

[2011] 12 S.C.R. 1

JAGDISH PRASAD

v.

STATE OF RAJASTHAN & ORS.
(Civil Appeal Nos. 5102-5103 OF 2011)

JULY 07, 2011

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Service Law – Selection by promotion – Rajasthan Transport Service Rules, 1979 – rr. 6, 10 & 24 – Selection/promotion process – Validity of – Promotion to post of District Transport Officer (DTO) from the post of Motor Vehicle Inspectors – Amendment to Schedule I and deletion of Schedule II of the 1979 Rules in the year 1992 leading to deletion of requirement of passing qualifying examination for the higher post of DTO – Effect of – Selection/promotion order dated 8th July, 1994 – Action of the State government in clubbing all the vacancies of more than 10 years (from 1983-84 till 1993-94) and giving promotions challenged – Whether by amendment to Schedule I and the deletion of Schedule II of the 1979 Rules the effect of the statutory provisions like rr. 6, 10, 24 read in their plain language stood diluted and the statutory provisions were rendered ineffective and inoperative – Held: The services of the Transport Department in all relevant posts are covered under the provisions of the 1979 Rules and their purpose is to make promotions on merit or merit-cum-seniority in the prescribed proportion of 50:50 – The Schedule of the 1979 Rules has to be in conformity with, and is required to advance the object of the primary statutory provision and cannot in any way wipe out its effect and spirit – Even if Schedule II of the 1979 did not exist, it was obligatory on the part of the respondent to evolve a methodology to make promotions purely on merit – Right from 1983-84 till 1993-94 no examination was conducted by the appropriate authority despite issuance of notifications for holding exams on a few of these occasions – Representation from the

A *Transport Inspector's Union* cannot be considered as a sufficient cause or reason for not holding the examinations for more than ten years and causing serious prejudice to the candidates who might have been sufficiently meritorious to qualify in the exams and be considered for promotion to 50% of the posts under the promotion quota – Even after 1993-94, the process of selection adopted by the State Government cannot be accepted – The preparation of seniority list, method of selection and clubbing of vacancies were apparently in violation of the statutory Rules – Selection/promotion order dated 8th July, 1994 accordingly set aside with further directions – Fresh process of selection to be held by the competent authority in accordance with Rules – Selection by promotion for yearwise vacancies shall be filled in by compliance to r.24(6) – The authorities shall fill 50% of the promotion vacancies purely by merit, for which it will evolve a methodology, either by holding a qualifying examination as was being conducted prior to 1992, or by any other examination which would satisfy the basic criteria of selection by merit – Remaining 50% of the promotion posts shall be filled by seniority-cum-merit for which the departmental DPC shall meet within stipulated time – Secretary (Transport), Government of Rajasthan directed to conduct an enquiry personally and fix responsibility on all the officers/officials responsible for not conducting qualifying examination in accordance with Rules from 1983 to 1994 and subsequent thereto in accordance with law – The vacancies would be clubbed only for the purposes of calculating an arithmetical figure but, will be filled in accordance with yearwise vacancies and considering the officers eligible for promotion to the post of DTO in accordance with seniority cum merit rule for 50% of the promotion post – All remaining 50% posts shall be filled up purely on merit and by holding an examination – Persons already promoted would not be reverted and none of them would be entitled to claim any financial benefits, if they have already retired from the post of DTO – Candidates now

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selected in furtherance to the directions contained in the judgment shall not be entitled to any arrears of pay because though their promotion may be relatable to a previous year, such promotion shall be notional without any consequential benefits. A

Administrative Law – Rule of fairness – Held: Is an essential feature in Government action. B

The issue relating to promotion to the post of District Transport Officer (DTO) from the post of Motor Vehicle Inspectors arose for consideration in the present appeal. C

On 13th April, 1992, a notification was issued by the respondents amending the Rajasthan Transport Service Rules, 1979 whereby Schedule 1 and Schedule 2 of the 1979 Rules were amended. Earlier the candidates were required to pass a qualifying examination for the post of DTO. However, by this amendment, the said requirement was deleted under Schedule 1 and syllabus for the same was deleted from Schedule 2. In other words, promotion became possible without holding the said examination for the higher post. D
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It was alleged before the Service Tribunal that the State of Rajasthan had violated Rules 10 & 24 of the 1979 Rules and that the action of the State government in clubbing all the vacancies of more than 10 years (from 1983-84 till 1993-94) was improper as the respondents were obliged to consider the vacancies in each given year in terms of Rule 10. The State filed reply before the Tribunal stating that though the vacancies had been determined year wise no one had passed the qualifying examination and nobody had been found eligible for promotion upto 1st April, 1994 as per Schedule II of the 1979 Rules; that thereafter, for administrative reasons including the representation made by Rajasthan Transport Inspector's Union, the qualifying examination F
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A was done away with, and appointment/promotion to the
post of DTO was made simply by promotion. The further
case of the State Government was that vacancies in the
post of DTOs could not be filled for want of eligible
candidates and, therefore, the vacancies were carried
B forward for consideration to the subsequent years.

The Tribunal quashed the selection/promotion order
dated 8th July, 1994 and directed the State Government
to hold review Departmental Promotion Committee (DPC)
C to determine yearwise vacancies afresh holding that the
State Government could not have circumscribed or
diluted the provision regarding "year-wise" filling up of
vacancies.

The High Court in substance upheld the order of the
D Service Tribunal and issued certain further directions to
the respondents to undertake fresh exercise for
promotion to the post of DTO from the post of Motor
Vehicle Inspectors. The High Court held that the State
Government had given a complete go-bye to the
E provisions of the relevant Rules; and that mere deletion
of the condition of qualifying examination in the year
1992 did not justify the action of the State government in
clubbing all the vacancies of more than 10 years (from
1983-84 till 1993-94) and giving promotions to persons
F making a new zone of consideration and reservation also
accordingly. The Court held that clubbing of vacancies
could be made only for the purpose of direct recruitment
while promotions have to be made on the basis of year
wise determination of vacancies to the candidates eligible
G for the particular year who come in the zone of
consideration for the particular year; and that clubbing
of vacancies for more than 10 years not only created
complications so far as reservation of the posts as per
relevant roster were concerned, but entire procedure of
zone of consideration for each year was disturbed.
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In the instant appeal, the question that arose for consideration was whether by amendment to Schedule I and the deletion of Schedule II of the 1979 Rules the effect of the statutory provisions like Rules 6,10 and 24 of the 1979 Rules read in their plain language stood diluted and the statutory provisions were rendered ineffective and inoperative.

