the cases of Union of India Vs. Shivbachan Rai, (2001) 9 SCC 356, and Dr. Ami Lal Bhat Vs. State of Rajasthan and others, and points out that the legal proposition is granting of latitude and judicial non-interference unless the cut-off date is so capricious or whimsical as to be wholly unreasonable. The relevant observations, made in Shivbachan Rai (supra), read:

5. Thereafter the respondent was selected by the Union Public Service Commission. During the pendency of the present appeal the respondent, on 7.3.1994 had been appointed as Assistant Director as a direct recruit with effect from 24.1.1994 until further orders. The appointment notification further states:

This appointment is provisional and subject to the outcome of SLP (C) No. 3446 of 1993 pending in the Supreme Court of India.

6. The only question that we are required to consider is whether the Rules framed under the proviso to Article 309 of the Constitution and dated 29-3-1985 whereby age relaxation up to 5 years is permitted in the case of government servants can be considered as arbitrary or unreasonable. Prescribing of any age limit for a given post, as also deciding the extent to which any relaxation can be given if an age limit is prescribed, are essentially matters of policy.

(Emphasis is added).

124. Coupled with the above, the relevant observations, appearing in Ami Lal Bhat (supra), read as under:

5. This contention, in our view, is not sustainable. In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rulemaking authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off

date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable. This view was expressed by this Court in Union of India v. Parameswaran Match Works and has been reiterated in subsequent cases. In the case of A.P. Public Service Commission v. B. Sarat Chandra the relevant service rule stipulated that the candidate should not have completed the age of 26 years on the 1st day of July of the year in which the selection is made. Such a cut-off date was challenged. This Court considered the various steps required in the process of selection and said,

when such are the different steps in the process of selection the minimum or maximum age of suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for the recruiting agency to scrutinise the applications.

This Court, therefore, held that in order to avoid uncertainly in respect of minimum or maximum age of a candidate, which may arise if such an age is linked to the process of selection which may take an uncertain time, it is desirable that such a cut-off date should be with reference to a fixed date. Therefore, fixing an independent cut-off date, far from being arbitrary, makes for certainty in determining the maximum age.

6. In the case of Union of India v. Sudhir Kumar Jaiswal the date for determining the age of eligibility was fixed at 1st of August of the year in which the examination was to be held. At the time when this cut-off date was fixed, there used to be only one examination for recruitment. Later on, a preliminary examination was also introduced. Yet the cut-off date was not modified. The Tribunal held that after the introduction of the preliminary examination the cut-off date had become arbitrary. Negativing mis view of the Tribunal and allowing the appeal, this Court cited with approval the decision of this Court in Parameswaran Match Works case and said that fixing of the cut-off date can be considered as arbitrary only if it can be looked upon as so capricious or. whimsical as to invite judicial interference. Unless the date is grossly unreasonable, the Court would be reluctant to strike down such a cut-off date.

7. In the present case, the cut-off date has been fixed by the State of Rajasthan under its Rules relating to various services with reference to the 1st of January following the year in which the applications are invited. All Service Rules are uniform on this point. Looking to the various dates on which different departments and different heads of administration may issue their advertisements for recruitment, a uniform cut-off date has been fixed in respect of all such advertisements as 1st January of the year following. This is to make for certainty. Such a uniform date prescribed under all Service Rules and Regulations makes it easier for the prospective candidates to understand their eligibility for applying

for the post in question. Such a date is not so wide off the mark as to be construed as grossly unreasonable or arbitrary. The time-gap between the advertisement and the cut-off date is less than a year. It takes into account the fact that after the advertisement, time has to be allowed for receipt of applications, for their scrutiny, for calling candidates for interview, for preparing a panel of selected candidates and for actual appointment. The cutoff date, therefore, cannot be considered as unreasonable. It was, however, strenuously urged before us that the only acceptable cutoff date is the last date for receipt of applications under a given advertisement. Undoubtedly, this can be a possible cut-off date. But there is no basis for urging that this is the only reasonable cut-off date. Even such a date is liable to question in given circumstances. In the first place, making a cut-off date dependent on the last date for receiving applications, makes it more subject to vagaries of the department concerned, making it dependent on the date when each department issues an advertisement, and the date which each department concerned fixes as the last date for receiving applications. A person who may fall on the wrong side of such a cut-off date may well contend that the cut-off date is unfair, since the advertisement could have been issued earlier; or in the alternative that the cut-off date could have been fixed later at the point of selection or appointment. Such an argument is always open, irrespective of the cut-off date fixed and the manner in which it is fixed. That is why this Court has said in the case of Parameswaran Match Works and later cases that the cut-off date is valid unless it is so capricious or whimsical as to be wholly unreasonable. To say that the only cut-off date can be the last date for receiving applications, appears to be without any basis. In our view the cut-off date which is fixed in the present case with reference to the beginning of the calendar year following the date of application, cannot be considered as capricious or unreasonable. On the contrary, it is less prone to vagaries and is less uncertain.

