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P. DHARNI & ORS.

v.

GOVT. OF TAMIL NADU & ORS.
(Civil Appeal No. 4832 of 2013)

B

JULY 1, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

Service Law:

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Promotion - Out-of-turn/accelerated promotion - Claim for - By Motor Vehicle Inspector (Grade II) - To the post of Regional Transport Officer - Under r.36(b)(ii) of Tamil Nadu State and Subordinate Services Rules - After rendering about 3 years of service - Permissibility - Held: Special rules framed prescribing conditions of eligibility and manner and method of appointment from the Post of Motor Vehicles Inspector (Grade II) to the post of Motor Vehicles Inspector (Grade I) and from the post of Motor Vehicles Inspector (Grade I) to the post of Regional Transport Officer - The claimant, since not fulfilling the eligibility criteria for promotion stipulated in Special Rules, would not be entitled to accelerated promotion under r.36(b)(ii) of the General Rules - Moreover, r.36(b)(ii) which contemplates accelerated promotion, only in cases where seniority is the sole criterion for promotion, would not be applicable to the post of Regional Transport Officer, because the appointment on the post is not made by seniority - Tamil Nadu State and Subordinate Services Rules - r.36(b)(ii).

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Respondent No.5, an employee on the post of Motor Vehicles Inspector (Grade II), after his 3 years of service on the post, moved a representation seeking his out-of-turn/accelerated promotion to the post of Regional Transport Officer on the basis of his outstanding performance in the service. His name was recommended

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for out-of-turn/accelerated promotion by the authorities of the department citing r.36(b)(ii) of the Tamil Nadu State and Subordinate Service Rules. The claim of the respondent No.5 was rejected by State Government. The same was challenged and the Administrative Tribunal allowing the claim of respondent No.5, directed the State to issue an order promoting respondent No.5 as Regional Transport Officer. The order was further upheld by High Court and the appeal thereagainst before Supreme Court was withdrawn by the State.

The appellants in the present appeal, who were the employees senior to respondent No.5 and whose rights were liable to be prejudicially affected by the accelerated promotion of respondent No.5, filed appeal to this Court, challenging the order of accelerated promotion of respondent No.5.

Allowing the appeal, the Court

HELD: 1. A perusal of Rule 2 of Tamil Nadu State and Subordinate Services Rules leaves no room for any doubt, that in case of repugnancy between the Special Rules and the General Rules, the Special Rules will prevail over the General Rules. Rule 36(b)(ii) of the Tamil Nadu State and Subordinate Services Rules, falls in Part II - General Rules, is clearly a General Rule. The rules prescribing the conditions of eligibility and the manner/method of appointment by promotion from the post of Motor Vehicles Inspector (Grade II) to the post of Motor Vehicles Inspector (Grade I), framed under Section 42 of the Tamil Nadu Transport Subordinate Service, are Special Rules. The rules prescribing the conditions of eligibility and the manner/method of appointment by transfer to the post of Regional Transport Officer, inter alia out of Motor Vehicles Inspectors (Grade I), framed under Section 28 of the Tamil Nadu Transport Service, are Special Rules. And, in case of a conflict between the

A Special Rules and the General Rules, the Special Rules will have an overriding effect over the General Rules. [Para 21] [1011-B-E]

B 2. The Special Rule prescribing the minimum period of eligibility for appointment to the post of Regional Transport Officer, cannot be overlooked while allowing out-of-turn/accelerated appointment to respondent No. 5, to the post of Regional Transport Officer. The claim made by respondent No. 5, for out-of-turn promotion under Rule 36(b)(ii) of the General Rules, would be valid only if respondent no.5, had satisfied the conditions of eligibility stipulated in the Special Rules for appointment to the post of Regional Transport Officer. In the present case, respondent No. 5 made a representation claiming out-of-turn/accelerated promotion, only when he had rendered just over three years of service as Motor Vehicles Inspector (Grade II). At that stage, there was no question of his being considered for appointment against the post of Regional Transport Officer, as he had by then, not rendered even a single days service as Motor Vehicles Inspector Grade-I (as against the prescribed five years' service). Thus at that juncture, he was not even eligible for promotion to the post of Motor Vehicles Inspector (Grade-I), as a minimum of five years' service as Motor Vehicles Inspector Grade-II is required before such promotion. Since a minimum of five years' service as Motor Vehicles Inspector (Grade I) is required before an individual can be appointed to the post of Regional Transport Officer, it is essential that respondent No. 5 ought to have fulfilled the prescribed condition, before claiming appointment as Regional Transport Officer. Since respondent No.5 could not have legitimately been promoted to the post of Motor Vehicles Inspector (Grade-I) itself, it is out of the question to accept or assume, that he could have nonetheless been promoted to the post of Regional Transport Officer, which required a further five