Disposing of the appeal, the Court

HELD:1. The Rajasthan Transport Service Rules, 1979 clearly postulate merit to be the criterion for promotion to higher posts. The vacancies have to be determined as per Rule 10 of the 1979 Rules, on the 1st April of every year. If any fraction of vacancies is left over, after the apportionment of vacancies in the manner prescribed, the same shall be appointed through the quota of various methods prescribed in continuous cyclic order, giving precedence to the promotion quota. Appointing authority has to determine yearwise vacancies of earlier years, which were required to be filled in by promotion if such vacancies were not determined and filled earlier in the year they were required to be filled in, in the subsequent years. The emphasis of the language of these rules is on yearly vacancies and they are required to be filled in with reference to each particular year. The vacancies are required to be determined and filled in as on 1st April of every year, for the vacancies occurring during the financial year, in terms of Rule 10(1)(a). Under Rule 7(1), the requisite vacancies are to be reserved for Scheduled Castes and Scheduled Tribes in accordance with the order of the Government in force at the time of recruitment that is by direct recruitment or by promotion. These vacancies are to be filled by seniority-cum-merit and merit. If the vacancies, for the reasons stated, remained unfilled they can be carried forward only for a limited period of three recruitment years in total, and thereafter such reservation would

A lapse, in terms of Rule 7(4) of the 1979 Rules. [Para 20]
[25-B-G]

2. Another very important aspect of the Rules is that merit and seniority-cum-merit are the only relevant criteria for promotion to various posts. The language of Rule 24(1) of the 1979 Rules does not allow for any ambiguity and clearly says that a list of senior most persons, who are eligible and qualified under the 1979 Rules, will be prepared and from that list, promotion on the basis of seniority-cum-merit or on the basis of merit to the concerned class of posts will be made. Rule 24(6) of the 1979 Rules further postulates that all other higher posts or higher categories of posts in the Service shall be made on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50. If upon merit alone candidates are not available then selection by promotion on the basis of seniority cum merit may be made in the same manner as is specified in the 1979 Rules. On reading of Rule 24 (6), 24(11) and 24 (11A) of the 1979 Rules conjointly, it is clear that promotions have to be made by the DPC by the criteria and procedure for promotion as applicable in that particular year, to which the vacancies relate. The service experience of an incumbent who has been so promoted, for promotion to higher posts for any period during which he has not actually performed the duties of the post to which he would have been promoted, shall be counted. It also requires that pay of a person who has been so promoted shall be re-fixed at the pay scale which he would have derived at the time of his promotion, but no arrears of pay shall be allowed to him. The Government or the appointing authority has the power to order for the review of the proceedings of DPC held earlier on account of some mistake apparent on the face of the record or on account of substantial error affecting the decision of the DPC or even for any other sufficient reason like

change in seniority, wrong determination of vacancies etc. [Para 21] [25-H; 26-A-B] A

3. It is a settled principle of law that the Schedule of the 1979 Rules has to be in conformity with, and is required to advance the object of the primary statutory provision. Thus, a schedule cannot in any way wipe out the statutory provisions of the Act in effect and spirit. It is nobody's case, and in fact, nothing has been brought to the notice of this Court, that Rules 6, 10, 11 and 24 of the 1979 Rules have been subjected to any amendment by the competent authority. Once these provisions stand in the statute book, then respondents cannot escape from complying with them in the appropriate manner and without defeating the object of these Rules. The services of the Transport Department in all relevant posts is covered under the provisions of the 1979 Rules and their purpose is to make promotions on merit or merit-cum-seniority. Their prescribed proportion of 50:50 has to be maintained. When Schedule 1 of the 1979 Rules is read along with the above indicated provisions, it is obvious that under Clause 4 of Schedule 1 of the 1979 Rules, 50% posts of DTO are to be filled up by direct recruitment and 50% posts by promotion. [Para 23] [27-B-E] B C D E

4. Rule 24(6) of the 1979 Rules mandates that selection for promotion to all other higher posts or higher categories of posts in the Service shall be made on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50. In other words, 50% vacancies are to be filled up on the basis of merit while the remaining 50% vacancies in the promotion quota are to be filled up by seniority-cum-merit. The persons have to be within the appropriate position in the seniority list before they can be considered for promotion under the latter category. Eligibility requirements have been specified under the 1979 Rules, which candidates must F G H

A satisfy to be considered under the seniority-cum-merit
category. The other persons who are to be promoted to
the post of DTO are on the basis of merit alone. Even if
Schedule II of the 1979 Rules does not exist, it is
obligatory on the part of the respondent to evolve a
B methodology to make promotions purely on merit. Once
the framers of the Rules have intended to provide merit
as the sole criteria of promotion, the appointing authority
is not vested with the jurisdiction to waive the same or
completely wipe out the same, on a flimsy excuse such
C as the one proposed in the present case. [Para 23] [27-
E-H; 28-A-B]