(Emphasis is supplied)

125. We, now, come to the learned Tribunal''s conclusion that the Amendment Rules, 2011, has abridged the right conferred on the applicants-private respondents by Rule 4(1)(b) of the Recruitment Rules, 1954, for being considered for promotion to Indian Police Service. Is this conclusion correct?

126. The question, therefore, is: Whether the impugned Amendment Rules, 2011, and/or the Regulation, 2011, while prescribing LCE as a mode of recruitment to the Indian Police Service, intrude into the quota of the State Police Service Officers for promotion to the Indian Police Service as envisaged by Rule 4(1)(b) of the Recruitment Rules, 1954, and abridged thereby the right of consideration for promotion to the Indian Police Service of persons, such as, the applicants-private respondents?

127. The learned Tribunal, it may be noted, has assigned no reason whatsoever as to why it concluded that inclusion of an additional cadre of officers, by taking resort to LCE, abridges the right of being considered for promotion of persons, such as, applicants-private respondents, under Rule 4(1)(b) of the Recruitment Rules, 1954.

Reaching of a conclusion, by the learned Tribunal, without assigning any reason therefor, is wholly illegal and cannot be sustained.

128. Coupled with the above, it is of great importance to note that the word "promotion" is, in fact, a misnomer. In ordinary parlance, promotion is a condition of service and right to be considered for promotion is a right, though not vested in nature.

129. Ordinarily, "promotion" means the appointment of a member of any category or grade of a service or a class of service to a higher category or grade of such service or class. We may, in this regard, refer to the case of C.C. Padmanabhan and Others Vs. Director of Public Instructions and Others, wherein the Supreme Court, at para 5, observed as to what promotion means. The relevant observations, appearing at para 5, read as under:

5. Promotion is thus defined in clause (11) of Rule 2 of the Kerala State and Subordinate Services Rules, 1958:

"Promotion" means the appointment of a member of any category or grade of a service or a class of service to a higher category or grade of such service or class.

This definition fully conforms to the meaning of "promotion" as understood in ordinary parlance and also as a term frequently used in cases involving service laws. According to it a person already holding a post would have a promotion if he is appointed to another post which satisfies either of the following two conditions, namely-

(i) that the new post is in a higher category of the same service or class of service;

(ii) the new post carries a higher grade in the same service or class.

(Emphasis is added)

130. Promotion, as a condition of service, would apply to, or cover, a person, who is a member of the service. Since the applicants-private respondents are members of the Assam Police Service, their promotion to the Indian Police Service cannot be regarded as their condition of service, for, they are yet to be recruited to the Indian Police Service by way of selection/promotion. Recruitment by promotion is a condition of recruitment and not a condition of service. Therefore, recruitment of an officer of Assam Police Service to the Indian Police Service, by promotion, is not, and cannot be regarded as, a condition of service; rather, the recruitment of a number of the Assam Police Service to the Indian Police Service, by promotion, is a condition of recruitment. No right can be said to accrue to a member of the Assam Police Service to be recruited to the Indian Police Service by way of promotion.

131. Hence, recruitment to the Indian Police Service, by way of promotion, is merely a chance for an officer of the Assam Police Service, such as, the applicants-private

respondents.

132. We may pause here to refer to the Indian Police Service (Appointment by Promotion) Regulation, 1955. Regulation 5(2) deals with zone of consideration; Regulation 5(3) deals with age; Regulation 5(4) deals with the list to be prepared merit-wise; and Regulation 5(5) prescribes arrangement of select list.