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years' service. The Special Rules laying down the conditions of eligibility and the manner/method of promotion to the post of Regional Transport Officer, would stand violated, if the claim of respondent No. 5, for out-of-turn/accelerated promotion, was to be acceded to. [Para 25] [1014-G-H; 1015-B-G; 1016-B; 1017-B-D]

3. Thus, a minimum of ten years service after appointment as Motor Vehicles Inspector (Grade-II) is required under the Special Rules, before an individual can be appointed as Regional Transport Officer (five years' service for promotion as Motor Vehicles Inspector (Grade-I), and another five years' service as Motor Vehicles Inspector (Grade-I) before appointment as Regional Transport Officer). Therefore, that the order passed by the Administrative Tribunal, as also, by the High Court by relying on Rule 36(b)(ii) of the General Rules, was in clear derogation of the Special Rules. [Para 25] [1016-E-F; 1017-D]

4. Clause (ii) of Rule 36(b) of the General Rules, could have been invoked only in matters where promotions are to be made solely on the basis of seniority. Rule 2(b) of the Special Rules laying down the manner/method for promotion to the post of Motor Vehicles Inspector (Grade I) clearly mandates, that promotion to the said post, would be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. It is, therefore apparent, that the post of Motor Vehicles Inspector (Grade I) is a selection post. That being the undisputed position, it would not have been possible for the authorities to invoke Rule 36(b)(ii) of the General Rules, even for promoting respondent No. 5, to the post of Motor Vehicles Inspector (Grade I). [Para 27] [1018-F-H; 1019-A]

5. Insofar as the post of Regional Transport Officer is concerned, the Special Rules framed under Section 28

A of the Tamil Nadu Transport Service, laying down the
 conditions of eligibility and the manner/method of
 appointment to the post of Regional Transport Officer, do
 not postulate appointment to the post of Regional
 Transport Officer by way of promotion. Rule 2 of the
 B Special Rules clearly envisage, that appointment against
 the post of Regional Transport Officer, would be made
 only by way of transfer, interalia from amongst Motor
 Vehicles Inspectors (Grade I). Rule 36(b)(ii) of the General
 Rules does not postulate out-of-turn/accelerated
 C appointment by way of transfer. Even though the Special
 Rules do not lay down the method or manner of making
 appointments by way of transfer, Rule 36A (introduced
 with effect from 30.1.1996) contained in Part II - 'General
 Rules', of the Tamil Nadu State and Subordinate Services,
 D postulates, that appointment by transfer shall be made on
 grounds of merit and ability, seniority being considered
 only where merit and ability are approximately equal. In
 the aforesaid view of the matter, it is imperative to
 conclude, that even for appointments by way of transfer,
 E the appointing authority must sieve the eligible
 candidates by adopting a process of selection. Since the
 post of Regional Transport Officer, is to be filled up by
 way of transfer, i.e., by way of selection amongst eligible
 candidates, Rule 36(b)(ii) of the General Rules would be
 inapplicable. Thus the General Rules contemplate out-of-
 F turn/accelerated promotion, only in cases where seniority
 is the sole criterion for promotion, whereas, the post of
 Regional Transport Officer is not to be filled up on the
 basis of seniority. [Paras 26 and 27] [1017-F-H; 1018-A;
 1019-B-E]