5. Right from 1983-84 till 1993-94 no examination has
been conducted by the appropriate authority despite the
fact that they also issued notifications for holding exams
D on a few of these occasions. If there was a
representation from the Rajasthan Transport Inspector's
Union, it cannot be considered as a sufficient cause or
reason for not holding the examinations for more than ten
years and causing serious prejudice to the candidates
E who might have been sufficiently meritorious to qualify
in the exams and be considered for promotion to 50% of
the posts under the promotion quota. It is a matter of
regret that a Government can take such a stand before a
Court of law and expects the Court to accept such a
F submission. It is *ex facie* untenable. Once the rules stand
clear, the Authority concerned is expected to act in
accordance with law and not to defeat the law. One who
defeats the law by his unjustifiable and unsustainable
acts is liable for the consequences of such default. One
G falls to understand why the Government and its entire
hierarchy had shut its eyes to this gross violation of
statutory rules over such a long period. It is a matter of
concern that any rule of good governance that an
obligation is imposed upon the State to select the best
H candidates to higher posts and not to frustrate rules

which prescribe merit as this is essential to the process of selection. It is painful to note that the Government has put forward such a flimsy excuse for its inaction and unfortunately the same has weighed with the High Court to some extent, though it has dismissed the appeal of the State. The Government has no justification whatsoever in not holding the qualifying test for a long period of ten years and this is a matter which the hierarchy of the State Government needs to examine and fix responsibility. [Para 24] [28-C-H; 29-A-B]

6. Even after 1993-94, the process of selection adopted by the State Government cannot be accepted. The preparation of seniority list, method of selection and clubbing of vacancies are apparently in violation of the statutory Rules. The Tribunal, in its judgment, has noticed Rule 24(ii) of the 1979 Rules and observed that even if the DPC held together vacancies of several years, yet the vacancy of each year should be determined and also filled up separately. This Court does not approve of the observations made by the Tribunal that on the one hand the department has treated the rules as sacrosanct and on the other hand, right from introduction of the 1979 Rules not even a single examination was held. The fallaciousness in the stand of the Government, is clear from the fact that the representations against the procedure started after 8 to 9 years, but right from the first year i.e. from 1983, there can be no justification for not holding the examination in accordance with the Rules. It appears that the attempt was intended to suppress the rule of selection by merit. The Tribunal failed to notice other provisions of the relevant rules. It finally quashed the selection / promotion order dated 8th July, 1994 and issued direction to hold review DPC within the specified time by filling yearwise vacancies. One direction of the Tribunal, as is appearing from its order, certainly cannot be sustained. The Tribunal could not

A have directed that 'ideally the notification dated 13.4.1992 should be amended retrospectively'. It is not clear whether the Tribunal meant that this notification should be given effect to retrospectively, in relation to the vacancies from of 1983-84, or that the said notification itself should be amended. This ambiguity was entirely uncalled for. [Para 25] [29-B-H; 30-A]

Vinod Kumar Sangal v. Union of India (1995) 4 SCC 246: 1995 (3) SCR 734 and *B.L. Gupta v. M.C.D.* (1998) 9 SCC 223 – referred to.

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7. The High Court referred to the Rules to some extent and to the fact that for one vacancy, 5 eligible persons are required to be considered and for 2 vacancies, 8 eligible persons should be considered; and that such proportion in accordance with the zone of consideration as specified under Rule 24(6) of the 1979 Rules should be maintained. The High Court also referred to the judgment of this Court in coming to the conclusion that clubbing of vacancies was not proper, and that such a course could be adopted only in the case of direct recruitment. The High Court directed the making a completely fresh exercise and directed that the persons already promoted were not to be demoted but promotion be made yearwise. Though for somewhat different reasons, partially accepting the findings recorded by the Tribunal, this Court accepts some of the findings of the Tribunal and the High Court; but the conclusions arrived at cannot be accepted in their entirety. This Court is not only concerned with promotion or otherwise of any relief to the appellants or any persons in service but must also ensure that Rules are implemented and selection is made strictly in accordance with such Rules. Also this Court cannot ignore the fact that a Government servant gets a right, (though not indefeasible right), to be considered for promotion to the appropriate post to which he is eligible and entitled, in accordance with law. [Para 26] [30-B-G]

Union of India and Another v. Hemraj Singh Chauhan and others (2010) 4 SCC 290: 2010 (3) SCR 755 – referred to. A

8. It is equally true that the rule of fairness in Government action is an essential feature. However, such fairness has to be founded on reasons. Usually, the providing of reasons demonstrates the concept of reasonableness but where the statutory rules provide the circumstances and criteria, ambit and methods by which the selection should be governed, they would become the yardstick of fairness. [Para 27] [31-C-D] B C

Manager Government Branch Press and Anr. v. D.B. Belliappa (1979) 1 SCC 477: 1979 (2) SCR 458 – referred to. D

9. In the instant case, in view of the infirmities and illegalities from which the selection process suffers, this Court, though for different reasons, has come to the same conclusion as the High Court while also issuing directions. Therefore, while setting aside the selection/promotion order dated 8th July, 1994, this Court further issues the following directions for strict compliance by all the authorities concerned and without any further delay: 1) Fresh process of selection shall be held by the competent authority in accordance with Rules, as expeditiously as possible and in any case not later than three months; 2) The selection by promotion for the yearwise vacancies shall be filled in by compliance to Rule 24(6) of the 1979 Rules. The authorities shall fill 50% of the promotion vacancies purely by merit, for which it will evolve a methodology, either by holding a qualifying examination as was being conducted prior to 1992, or by any other examination which would satisfy the basic criteria of selection by merit. 3) Remaining 50% of the promotion posts shall be filled by seniority-cum- E F G H

A merit for which the departmental DPC shall meet within the stipulated time as afore-directed. 4) The Secretary (Transport), Government of Rajasthan is hereby directed to conduct an enquiry personally and fix responsibility on all the officers/officials responsible for not conducting
 B qualifying examination in accordance with Rules from 1983 to 1994 and subsequent thereto in accordance with law. In other words, the officers must be held responsible for their lapses and be punished in accordance with law. 5) The vacancies would be clubbed only for the purposes
 C of calculating an arithmetical figure but, will be filled in accordance with yearwise vacancies and considering the officers eligible for promotion to the post of DTO in accordance with seniority cum merit rule for 50% of the promotion post. 6) All remaining 50% posts shall be filled
 D up purely on merit and by holding an examination. 7) The persons who have already been promoted would not be reverted and none of them would be entitled to claim any financial benefits, if they have already retired from the post of DTO. 8) The candidates now selected in
 E furtherance to the directions contained in the judgment shall not be entitled to any arrears of pay because though their promotion may be relatable to a previous year, such promotion shall be notional without any consequential benefits. [Para 28] [31-E-H; 32-A-H; 33-A-B]

F **Case Law Reference:**

	1995 (3) SCR 734	referred to	Para 25
	(1998) 9 SCC 223	referred to	Para 25
G	2010 (3) SCR 755	referred to	Para 26
	1979 (2) SCR 458	referred to	Para 27

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From the Judgment & Order dated 17.4.2009 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Civil Special Appeal No. 1069 of 2006 and D.B. Civil Special Appeal No. 1364 of 2008.