133. The applicants-private respondents cannot speculate as to when they will come within the zone of consideration for promotion nor can they say that on the basis of their service records, they would be classified as "outstanding" or they will have a cake walk into the Indian Police Service. While considering the illustration, given by Mr. N. Dutta, learned Senior counsel, appearing for the applicants-private respondents, that the Superintendent of Police, Dhubri, is holding a non-cadre post and if this is converted into a cadre post, it will adversely affect him, it is necessary to point out that a non-cadre post is created for a temporary period and creation of such a non-cadre post cannot be for the purpose of augmenting promotional avenues. Far from this, creation of a non-cadre post has to be need based and if the post is really needed for indefinitely long period, then, non-cadre post has to be encadred into the Indian Police Service. Considered in this light, there is no force in the contention, raised on behalf of the applicants-respondents, that the applicants-respondents would be deprived of their right to hold a non-cadre post if the scheme of LCE is sustained. In fact, the relevant observations, appearing in this regard, at para 2:5:6 of Kamal Kumar Committee"s report, are of great relevance. The observations read asunder:

2.5.6. IPS (Cadre Rules) indeed authorize the State Governments to create ex-cadre posts over and above the authorized strength of senior duty posts, but only to meet any sudden and immediate needs of the cadres, that too for a period of two years only after which the Government of India"s approval is required to be obtained. However, that this stipulation exists only on paper is quite evident from the ground situation described above. Also, because the State Governments are any way able to have all the posts that they need for the policing and internal security tasks, even if technically deemed as ex-cadre posts, they do not press for their encadrement. The day-to-day work goes on but these posts not being included in the authorized cadre strength, remain out of reckoning for the purpose of determining the recruitment rate thereby leading to shortages of the kind that the IPS cadre is facing today. Indeed, acute shortages often also compel the State Governments to either keep some of the cadre posts and some ex-cadre posts vacant, or post State police service officers against them depending of the availability of latter.

(Emphasis is added)

134. From the above observations, made in Kamal Kumar Committee"s Report, it becomes clear that ex cadre posts are meant to meet the exigency of situation and cannot be allowed to remain permanently and as of right, more particularly, in the case of

officer holding the ex cadre post.

135. To put it a little differently, recruitment to the Indian Police Service by promotion is not a condition of service, but a condition of recruitment inasmuch as a person is recruited to the Indian Police Service if he is covered by Rule 4(1)(b) of the Recruitment Rules, 1954, or comes within the zone of consideration of Rule 4(1)(b).

136. To be more explicit, as rightly pointed out by Mr. Mishra, learned Senior counsel, Rule 4(1)(b) does not provide for promotion to a senior grade of the Assam Police Service, 1967; rather, Rule 4(1)(b) provides for recruitment to the Indian Police Service by promotion. Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, deals with the zone of consideration by prescribing the age and requiring categorization of officers on merit and arrangement of select list. The applicants-private respondents can, by no stretch of imagination, stipulate as to when they will come within the zone of consideration or whether on categorization, of their merit on the basis of their service records, they would be catapulted to the Indian Police Service. In such a situation, question of reduction of their chances of promotion to the Indian Police Service does not arise. In no uncertain words, therefore, held the Supreme Court, in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, that though promotion is condition of service, mere chance of promotion is not even a condition of service. The relevant observations, made in Mohd. Shujat Ali (supra), read thus:

15. In the first place, it is not correct to say that there was any variation in the condition of service in regard to promotion applicable to non-graduate Supervisors from the erstwhile State of Hyderabad immediately prior to November 1, 1956. It is true that a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service. This proposition can no longer be disputed in view of several pronouncements of this Court on the point and particularly the decision in Mohammad Bhakar v. Y. Krishna Reddy where this Court, speaking through Mitter, J., said: "Any rule which affects the promotion of a person relates to his condition of service". But when we speak of a right to be considered for promotion, we must not confuse it with mere chance of promotion - the latter would certainly not be a condition of service. This Court pointed out in State of Mysore v. G.B. Purohit that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service. What happened in State of Mysore v. G.B. Purohit was that the district wise seniority of Sanitary Inspectors was changed to State wise seniority and as a result of this change, the respondents went down in seniority and became very junior. This, it was urged, affected their chances of promotion which were protected under the proviso to Section 115 sub-section (7). This contention was negatived and Wanchoo, J. as he then was, speaking on behalf of this Court observed: "It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances

of promotion are not conditions of service". Now, here in the present case, all that happened as a result of the application of the Andhra Rules and the enactment of the Andhra Pradesh Rules was that the number of posts of Assistant Engineers available to non-graduate Supervisors from the erstwhile Hyderabad State for promotion, was reduced: originally it was fifty per cent, then it became thirty-three and one-third per cent, then one in eighteen and ultimately one in twenty-four. The right to be considered for promotion was not affected but the chances of promotion were severely reduced. This did not constitute variation in the condition of service applicable immediately prior to November 1, 1956 and the proviso to Section 115 sub-section (7) was not attracted. This view is completely supported by the decision of a Constitution Bench of this Court in Ramchandra Shankar Deodhar v. The State of Maharashtra.