G 6. For onward promotions (from the post of Motor
 Vehicles Inspector (Grade II)), the criterion to be adopted
 was that of selection. Seniority was only to be taken into
 consideration where merit and ability of two eligible
 H candidates was found to be approximately equal. Thus

every claim for onward promotion from the post of Motor Vehicles Inspector (Grade II) was liable to be considered on the basis of merit. Therefore, an individual with superior merit would steal a march over those less meritorious. Thus viewed, if respondent No.5, was actually possessed of outstanding and exceptional merit, as is sought to be suggested, he would have stolen a march over his seniors even under the existing Special Rules. Thus viewed, even by the manner/method of onward progression postulated in the Special Rules, a person with conspicuous merit and ability (as postulated under Rule 36(b)(ii) of the General Rules), would overtake others without having to invoke Rule 36(b)(ii) of the General Rules. Respondent No.5, after he had acquired eligibility for promotion to the post of Motor Vehicles Inspector (Grade I), he was promoted as such only on 10.5.2000. The merit and ability possessed by respondent no. 5, is not shown to have resulted in his having superseded other members of the cadre senior to them. [Para 28] [1019-G-H; 1020-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4832 of 2013.

From the Judgment and Order dated 29.11.2011 in CP No. 1688 of 2011 of the High Court of Madras.

R. Venkataramani, Guru Krishnakumar, AAG, Lata Krishnamurti, Dr. B. Kalaivannan, Neeraj Shekhar, Ashutosh Thakur, P.R. Mala, Pranav Diesh, Karan Kalia, Ashish Dixit, R. Nedumaran, Neelam Singh, Supriya Garg, Shodhan Babu, B. Balaji, R. Rakesh Sharma, Veera Mani, Prasana Venkat for the appearing parties.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. Leave granted.

2. The controversy raised in the instant appeal revolves

A around the genuineness of the claim of respondent no. 5, K.V. Karthalingan, for promotion from the post of Motor Vehicles Inspector (Grade II) to the post of Regional Transport Officer. In order to understand the veracity of the aforesaid claim it would be relevant to mention, that the post of Motor Vehicles
 B Inspector (Grade II) is the lower most entry level post. The post of Motor Vehicles Inspector (Grade II), is filled up only by way of direct recruitment. Onward promotion therefrom is to the post of Motor Vehicles Inspector (Grade I). It is not a matter of dispute, that Special Rules framed under Section 42 of the Tamil
 C Nadu Transport Subordinate Service exclusively prescribe the conditions of eligibility and the manner/method of promotion from the post of Motor Vehicles Inspector (Grade II) to the post of Motor Vehicles Inspector (Grade I). The aforesaid rules came into force with effect from 19.8.1981. The said rules have been
 D made available to us from the Tamil Nadu Service Manual, Volume III. For purposes of the present controversy, a relevant extract of rules 2, 5 and 9 of the said Special Rules is being reproduced hereunder:-

E "2. Appointment - (a) Appointment to the category mentioned in column (1) of the table below shall be made by the methods specified in the corresponding entries in column (2) thereof:-

TABLE

| F | Category (1) | Method of Recruitment (2) |
|---|---|---|
| | 1. Motor Vehicle Inspector Grade-I | Promotion from Motor Vehicles Inspector, Grade - II |
| G | 2. Motor Vehicles Inspectors Grade - II | Direct Recruitments: |

H (b) Promotion to category - 1 shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal.

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5. Qualifications - (a) Age-(i) No per shall be eligible for appointment to category-2 by direct recruitment, unless he possesses the qualifications specified below, namely :-

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(1) Must have completed 21 years of age;

(2) Must not have completed 32 years of age :

Provided that a person belonging to the Scheduled Caste/ Scheduled Tribes shall be eligible for appointment by direct recruitment to category-2 if he has not completed 37 years of age.

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Provided further that the minimum age limit of 21 years prescribed above shall apply also to the candidate belonging to Scheduled Caste/Scheduled Tribes and Backward Classes.

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(ii) The age limit prescribed in this rule shall be reckoned so far as direct recruits are concerned with reference to the first day of July of the year in which the selection for appointment is made.