M.R. Calla, Charu Mathur for the Appellant.

Dr. Manish Singhvi, AAG, R.N. Mathur, R. Gopalakrishnan, Bina Madhavan, Banwari Sharma (for Lawyer's Knit & Co.) for the Respondents.

The Judgment of the Court was delivered by

SWATANTER KUMAR J. 1. Leave granted.

2. These appeals are directed against the common judgment of the High Court of Judicature of Rajasthan, Jaipur Bench, at Jaipur dated 17th April, 2009 whereby the High Court in substance upheld the order of the Rajasthan Civil Services Appellate Tribunal, Jaipur (in short the 'Tribunal') dated 8th February, 1999 and issued certain further directions to the respondents to undertake fresh exercise for promotion to the post of District Transport Officer (in short the 'DTO') from the post of Motor Vehicle Inspectors. At the very outset we may refer to the relevant part of the Division Bench judgment dealing with the subject in question and issuing the directions which reads as under:

"There cannot be any dispute and as has been decided by the Apex Court that clubbing of vacancies could be made only for the purpose of direct recruitment. However, promotions have to be made on the basis of year wise determination of vacancies to the candidates eligible for the particular year who come in the zone of consideration for the particular year as also been referred above. In the present case, it appears that State Government had given a complete go-bye to the provisions of the relevant Rules and while clubbing the vacancies from 1983-84 fill 1993-

A 94, the promotions have been made accordingly. The clubbing of vacancies for more than 10 years have not only created complications so far as reservation of the posts as per relevant roster are concerned, but entire procedure of zone of consideration for each year have been disturbed.

B Merely deletion of the condition of qualifying examination in the year 1992 will not justify the action of the State government in clubbing all the vacancies of more than 10 years and give promotions to persons making a new zone of consideration and reservation also accordingly. On the

C face of it the whole action of the State Government cannot be sustained in the eyes of law. More so when it is also not a case of one time promotion which also require a special notification and amendment in the Rules.

D Having considered entire facts and circumstances, since after due consideration proper discretion has been used by the learned Tribunal as also learned Single Judge, we find no ground for any further interference. The appellant State may now make a complete fresh exercise as per directions of the Tribunal as early as possible

E preferably within four months. It is further made clear that persons already promoted shall not be demoted till the exercise is made and fresh orders of promotions on the basis of yearwise determination of vacancies are passed. In case any person is not found suitable for the particular

F year and have already been given benefit of promotion, in case of reversion or change of year of promotion, the salary already paid, may not be recovered, however, pay fixation has to be made accordingly. If any person has retired during the intervening period, his retiral benefits

G already paid on the basis of last pay drawn may also not be recovered except for revision of pension if required.

With the above observations and direction, the appeals are disposed of accordingly.”

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3. In order to examine the challenge to the impugned judgment in its proper perspective, it will be useful for us to refer to the basic facts giving rise to the present appeal. The appellant belongs to a Scheduled Caste and was initially appointed as a Motor Vehicle Sub-Inspector vide order dated 23rd August, 1980. He was confirmed in this post on 3rd May, 1983 whereafter, he was promoted upon his satisfactory performance of his duties to the post of Motor Vehicle Sub Inspector through Departmental Promotion Committee (in short the 'DPC') on the principle of seniority-cum-merit vide order dated 20th January, 1987. He was thereafter regularized in the said post on 15th October, 1988. On 13th April, 1992, a notification was issued by the respondents amending the Rajasthan Transport Service Rules, 1979 (in short the '1979 Rules') (marked as annexure P-5 to the Petition). By this amendment, Schedule 1 and Schedule 2 of the 1979 Rules to the existing Rules were amended. The Notification read as under:

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan hereby makes the following amendments with immediate effect in the Rajasthan Transport Service Rules, 1979m namely:

AMENDMENT

In the said rules:-

1. Amendment of Schedule-1:

(i) the existing entries at item

(ii) occurring in column 6 against to S.No. 4 shall be deleted.

2. The existing Schedule II shall be deleted."

4. As is evident from the above Schedule, earlier the

A candidates were required to pass the qualifying examination for the post of District Transport Officer. However, by this amendment, the said requirement was deleted under Schedule 1 and syllabus for the same was deleted from Schedule 2. In other words, promotion would be possible without holding the
 B said examination for the higher post.