(Emphasis is supplied).

137. Promotion to a higher grade, in the same service, is, rightly contends Mr. Kabir, learned counsel, different from recruitment to a new service by way of promotion. While, in the case of the former, promotion is a condition of service, the promotion, in the latter category, is a condition of recruitment. The relevant observations, made in this regard, at para 5, in C.C. Padmanabhan Vs. Director of Public Instructions, reported in 1980 Supp. SCC 668, are of great relevance and we have already reproduced the same above.

138. In Syed Khalid Rizvi and Others and Ramesh Prasad Singh and Others Vs. Union of India (UOI) and Others, the Supreme Court has clearly held that recruitment by promotion is not a condition of service, but a condition of recruitment and that the chance of promotion is defeasible, because chance of promotion is not a condition of service. The relevant observations, made in Syed Kalid Rizvi (supra), read as under:

5. These facts and diverse contentions of the counsel on either side would give rise to the following questions: (i) whether the promotees have been appointed to IPS according to Rule? (ii) whether their continuous officiation in cadre posts would enure to their seniority entitling to the year of allotment from the dates of their initial promotions; (iii) whether their inclusion in the select-list and the computation of seniority from that date are conditions of service; and (iv) whether the facts would justify to draw the presumption of deemed relaxation of relevant rules by Rule 3 of the Residuary Rules?

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28. We find force in the contention of Shri P.P. Rao that unless the promotees were recruited to the Indian Police Service in accordance with the regulations and rules they did not form a class with the direct recruits and unequals cannot be treated as equals. Recruitment to the service is from more than two sources, primarily from direct recruitment and promotion. Unless the promotee officer is appointed to the service in accordance with the rules, he does not become a member of the service. On appointment

under Rule 9 of the Recruitment Rules to a substantive vacancy from the select-list by the Central Government the promotee officer becomes a member of the service. But whereas appointment under Regulation 8 of Promotion Regulations is in disregard of the rules to cope up with the administrative expediency, be it to a temporary or substantive vacancy an appointee under Regulation 8 read with Rule 9 of Cadre Rules is an unequal to a direct recruit or one under Regulation 9 of Promotion Regulation read with Rule 9 of Recruitment Rules. So unequals cannot be treated as equals offending Articles 14 and 16(1) of the Constitution. Mere production of inequality by operation of the rule is not sufficient to treat an appointee under Regulation 8 of Promotion Regulation on par with one under direct recruitment or one under Rule 9 of Recruitment Rules and Regulation 9 of Promotion Regulations. Getting qualified earlier in point of time or passing the prescribed tests does not by itself clothe with a right to promotion or entitle to seniority. It would arise only after the select-list was prepared on comparative evaluation of the record and assessment of merit, ability and suitability and fixation of inter se seniority was made and approved by the UPSC followed by or preceded with an order of appointment under Regulation 9 of Promotion Regulations and Rule 9 of Recruitment Rules. Persons similarly circumstanced alone are entitled to equal treatment. The rule-making authority or the legislature takes into consideration diverse factors to integrate into common cadre the incumbents drawn from different sources. They have better knowledge to adjust those appointees to integrate them into a common cadre. Until the officers are appointed to the Indian Police Service in accordance with the Recruitment Rules and Promotion Regulations, they remain from a separate source and a distinct class. Only on due appointment after their fusion into common stream or cadre there cannot be any invidious discrimination thereafter between the promotees and the direct recruits. The direct recruits and promotees/officers constitute, thus, different classes. Conditions of recruitment should strictly be complied with in making recruitment by promotion of the Dy. S.P. from a State Police Service holding substantive posts into the Indian Police Service. Any appointment in contravention thereof would negate the scheme of the rules and regulations.

29. Fulfilling the conditions of eligibility for consideration for promotion to the Indian Police Service from State Service are conditions of recruitment. Once a promotee has duly been recruited by promotion the conditions thereafter like pay, pension etc. are conditions of service. The compliance of conditions of recruitment are mandatory for appointment by promotion. In Keshav Chandra Joshi case, the writ petitioners were Forest Range Officers in U.P. State Forest Subordinate Service. Due to paucity of direct recruit Asstt. Conservators of Forest by the UPSC the Forest Range Officers were temporarily promoted and they continued to officiate as Asstt. Conservators of Forest for a period ranging between 5 to 12 years. They filed a writ petition under Article 32 contending that they became senior to the direct recruits who were recruited later on and that their continuous officiation should be counted towards their seniority. This Court, while repelling the contention, held that appointment to the post in accordance with the rules is a precondition and the conditions of rules of recruitment cannot be relaxed and that the

promotees get their seniority only from the date of the regular promotion in accordance with the rules and within quota. The entire officiating period was held to be fortuitous. It must, therefore, be held that recruitment by promotion in accordance with the regulations and rules are conditions of recruitment and are mandatory and should be complied with.