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(b) Other Qualifications.-No person shall be eligible for appointment to the category specified in column (1) by the method specified in column (2) of the table below unless he possess the qualifications specified in the corresponding entries in the column (3) thereof :-

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TABLE

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| Sl.No. | Category | Method | Qualification |
|--------|----------------|-----------|------------------------------|
| (1) | (2) | (3) | (4) |
| 1. | Motor Vehicles | Promotion | i) Must have served as Motor |

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Service for regulating the conditions of eligibility and the manner/method of appointment, inter alia to the post of Regional Transport Officer. Under the above rules, the post of Regional Transport Officer can be filled up only by way of transfer. The above Special Rules came into force with effect from 15.9.1974. The same have been made available to us, from the Tamil Nadu Service Manual, Volume II. Relevant extracts of Rules 2, 3 and 6 of the above Special Rules, which have a bearing on the present controversy, and are being reproduced hereunder:-

"2. Appointment.-(a) Appointment to these categories shall be as follows :

| Category | Method of Appointment |
|---|--|
| (1) | (2) |
| Category-1: Deputy Transport Commissioner | 1) By promotion from category-2; or 2) For special reasons by recruitment by transfer from any other service on tenure basis. |
| Category-2: (1) Regional Transport Officer and Additional Transport Officer | 1) By recruitment by transfer from among- |
| (2) Assistant Secretary State Transport Authority | (i) Motor Vehicles Inspectors, Grade-I in the Tamil Nadu Transport Subordinate Service; or (ii) Superintendents, |

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A Selection Grade and
Personal Assistant to
Regional Transport Officers,
in the Tamil Nadu Ministerial
Service;

B (or)

(2) For special reasons by
recruitment by transfer from any other
service on tenure basis;

C (3) Appointment of an Officer on
tenure basis from any State
Transport
Undertakings.

D (b) Promotion to Category-I shall be made on grounds
of merit and ability, seniority being considered only
where merit and ability of competing candidates
are approximately equal.

E (c) The posts in category 2 other than those filled up
by recruitment by transfer from any other service on
a tenure basis shall be filled up by rotation, the first,
second, fourth and fifth vacancies being filled up by
recruitment by transfer from among Motor Vehicles
Inspectors, Grade I, and the third vacancy being
filled up by recruitment by transfer from
Superintendents in the Selection Grade and
Personal Assistants to Regional Transport Officers
in the Ministerial Service :

Provided that this rotation shall be followed in respect of
appointments made on and from the 26th June 1978 :

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Provided further that the temporary appointments to Category-2 made on and from the 15th September 1974 to the 25th June 1978 shall be regulated in the proportion of 1 : 1 between Motor Vehicles Inspectors, Grading - I, and Superintendents, Selection Grade, including Personal Assistants to Regional Transport Officers in the Ministerial Service. A
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3. Qualification:- No persons holding the post specified in Column (2) of the Table below, shall be eligible for appointment to the category specified in column (1) unless he posses the qualifications specified in column (3) thereof : C

TABLE

| CATEGORY (1) | POST (2) | QUALIFICATION (3) | D |
|--|--|--|--------|
| Category - 1 | 1. Regional | xxx xxx xxx | |
| Deputy Transport Commissioner | Transport Officer and Additional Regional Transport Officer | | E |
| | 2. Assistant Secretary, State Transport Authority | | F |
| <u>Category-2</u> (1) Regional Transport Officer and Additional Regional Transport Officer. | Motor Vehicles Inspector, Grade-I | Must have served for a total period of not less than five years as Motor Vehicles Inspector, Grade-I out of which | G H |

A not less than two years must be in a field office

(2) Assistant Superintendents, Must have served
Secretary Selection Grade for a total period
B State Transport and Personal of not less than
Authority Assistants to the five years as
Regional Transport Superintendent or
Officers a Personal
C Assistant to the
Regional
Transport Officer
of which not less
than two years
shall be as a
D Personal
Assistant to
Regional
Transport Officer.

Provided that this rule shall not be applicable to
E appointments prior to the date of 1st July 1978.

6 Preparation of Annual List of Approved Candidates
- A list of approved candidates for appointment by
promotion to Category 1 and recruitment by
transfer to category 2 shall be prepared every year.
F The crucial date for inclusion in the panel of all
eligible officers for such appointment shall be the
1st July of the year in which the selection for
appointment is made."