5. On 27th May, 1994 a seniority list of Motor Vehicle Inspectors was issued. On the basis of this seniority list, a number of persons, including the appellant, were promoted to the post of District Transport Officer vide order dated 8th July, 1994. One Shri Pooran Singh, respondent No.2 belonging to the General Category, who was holding the post of Motor Vehicle Inspector in the Transport Department, preferred an appeal before the Tribunal against the order dated 8th July, 1994. According to him, he was senior to the persons who
 C were promoted by that order and this was a supercession, contrary to the 1979 Rules. Therefore, it was to be declared as illegal and unjustifiable. He also prayed for consequential reliefs.
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E 6. Another contention raised before the Tribunal was that the State of Rajasthan violated Rules 10 & 24 of the 1979 Rules and hence, the exercise of the State was arbitrary and discriminatory. The clubbing of the vacancies from the years 1983-84 to 1993-94 was for the total 21 vacancies, which was
 F improper as the respondents were obliged to consider the vacancies in each given year in terms of Rule 10. According to the challenge raised before the Tribunal, out of the 17 promotees from the Motor Vehicle Inspector cadre, 10 from general category were actually senior to Pooran Singh but the candidates at serial nos.12 to 17 belonging to the Scheduled
 G Castes, were junior to him. He was at serial No.23 of the seniority list and as such was entitled to promotion in preference to those candidates. The State filed a reply before the Tribunal and stated that though the vacancies had been determined year wise no one had passed the qualifying
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examination and nobody had been found eligible for promotion upto 1st April, 1994 as per Schedule II of the 1979 Rules. Thereafter, for administrative reasons including the representation made by Rajasthan Transport Inspector's Union, the qualifying examination was done away with, as already referred, and appointment/promotion to the post of DTO was made simply by promotion. 21 vacancies became available and out of that 4 persons have already been promoted, leaving a balance of 17 vacancies. Out of these 17 vacancies, 5 vacancies were reserved for Scheduled Castes, 3 for Scheduled Tribes candidates and the remaining vacancies were clubbed and promotions were made on the basis of seniority cum merit. The detail of the yearwise vacancies are as follows:

<u>Year</u>	<u>Vacancies</u>	
1983-84	2	D
1984-85	2	
1985-86	1	E
1986-87	2	
1987-88	2	
1988-89	1	F
1989-90	1	
1990-91	1	
1991-92	2	G
1992-93	1	
1993-94	2	

7. It was further the case of the State that the vacancies

A have to be carried forward from year to year and in want of eligible candidates, vacancies could not be filled in accordance with rules. It was further urged by the State that the vacancies in the post of DTOs could not be filled for want of eligible candidates and, therefore, the vacancies were carried forward
 B for consideration to the subsequent years. It is also averred in the petition that the High Court had passed a judgment on 7th April, 1997 in SBCW No. 3423 of 1995 titled *Hiral Lal Joshi v. State* directing that Review DPC be held with regard to vacancies for the year 1993-94 to 1996-97 and then the
 C appointments were made, however, averments with regard to supercession of Pooran Singh was denied.

D 8. Vide order dated 8th February, 1999, the appeal filed by Pooran Singh was set aside by the Tribunal, and the operative part of the judgment reads as under:

E "In the light of the above discussion, Annexure-6 dated 8.7.1994 is quashed and the State Government is directed to hold review DPC within two months to determine yearwise vacancies afresh. The State Government has already indicated yearwise vacancies in page 2 of its
 F reply. The review DPC should be convened year wise and the promotion be done on the basis of year wise vacancies only. Since the departmental examinations were not organized by State Government from time (sic) and then that provision was deleted therefore, no candidate for any particular year should be treated to be unqualified on
 G account of not clearing the departmental examination. Ideally the notification dated 13.4.1992 should be amended retrospectively but even if it is not done so, the State Government cannot circumscribe or dilute the provision regarding "year-wise" filling up of vacancies.

H In the net result this appeal succeeds and is accepted. The State Government would pay the cost to the Appellant which is determined at Rs.1000/-."

9. This order of the Tribunal dated 8th February, 1999 was challenged by the State Government before the High Court. The High Court vide its order dated 18th July, 2005 passed in Civil Writ Petition No. 2111 of 1999, dismissed the Writ Petition and maintained the direction to the State Government to hold review DPC. Another writ petition was also filed by private persons being Writ Petition No. 1025 of 1999 which was also dismissed vide order dated 23rd July, 2008. It may be noticed here that reversion of Pooran Singh-petitioner was stayed by an interim order. Later he sought voluntary retirement and retired. However, appellant Jagdish Prasad was promoted as Assistant Transport Commissioner vide order dated 24th January, 2003.

10. Against the order passed by the learned Single Judge, as afore-noticed, the appellant preferred an appeal before the Division Bench of that High Court. All these appeals came to be dismissed by the Division Bench vide its order dated 17th April, 2009, the relevant portion of which has already been reproduced above.

11. The judgment of the Division Bench is impugned in the present appeal. Before we proceed to discuss the contentions in relation to the factual matrix of the case, it will be useful to examine the scheme of the 1979 Rules. The 1979 Rules had been notified vide notification of December, 1979. In terms of Rule 2(e) of the 1979 Rules, 'Direct Recruitment' means recruitment made in accordance with Part IV of the 1979 Rules.

12. Rule 2(k) of the 1979 Rules contemplates that 'Service' or 'Experience', wherever prescribed in these Rules, as a condition for promotion from one service to another, or within the service from one category to another, or to senior posts in the case of a person holding a lower post eligible for promotion to higher post, shall include the period for which the person has continuously worked on such lower post after regular selection in accordance with Rules promulgated under proviso to Article 309 of the Constitution of India.

A 13. Rule 7 of the 1979 Rules deals with Reservation of vacancies for the Scheduled Castes and the Scheduled Tribes. Such reservation has to be made in accordance with the orders of the Government for such reservation in force at the time of recruitment i.e. by direct recruitment and by promotion.

B Furthermore Rule 7(4) of the 1979 Rules requires that appointments shall be made strictly in accordance with the rosters prescribed separately for direct recruitment and promotion. In the event of non-availability of the eligible and suitable candidates amongst the Scheduled Castes and the

C Scheduled Tribes, as the case may be, in a particular year, the vacancies so reserved for them shall be filled in accordance with the normal procedure and an equivalent number of additional vacancies shall be reserved in the subsequent year. Such of the vacancies which remain so unfilled shall be carried

D forward to the subsequent three recruitment years in total and thereafter such reservation would lapse, provided that there shall be no carry forward of the vacancies in the post or class/ category/group of posts in any cadre of service to which promotions are made on the basis of both by merit and by

E seniority-cum-merit under these Rules.