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31. No employee has a right to promotion but he has only the right to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible. Take an illustration that the Promotion Regulations envisage maintaining integrity and good record by Dy. S.P. of State Police Service as eligibility condition for inclusion in the select-list for recruitment by promotion to Indian Police Service. Inclusion and approval of the name in the select-list by the UPSC, after considering the objections if any by the Central Government is also a condition precedent. Suppose if "B" is far junior to "A" in State Services and "B" was found more meritorious and suitable and was put in a select-list of 1980 and accordingly "B" was appointed to the Indian Police Service after following the procedure. "A" was thereby superseded by "B". Two years later "A" was found fit and suitable in 1984 and was accordingly appointed according to rules. Can "A" thereafter say that "B" being far junior to him in State Service, "A" should become senior to "B" in the Indian Police Service. The answer is obviously no because "B" had stolen a march over "A" and became senior to "A". Here maintaining integrity and good record are conditions of recruitment and seniority is an incidence of service. Take another illustration that the State Service provides - rule of reservation to the scheduled castes and scheduled tribes. "A" is a general candidate holding No. 1 rank according to the roster as he was most meritorious in the State service among general candidates. "B" scheduled castes candidate holds No. 3 point in the roster and "C", scheduled tribe holds No. 5 in the roster. Suppose Indian Police Service Recruitment Rules also provide reservation to the Scheduled Castes and Scheduled Tribes as well. By operation of the equality of opportunity by Articles 14, 16(1), 16(4) and 335, "B" and "C" were recruited by promotion from State Services to Central Services and were appointed earlier to "A" in 1980. "A" thereafter in the next year was found suitable as a general candidate and was appointed to the Indian Police Service. Can "A" thereafter contend that since "B" and "C" were appointed by virtue of reservation, though were less meritorious and junior to him in the State service and gradation list would not become senior to him in the cadre as IPS officer. Undoubtedly "B" and "C", by rule of reservation, had stolen a march over "A" from the State Service. By operation of rule of reservation "B" and "C" became senior and "A" became junior in the Central Services. Reservation and roster were conditions of recruitment and seniority was only an incidence of service. The eligibility for recruitment to the Indian Police Service, thus, is a condition of recruitment and not a condition of service. Accordingly we hold that seniority, though, normally an incidence of service, Seniority Rules, Recruitment Rules and Promotion Regulations form part of the conditions of recruitment to the Indian Police Service by promotion, which should be strictly complied with before becoming eligible for consideration for promotion and are not relaxable.

(Emphasis is added)

139. One of the basic grievances of the applicants-private respondents is that there is likelihood of reduction in their chances of promotion to the Indian Police Service if the impugned Amendment Rules, 2011, are allowed to survive. Suffice it to point out, in this regard, that since the LCE aims at making recruitment as against the quota meant for direct recruitment and not for promotional quota envisaged by Rule 4(1)(b) of the Recruitment Rules, 1954, and chances of promotion not being a condition of service, the applicants-private respondents" apprehension of reduction, in the promotional quota of the IPS, is not based on facts and the same ought not to have prevailed upon the learned Tribunal.

140. Coupled with the above, it has been categorically submitted, on behalf of the Union of India, that LCE is meant for filling up of vacancies in the direct recruitment quota only. Hence, the interest of the State Police Officers in getting inducted into the Indian Police Service, by promotion, is not jeopardized or abridged by the LCE. This apart, since the vacancies, sought to be filled up by resorting to LCE, would not cover the promotional quota, as contemplated by Rule 4(1)(b) of the Recruitment Rules, 1954, many of the officers of the State Police Service may get inducted into the Indian Police Service, through the new mode of recruitment reducing thereby the pressure over the promotional quota.

141. Though it is contended by Mr. Dutta, learned Senior counsel, that a junior officer may become senior if LCE is resorted to, we find no force in this submission inasmuch as LCE has been proposed merely as a mode of recruitment to fill up the quota of direct recruitment and if anyone gets inducted into the Indian Police Service through the LCE, it would not render the LCE arbitrary or discriminatory.