G A perusal of the rules extracted above reveal, that appointment
to the post of Regional Transport Officer is to be made only by
way of transfer, inter alia, from amongst Motor Vehicles
Inspectors (Grade I) (Rule 2(a)). Appointment by way of transfer
to the post of Regional Transport Officer from other services,
H (including the post of Motor Vehicles Inspectors (Grade-I) is to

be only on tenure basis (Rule 2(c)). It is significant to notice, that to be eligible for appointment to the post of Regional Transport Officer (from amongst Motor Vehicle Inspectors (Grade I)), the incumbent in question must have served for a total period of not less than five years as Motor Vehicles Inspector (Grade I), out of which not less than two years must be in a field office (Rule 3). Eligibility, on the basis of the qualifications prescribed for transfer to the post of Regional Transport Officer, is to be determined annually. For the said exercise, the cut off date stipulated under the Special Rules is 1st July of every year (Rule 6).

4. The career of respondent no. 5, K.V. Karthalingan, in the Transport Department of the State Government commenced on his appointment by direct recruitment as Motor Vehicles Inspector (Grade II), on 9.2.1995. While serving as Motor Vehicles Inspector (Grade II), he claimed that he had detected on a single date 14 cases of passenger vans being used as public careers. He asserted, that he had seized the concerned vehicles, whose owners were evading payment of tax (to the Transport Department). He also asserted, that he had detected irregularities being committed by certain dealers, for evading revenue (payable to the Transport Department). He also claimed to have detected various instances where dealers were found meddling with chassis numbers of vehicles. By a process of tempering, chassis numbers were being altered, by the dealers. According to respondent no. 5, his actions had resulted in bringing to book, numerous persons evading payment of tax to the Transport Department. According to respondent no. 5, K.V. Karthalingan, the above actions were taken by him despite grave personal risks. In this behalf, it was his assertion, that he had received a number of threatening letters, for having revealed the aforesaid irregularities. In the above letters he was threatened, that he would be eliminated. Despite receipt of such letters, respondent no. 5 claims to have continued to discharge his duties with dedication and devotion.

A 5. In appreciation of the above alleged exemplary devotion
of duty displayed by respondent no. 5, the Managing Director
of the Tamil Nadu State Transport Corporation, Kumbakonam
Division-1, as well as, the Managing Director of Cholan
Roadways Corporation, recommended the name of respondent
B no. 5, K.V. Karthalingan, for accelerated/out of turn promotion
as Regional Transport Officer. On 26.9.1997, having
considered the recommendations made by the Managing
Directors (referred to above), the Regional Transport Officer by
citing Rule 36(b)(ii) of the Tamil Nadu State and Subordinate
C Services Rules, also recommended the claim of respondent no.
5 for out of turn/accelerated promotion. The Deputy Transport
Commissioner, Trichy, on 10.7.1998, having considered the
above recommendations, endorsed the claim of respondent no.
5, K.V. Karthalingan, for accelerated/out of turn promotion, to
D the Commissioner of Transport, Chennai. In order to appreciate
the recommendation made on 26.9.1997 by the Regional
Transport Officer, it is essential to extract hereunder Rules 36
and 36A of the Tamil Nadu State and Subordinate Services
Rules, which came into force with effect from 1.1.1955. It was
E pointed out, that the above rules were framed in exercise of
powers conferred by the proviso under Article 309 of the
Constitution of India. The said rules are reproduced below :-

F "36. (a) Promotion - No member of a service or class
of a service shall be eligible for promotion from the
category in which he was appointed to the service
unless he has satisfactorily completed his probation
in that category:

G Provided that a member of a service or class of a
service who, having satisfactorily completed his probation
in the category in which he was appointed to the service,
has been promoted to the next higher category shall,
notwithstanding that he has not been declared to have
satisfactorily completed his probation in such higher
H category be eligible for promotion from such higher

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category:

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Provided further that if scales of pay of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay in descending order in other feeder categories shall be considered.