14. The proviso to Rule 7(4) of the 1979 Rules obviously restricts the application of carry forward. How the vacancies are to be determined has been specified in Rule 10 of the 1979 Rules and the same reads as under:

F "10. "Determination of vacancies:- (1)(a) Subject to the provisions of these Rules, the Appointing Authority shall determine on 1st April every year, the actual number of vacancies occurring during the financial year.

G (b) Where a post is to be filled in by a single method as prescribed in the rule or Schedule, the vacancies so determined shall be filled in by that method.

(c) Where a post is to be filled in by more than one method

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as prescribed in the rules or Schedule, the apportionment of vacancies, determined under clause (a) above, to each such method shall be done maintaining the prescribed proportion for the overall number of posts already filled in. If any fraction of vacancies is left over, after apportionment of the vacancies in the manner prescribed above, the same shall be apportioned to the quota of various methods prescribed as a continuous cyclic order giving precedence to the promotion quota. A
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(2) The Appointing Authority shall also determine the vacancies of earlier years, yearwise which were required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in." C

15. Procedure for Direct recruitment is dealt with in Part -IV of the 1979 Rules, which requires inviting of applications, scrutiny of applications, recommendations of the Commission, disqualifications for appointment and selection by the Appointing Authority. D

16. Part-V of the 1979 Rules deals with 'Procedure for Recruitment by Promotion' with which we are primarily concerned in the present case. E

17. Rule 24 of the 1979 Rules provides Criteria, Eligibility and Procedure for Promotion to Junior, Senior and other posts encadred in the Service. F

18. It is not necessary for us to re-produce the entire Rule 24 of the 1979 Rules. It would suffice to refer to the relevant part of the said Rule 24 of the 1979 Rules which is as follows: G

"24. Criteria, Eligibility and Procedure for Promotion to Junior, Senior and other posts encadred in the service:-
(1) As soon as the Appointing Authority determines the number of vacancies under rule 10 and decides that a ..

A certain number of posts are required to be filled in by promotion, the Appointing Authority shall, subject to provisions of sub-rule (9), prepare a correct and complete list of the senior-most persons who are eligible and qualified under these Rules for promotion on the basis of seniority cum-merit or on the basis of merit to the class of posts concerned.

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C (2) The persons enumerated in Column 5 of Schedule-1 shall be eligible for promotion to posts specified against them in Column 2 thereof to the extent indicated in Column 3 subject to their possessing minimum qualifications and experience on the first day of the month of April of the year of selection as specified in Column 6.

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D (6) Selection for promotion to all other higher posts or higher categories of posts in the Service shall be made on the basis of merit and on the basis on seniority-cum-merit in the proportion of 50:50.

E Provided that if the Committee is satisfied that suitable persons are not available for selection by promotion strictly on the basis of merit in a particular year, selection by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these Rules.

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G (11) If in any subsequent year, after promulgation of these Rules, vacancies relating to any earlier year are determined under sub-rule (2) of rule relating to determination of vacancies which were required to be filled by promotion, the Departmental Promotion Committee shall consider the cases of all such persons who would have been eligible in the year to which the vacancies relate

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irrespective of the year in which the meeting of the Departmental Promotion Committee is held and such promotions shall be governed by the criteria and procedure for promotion as was applicable in the particular year to which the vacancies relate and the service/experience of an incumbent who has been so promoted, for promotion to higher post for any period during which he has not actually performed the duties of the post to which he would have been promoted, shall be counted. The pay of a person who has been so promoted shall be re-fixed at the pay which he would have derived at the time of his promotion but no arrears of pay shall be allowed to him.

(11A) The Government or the Appointing Authority may order for the review of the proceedings of the D.P.C. held earlier on account of some mistake or error apparent on the face of record, or on account of a factual error substantially affecting the decision of the D.P.C. or for any other sufficient reasons e.g. change in seniority, wrong determination of vacancies, judgment/direction of any Court or Tribunal, or where adverse entries in the Confidential Reports of an individual are expunged or toned down or a punishment inflicted on him is set aside or reduced. The concurrence of the Department of Personnel and the Commission (where Commission is associated) shall always be obtained before holding the meeting of the review D.P.C."

19. Schedule I of the 1979 Rules provided for Post, Sources of recruitment, Qualification for Direct recruitment and Post from which promotion is to be made. Clause 4 of Schedule I of the 1979 Rules deals with the Post of DTO which reads as under, after amendment:

S. No.	Name of the post	Sources recruitment with percentage	Minimum qualification for direct recruitment	Post from which promotion is to be made	Qualifications and experience for promotion	Remarks
4.	District Transport Officer	50% by direct recruitment and 50% by promotion	Degree in Science Commerce, Arts or Engineering from a recognized University established by law in India or declared equivalent thereto by the Government.	Motor vehicle Inspector	(i) 5 years' experience in the post mentioned in Column 5. +(ii) Deleted	(i) Service rendered against the post of Sales Tax Inspector or Inspector Excise and Taxation prior to posting in the Transport Department or Motor Vehicle Inspector shall count in computing the period of 5 years' service as Motor Vehicle Inspector. (ii) Till directly recruited candidates are not available posts may be filled up from amongst the Rajasthan Administrative officers or Officers of any other State Service or Rajasthan Tehsildar Service.

20. As it is evident prior to the amendment, the expression used in the Schedule was "*in addition to the above must have passed qualifying examination as prescribed in Schedule – II*" This was notified to be deleted from the Rules vide Notification dated 13 April, 1992. Consequentially, Schedule II of the 1979 Rules was also amended and the syllabus provided for this qualifying examination was deleted in its entirety. If we analyse the above Rules in their correct perspective, it becomes evident that the Rules clearly postulate merit to be the criterion for promotion to higher posts. The vacancies have to be determined as per Rule 10 of the 1979 Rules, on the 1st April of every year. If any fraction of vacancies is left over, after the apportionment of vacancies in the manner prescribed, the same shall be appointed through the quota of various methods prescribed in continuous cyclic order, giving precedence to the promotion quota. Appointing authority has to determine yearwise vacancies of earlier years, which were required to be filled in by promotion if such vacancies were not determined and filled earlier in the year they were required to be filled in, in the subsequent years. In other words, the emphasis of the language of these rules is on yearly vacancies and they are required to be filled in with reference to each particular year. The vacancies are required to be determined and filled in as on 1st April of every year, for the vacancies occurring during the financial year, in terms of Rule 10(1)(a). Under Rule 7(1), the requisite vacancies are to be reserved for Scheduled Castes and Scheduled Tribes in accordance with the order of the Government in force at the time of recruitment that is by direct recruitment or by promotion. These vacancies are to be filled by seniority-cum-merit and merit. If the vacancies, for the reasons stated, remained unfilled they can be carried forward only for a limited period of three recruitment years in total, and thereafter such reservation would lapse, in terms of Rule 7(4) of the 1979 Rules.