142. It is argued by Mr. Dutta that the introduction of the LCE, as a new mode of recruitment to the Indian Police Service, requires amendment to the Indian Police Service (Cadre) Rules, 1954. It needs to be noted that though this aspect was raised before the learned Tribunal, but the learned Tribunal has chosen not to comment on the same. It is, therefore, strictly speaking, not necessary for us to deal with this aspect of the grievances of the applicants-private respondents. Even then, we have considered this aspect and we find that the introduction of the LCE, as a new or additional mode of recruitment to the Indian Police Service, does not really call for making amendments to the Indian Police Service (Cadre) Rules, 1954, inasmuch as no change in the management of the Indian Police Service has been proposed through the LCE but only to fill up some of the vacancies in the direct recruitment quota. Even amendment to the Indian Police Service (Fixation and Cadre Strength) Rules, 1954, is not required for introducing LCE, because Indian Police Service (Fixation and Cadre Strength) Rules, 1954, have been framed for the purpose of fixing the total number of posts in a particular cadre and not for fixing modes of recruitments to fill up the posts. The LCE is for filling up of some of the vacancies and not for filling up of total number of posts.

143. It has been rightly pointed out, on behalf of the Union of India, that, even on facts, the apprehension of the applicants-private respondents, that their chances of promotion to Indian Police Service may be reduced if the third mode of recruitment to the Indian Police Service, by way of LCE is sustained, does not carry conviction.

144. It may also be noted that the All India Services (Joint Cadre) Rules, 1972, have no relevance to the facts and circumstances of the present case inasmuch as Rule 3 read with Rule 6 of the All India Services (Joint Cadre) Rules, 1972, makes it clear that the Joint Cadre Authority comes into picture once a person is inducted into the All India Service. Since the candidates to be inducted into the Indian Police Service, through LCE, are not the members of All India Service, these Rules have no application to their cases.

145. Because of the fact that the LCE, as a new mode of direct recruitment to Indian Police Service, did not, in any manner, violate, as already discussed above, any fundamental rights or legal rights of the applicants-private respondents, they ought not to have been regarded as persons aggrieved within the meaning of Section 19 of the Administrative Tribunal Act, 1985.

146. Yet another grievance of the applicants-private respondents is that if the criterion, "within a period of 5 years", which Regulation 5 of the impugned Regulation, 2011, prescribes as the requisite experience, is accepted, it will deprive many of the officers of the Assam Police Service from being promoted to the Indian Police Service, for, most of the officers from the Assam Police Service may not be able to acquire the requisite experience of five years, in the post of Deputy Superintendent of Police, before they attain the age of 35 years. Suffice it to point out, in this regard, that none of the applicants-respondents is an officer below the rank of the Deputy Superintendent of Police. In fact, Deputy Superintendent of Police is a post to which direct recruitments are also made under the Assam Police Service Rules.

147. When 5 years of experience has been considered by the Government to be fixed as the minimum experience required to become eligible for applying for the LCE, fixing and/or prescribing 35 years, as the upper age limit, in our considered view, is quite reasonable keeping in view the objects sought to be achieved through the impugned amendments and we notice nothing abnormal, irrational, arbitrary, unfair or unreasonable, on the part of the State respondents, in prescribing either the age limit or the requisite experience. The nexus, we may hasten to say, between the impugned amendments and the object (of having "battle ready" officers in the level of District Superintendent and/or Deputy Inspector General of Police in order to contain Maoist insurgency) sought to be achieved thereby is well established in the facts and circumstances of the case.

148. What crystallizes from the above discussion is that the impugned Amendment Rules 2011 as well as the Regulation 2011 can, by no means, be regarded as invalid, ultra vires, illegal or mala fide.

149. Situated thus, we hereby set aside the impugned order, dated 14.09.2012, passed by the learned Tribunal and accordingly restore the (i) Govt. Notification No. GSR 660(E) dated 29.08.2011, issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, (ii) the Gazette of India, Extraordinary bearing GSR No. 116(E), dated 03.03.2012, published by the Ministry of Home Affairs, Government of India, and the (iii) Examination Notice No. 05/2010-IPSLC, dated 10.03.2012, published by the UPSC, for holding Limited Competitive Examinations for recruitment to the Indian Police Service.

150. With the above observations and directions, these writ petitions shall stand disposed of. No order as to costs.