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(b) (i) Promotions to selection category or grade.- Promotions in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability, seniority, being considered only where merit and ability are approximately equal. The inter-se-seniority among the persons found suitable for such promotion shall be with reference to the inter-se-seniority of such persons in the lower post.

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(ii) Promotion according to seniority-All other promotions shall, be made in accordance with seniority unless-

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(1) the promotion of a Member has been withheld as a penalty, or

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(2) a Member is given special promotion for conspicuous merit and ability.

(c) Appointment of a member to higher category not to be considered if he had been on leave for three or four years or more continuously.-Notwithstanding anything contained in sub-rules (a) and (b), a member of a service who had been on leave for a period of three years continuously for any reason except higher studies or for a period of four years continuously for higher studies, shall not be

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A considered for appointment as a higher category either by promotion or by recruitment by transfer unless he has completed service for a period of one year from the date on which he joins duty on return from leave.

B 36A. Appointment by Recruitment by Transfer.-
 Appointments by recruitment by transfer to a class or
 category in a State Service from among the holders of
 posts in a Subordinate Service, shall be made on grounds
 of merit and ability, seniority being considered only where
 C merit and ability are approximately equal."

6. Whilst it is the claim of respondent no. 5, that he had a genuine claim for out of turn/accelerated promotion under Rule 36(b)(ii), it is the vehement contention of the learned counsel
 D for the appellants before us, that the aforesaid rule could neither be invoked for promotion to the post of Motor Vehicles Inspector (Grade I) nor for appointment by way of transfer to the post of Regional Transport Officer.

E 7. Before examining the merits of the controversy, it will be essential for us to narrate the sequence of events leading to the direction by the High Court of Judicature at Madras (hereinafter referred to as the 'High Court'), for promoting
 F respondent no.5, K.V. Karthalingan, to the post of Regional Transport Officer. Insofar as the instant aspect of the matter is concerned, it would be relevant to mention, that respondent no. 5 addressed a representation dated 30.6.1998 seeking out of
 turn/accelerated promotion. For his instant prayer, he sought consideration of his sincere, efficient and unblemished record of service, detailed above. On receipt of the aforesaid
 G representation, relying on the recommendation made by the Managing Director of the Tamil Nadu State Transport Corporation, Kumbakonam Division-1 and Managing Director of Cholan Roadways Corporation, on 26.9.1997 the Regional Transport Officer, also recommended the claim of respondent
 H no. 5. Thereupon, the Deputy Transport Commissioner, Trichy,

on 10.7.1998, further recommended respondent no. 5, K.V. Karthalingan, for accelerated promotion, to the Commissioner of Transport, Chennai. A

8. Despite the above recommendations, no action was taken by the authorities. It is, therefore, that respondent no. 5, K.V. Karthalingan, approached the Tamil Nadu Administrative Tribunal, at Chennai (hereinafter referred to as, the Administrative Tribunal), by filing Original Application no. 5918 of 1998. The aforesaid Original Application was disposed of by an order dated 6.11.1998, without issuing notice to the respondents. A perusal of the order dated 6.11.1998 reveals, that the Transport Secretary of the State Government, was directed to pass orders on the recommendations made by the Deputy Transport Commissioner, Trichy dated 10.7.1998. B C

9. Consequent upon the issuance of the above directions, the State Government passed an order dated 8.12.1998. By the instant order, the claim of the respondent no. 5 K.V. Karthalingan, for out of turn/accelerated promotion came to be rejected. While rejecting the prayer of respondent no. 5, the State Government recorded, inter alia, the following reasons:- D E

"2. The government have examined the representation of Mr. V. Kathalingam, taking into consideration of the direction the Hon'ble (Tribunal). (The) Tamil Nadu Transport Subordinate Service do not provide for out of turn or accelerated promotion. Besides, there is no merit in the claim of the petitioner. Instances of extraordinary services quoted by him are common in Transport Department as well as in Civil Service. F

3. Accordingly, the Government rejects the request of Mr. Kathalingam, Motor Vehicles Inspector, Grade-II for accelerated Promotion." G

A perusal of the order passed by the State Government reveals, that the rules regulating the conditions of service of H

- A respondent no. 5 do not provide for an avenue for out of turn/ accelerated promotion. The State Government also arrived at the conclusion, that the instances of extraordinary service relied upon by respondent no. 5 (to claim out of turn/accelerated promotion), could not be treated as exceptional or
- B unprecedented, because such instances were common in the Transport Department.