21. Another very important aspect of the Rules is that merit and seniority-cum-merit are the only relevant criteria for

- A promotion to various posts. The language of Rule 24(1) of the 1979 Rules does not allow for any ambiguity and clearly says that a list of senior most persons, who are eligible and qualified under the 1979 Rules, will be prepared and from that list, promotion on the basis of seniority-cum-merit or on the basis of merit to the concerned class of posts will be made. Rule 24(6) of the 1979 Rules further postulates that all other higher posts or higher categories of posts in the Service shall be made on the basis of merit and on the basis on seniority-cum-merit in the proportion of 50:50. If upon merit alone candidates are not available then selection by promotion on the basis of seniority cum merit may be made in the same manner as is specified in the 1979 Rules. On reading of Rule 24 (6), 24(11) and 24 (11A) of the 1979 Rules conjointly, it is clear that promotions have to be made by the DPC by the criteria and procedure for promotion as applicable in that particular year, to which the vacancies relate. The service experience of an incumbent who has been so promoted, for promotion to higher posts for any period during which he has not actually performed the duties of the post to which he would have been promoted, shall be counted. It also requires that pay of a person who has been so promoted shall be re-fixed at the pay scale which he would have derived at the time of his promotion, but no arrears of pay shall be allowed to him. The Government or the appointing authority has the power to order for the review of the proceedings of DPC held earlier on account of some mistake apparent on the face of the record or on account of substantial error affecting the decision of the DPC or even for any other sufficient reason like change in seniority, wrong determination of vacancies etc.
- G 22. The first and the foremost question that arises for consideration by this Court is whether merely by the amendment to Schedule I and the deletion of Schedule II of the 1979 Rules the effect of the statutory provisions like Rules 6,10, 24 of the 1979 Rules read in their plain language would stand diluted.
- H Can it be argued that amendment to these schedules renders

the statutory provisions ineffective and inoperative?

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23. It is a settled principle of law that the Schedule of the 1979 Rules has to be in conformity with, and is required to advance the object of the primary statutory provision. Thus, a schedule cannot in any way wipe out the statutory provisions of the Act in effect and spirit. It is nobody's case, and in fact, nothing has been brought to our notice, that Rules 6, 10, 11 and 24 of the 1979 Rules have been subjected to any amendment by the competent authority. Once these provisions stand in the statute book, then respondents cannot escape from complying with them in the appropriate manner and without defeating the object of these Rules. We have already discussed the scheme of the Act, which shows that the services of the Transport Department in all relevant posts is covered under the provisions of the 1979 Rules and their purpose is to make promotions on merit or merit-cum-seniority. Their prescribed proportion of 50:50 has to be maintained. When Schedule 1 of the 1979 Rules is read along with the above indicated provisions, it is obvious that under Clause 4 of Schedule 1 of the 1979 Rules, 50% posts of DTO are to be filled up by direct recruitment and 50% posts by promotion. Now, the question is how the 50% promotions are to be filled up by the respondents. Rule 24(6) of the 1979 Rules mandates that selection for promotion to all other higher posts or higher categories of posts in the Service shall be made on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50. In other words, 50% vacancies are to be filled up on the basis of merit while the remaining 50% vacancies in the promotion quota are to be filled up by seniority-cum-merit. The persons have to be within the appropriate position in the seniority list before they can be considered for promotion under the latter category. Eligibility requirements have been specified under the 1979 Rules, which candidates must satisfy to be considered under the seniority-cum-merit category. The other persons who are to be promoted to the post of DTO are on the basis of merit alone.

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- A Even if Schedule II of the 1979 Rules does not exist, it is obligatory on the part of the respondent to evolve a methodology to make promotions purely on merit. Once the framers of the Rules have intended to provide merit as the sole criteria of promotion, the appointing authority is not vested with
- B the jurisdiction to waive the same or completely wipe out the same, on a flimsy excuse such as the one proposed in the present case.

24. In light of this, we now come to the conduct of the Government which we cannot but help to comment upon. Right from 1983-84 till 1993-94 no examination has been conducted by the appropriate authority despite the fact that they also issued notifications for holding exams on a few of these occasions. If there was a representation from the Rajasthan Transport Inspector's Union, it cannot be considered as a sufficient cause or reason for not holding the examinations for more than ten years and causing serious prejudice to the candidates who might have been sufficiently meritorious to qualify in the exams and be considered for promotion to 50% of the posts under the promotion quota. It is a matter of regret that a Government can take such a stand before a Court of law and expects the Court to accept such a submission. It is *ex facie* untenable. Once the rules stand clear, the Authority concerned is expected to act in accordance with law and not to defeat the law. One who defeats the law by his unjustifiable and unsustainable acts is liable for the consequences of such default. We fail to understand why the Government and its entire hierarchy had shut its eyes to this gross violation of statutory rules over such a long period. It is a matter of concern that any rule of good governance that an obligation is imposed upon the State to select the best candidates to higher posts and not to frustrate rules which prescribe merit as this is essential to the process of selection. It is painful to note that the Government has put forward such a flimsy excuse for its inaction and unfortunately the same has weighed with the High Court to some extent, though it has dismissed the appeal of

the State. We have no hesitation in observing that the Government has no justification whatsoever in not holding the qualifying test for a long period of ten years and this is a matter which the hierarchy of the State Government needs to examine and fix responsibility.

25. Even after 1993-94, the process of selection adopted by the State Government cannot be accepted. The preparation of seniority list, method of selection and clubbing of vacancies are apparently in violation of the statutory Rules as afore-noticed. The Tribunal, in its judgment, has noticed Rule 24(ii) of the 1979 Rules and observed that even if the DPC held together vacancies of several years, yet the vacancy of each year should be determined and also filled up separately. In this regard the reference was also made to the judgment of this Court in the case of *Vinod Kumar Sangal v. Union of India* [(1995) 4 SCC 246]. We do approve of the observations made by the Tribunal that on the one hand the department has treated the rules as sacrosanct and on the other hand, right from introduction of the 1979 Rules not even a single examination was held. The fallaciousness in the stand of the Government, to our mind, is clear from the fact that the representations against the procedure started after 8 to 9 years, but right from the first year i.e. from 1983, there can be no justification for not holding the examination in accordance with the Rules. It appears that the attempt was intended to suppress the rule of selection by merit. The Tribunal failed to notice other provisions of the relevant rules. While referring to the judgment of this Court in the case of *B.L. Gupta v. M.C.D.* [(1998) 9 SCC 223], it finally quashed the order dated 8th July, 1994 and issued direction to hold review DPC within the specified time by filling yearwise vacancies. One direction of the Tribunal, as is appearing from its order, certainly cannot be sustained. The Tribunal could not have directed that 'ideally the notification dated 13.4.1992 should be amended retrospectively'. It is not clear whether the Tribunal meant that this notification should be given effect to

A retrospectively, in relation to the vacancies from of 1983-84, or that the said notification itself should be amended. This ambiguity was entirely uncalled for.

26. The Division Bench, while dealing with the judgment of the learned Single Judge and the Tribunal, referred to the Rules to some extent and to the fact that for one vacancy, 5 eligible persons are required to be considered and for 2 vacancies, 8 eligible persons should be considered; and that such proportion in accordance with the zone of consideration as specified under Rule 24(6) of the 1979 Rules should be maintained. The High Court also referred to the judgment of this Court in coming to the conclusion that clubbing of vacancies was not proper, and that such a course could be adopted only in the case of direct recruitment. The High Court directed the making a completely fresh exercise and directed that the persons already promoted were not be demoted but promotion be made yearwise. Though for somewhat different reasons, partially accepting the findings recorded by the Tribunal, which we have discussed above, we would accept some of the findings of the Tribunal and the High Court; but the conclusions arrived at cannot be accepted in their entirety. We are not only concerned with promotion or otherwise of any relief to the appellants or any persons in service but we must also ensure that Rules are implemented and selection is made strictly in accordance with such Rules. We also cannot ignore the fact that a Government servant gets a right, (though not indefeasible right), to be considered for promotion to the appropriate post to which he is eligible and entitled, in accordance with law. In the case of *Union of India and Another v. Hemraj Singh Chauhan and others* [(2010) 4 SCC 290] this Court while dealing with somewhat similar situation held as under:

“35. The Court must keep in mind the constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers,

which is consistent with their role in a welfare State. A

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution." B

27. It is equally true that the rule of fairness in Government action is an essential feature. However, such fairness has to be founded on reasons. Usually, the providing of Reasons demonstrates the concept of reasonableness but where the statutory rules provide the circumstances and criteria, ambit and methods by which the selection should be governed, they would become the yardstick of fairness. In the case of *Manager Government Branch Press and Anr. v. D.B. Belliappa* [(1979) 1 SCC 477], this Court held that the essence of the guarantee under Articles 14 and 16 of the Constitution is 'fairness founded on reasons'. C D

28. Having discussed in detail the infirmities and illegalities from which the selection process suffers, we, though for different reasons, have come to the same conclusion as the High Court while also issuing directions. Therefore, while setting aside the selection/promotion order dated 8th July, 1994, we further issue the following directions for strict compliance by all the authorities concerned and without any further delay: E F

1. Fresh process of selection shall be held by the competent authority in accordance with Rules, as expeditiously as possible and in any case not later than three months from today; G
2. The selection by promotion for the yearwise vacancies shall be filled in by compliance to Rule H

- A 24(6) of the 1979 Rules. The authorities shall fill 50% of the promotion vacancies purely by merit, for which it will evolve a methodology, either by holding a qualifying examination as was being conducted prior to 1992, or by any other examination which would satisfy the basic criteria of selection by merit.
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3. Remaining 50% of the promotion posts shall be filled by seniority-cum-merit for which the departmental DPC shall meet within the stipulated time as afore-directed.
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4. The Secretary (Transport), Government of Rajasthan is hereby directed to conduct an enquiry personally and fix responsibility on all the officers/officials responsible for not conducting qualifying examination in accordance with Rules from 1983 to 1994 and subsequent thereto in accordance with law. In other words, the officers must be held responsible for their lapses and be punished in accordance with law.
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- E 5. The vacancies would be clubbed only for the purposes of calculating an arithmetical figure but, will be filled in accordance with yearwise vacancies and considering the officers eligible for promotion to the post of DTO in accordance with seniority cum merit rule for 50% of the promotion post.
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6. All remaining 50% posts shall be filled up purely on merit and by holding an examination.
- G 7. The persons who have already been promoted would not be reverted and none of them would be entitled to claim any financial benefits, if they have already retired from the post of DTO.
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8. The candidates now selected in furtherance to the directions contained in the judgment shall not be entitled to any arrears of pay because though their promotion may be relatable to a previous year, such promotion shall be notional without any consequential benefits. A
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29. The appeals are partially accepted and are disposed of, with no order as to costs, with the directions afore-indicated. All the authorities concerned shall comply with these directions without default and submit their compliance report to the Registry of the High Court within 16 weeks from today. C

B.B.B.

Appeals disposed of.