10. Dissatisfied with the order of the State Government dated 8.12.1998, respondent no. 5 preferred Original Application no. 429 of 2002 before the Administrative Tribunal.
- C The aforesaid Original Application was allowed by the Administrative Tribunal vide an order dated 10.7.2002. In the instant matter, the Administrative Tribunal had issued notice to the respondents (i.e, different functionaries of the State Government). The respondents were duly served. But the matter
- D was disposed of without waiting for a reply from them. While allowing the aforesaid application, even though the State Government while rejecting the claim of respondent no. 5 vide order dated 8.12.1998 had recorded that the instances indicated by him for out of turn/accelerated promotion, could
- E not be treated as exceptional or extraordinary, the Administrative Tribunal held that the same constituted conspicuous merit and ability, and were sufficient to earn respondent no.5, K.V. Karthalingan, out of turn/accelerated promotion as Regional Transport Officer. In its aforesaid
- F determination, the Administrative Tribunal recorded the following observations:-

- "5. The rejection order is found in G.O.Ms. No.2535 Home (Transport II) Department, dated 8.12.1998. There is no dispute about the extraordinary performance of the
- G petitioner. In one of the leading English Journals circulated in Tamil Nadu, the publication is to the following effect :

- "Parambalur October 31 Instance of dealers in two-wheelers illegally altering the chassis and
- H registration numbers of vehicles to distribute

vehicles with numbers as desired by the clients have come to light during inspections here. A

On July 18, a two-wheeler with the chassis number A 606 F 376242 was brought to the office of motor vehicle Inspector here. During the inspection the digit '6' in the chassis number was found repunched. Following this the inspector verified the papers relating to the vehicle issued by a local dealer. It came to light that as per the invoice issued by the manufacturers of June 8, 1996, the chassis number was A 606 F 3708242 and the vehicle has been registered from June 10. The Inspector found that the digit '6' had been repunched in lieu of '0'. B C

Consequently, the Inspector has reportedly written to the manufacturers and the Regional Transport Officer recommending cancellation of the grade licence issued to the dealer. D

Instance of meddling with the chassis number were also found in the vehicle brought for registration on earlier occasions. The digits '0' '3' and '1' were found tampered to read as '6', '8' and '7'. E

The Inspector has sent letters to the individual owners calling for explanation. The replies were similar. We parted with a bribe of Rs.2300 to avoid registration numbers totaling to '8' but the vehicles allotted to us carried numbers totaling to '8' only. We returned the vehicles and after a few days got vehicles with fresh registration numbers. F

It is said though it is three months since the irregularity was detected, no action has been taken so far. On the contrary the Inspector who detected the irregularity has reportedly received threat letters from a number of sources." G H

A 6. There is already a direction from this Tribunal in O.A.
No.5918 of 1998 to consider the case of the petitioner and
pass orders. Accordingly the government has passed
orders rejected the claim of the petitioner stating that
special rules for Tamil Nadu Transport Subordinate Service
do not provide for out of turn for accelerated promotion.

B 7. Mr. P. Jayaraman, Senior Counsel relied upon General
Rule 36(b)(2). It reads as follows :-

C "Promotion according to seniority:-

All the other promotion shall be made in accordance
with seniority unless :

D (i) The promotion of a member shall be withheld as
a penalty or

(ii) A member is given special promotion for
conspicuous merit and ability.

E By this Sub-rule (ii), there is an implication for grant of
special promotion for conspicuous merit and ability. In this
case, it is not disputed that the petitioners has rendered
meritorious service. Therefore, rejecting the claim of the
petitioner on the ground that there are no rules is not
proper. Hence the rejection order is set aside. The
petitioner shall be given promotion as Regional Transport
Officer. The orders shall be passed within a period of six
months from today."

A perusal of the determination rendered by the Administrative
Tribunal reveals, that a clear and categorical finding was
G recorded by it, that there was no dispute about the extraordinary
performance of respondent no. 5, K.V. Karthalingan. Reliance
was also placed on Rule 36(b)(ii) of the Tamil Nadu State and
Subordinate Service Rules to conclude, that the claim of
respondent no. 5 for out of turn/accelerated promotion could
H have validly been considered under Rule 36(b)(ii) of the

General Rules. Having recorded the aforesaid factual finding, as also having concluded that there was a statutory provision whereunder the claim of respondent no. 5 for out of turn/accelerated promotion could be granted, the Administrative Tribunal directed the respondents, to issue an order promoting the respondent no. 5 as Regional Transport Officer, within a period of six months (from the date of the order dated 10.7.2002).

11. Now that respondent no. 5 had succeeded before the Administrative Tribunal, the State Government filed Writ Petition (Civil) no. 21562 of 2003 before the High Court, to assail the order passed by the Administrative Tribunal dated 10.7.2002 (whereby respondent no. 5 was directed to be promoted to the post of Regional Transport Officer). The instant challenge raised by the State Government did not achieve the desired purpose, inasmuch as, the aforesaid writ petition came to be dismissed by an order dated 13.10.2004. In paragraph 2 of the order passed by a Division Bench of the High Court, on a consideration of the instances relied upon by respondent no. 5, as also, the recommendations made by the Managing Directors of Tamil Nadu Transport Corporation, Kumbakonam Division-1 and Cholan Roadways Corporation, and the recommendation made by the Deputy Transport Commissioner, Trichy, dated 10.7.1998, it came to be concluded, that respondent no. 5, K.V. Karthalingan, was entitled to out of turn/accelerated promotion. The High Court also took into consideration Rule 36(b)(ii) of the Tamil Nadu State and Subordinate Service Rules, and on the basis thereof held, that the statutory rules regulating the conditions of service of respondent no. 5, provided for out of turn/accelerated promotion, based on meritorious/outstanding service. Having so concluded, the High Court also expressed the view, that there was nothing in the Special Rules (the rules framed under Section 42 of the Tamil Nadu Transport Subordinate Service, and/or Section 28 of the Tamil Nadu Transport Service), that was repugnant to the General Rules (the Tamil Nadu State and

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A Subordinate Service Rules) providing for accelerated promotion. Accordingly, the High Court upheld the order passed by the Administrative Tribunal. The High Court while disposing of Writ Petition (Civil) no. 21562 of 2003, directed the State Government (i.e. the petitioners before the High Court) to
B implement the order passed by the Administrative Tribunal, within four months from the date of receipt of a copy of the High Court order.

12. Aggrieved with the decision rendered by the High Court in Writ Petition no. 21562 of 2003 (decided on 13.10.2004),
C the State Government filed Petition for Special Leave to Appeal (Civil) bearing no. 11538 of 2005. Besides the above petition filed by the State Government before this Court, one P. Mani also approached this Court by filing Petition for Special Leave to Appeal (Civil) bearing no. 11542 of 2005, for assailing the
D order of the High Court dated 13.10.2004. Both the above mentioned petitions were withdrawn by the State Government, as also, by the said P. Mani, on 7.7.2006. As a result of the withdrawal of the aforesaid petitions, the order passed by the High Court on 13.10.2004 directing the State Government to
E promote respondent no. 5 to the post of Regional Transport Officer, attained finality.

13. Despite the above legal position, namely, that the order of the High Court dated 13.10.2004 had attained finality, the
F State Government did not implement the order passed on 10.7.2002 (in O.A. no. 429 of 2002) by the Administrative Tribunal, or the order passed by the High Court dated 13.10.2004 (in Writ Petition No.21562 of 2003). It is in the aforesaid background, that respondent no. 5, K.V. Karthalingan,
G filed Contempt Petition no. 5188 of 2006 before the High Court. The High Court having taken notice of the entire factual position upto the date of withdrawal of the petitions for special leave to appeal preferred before this Court, recorded the following observations:-

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"6. After dismissal of the SLPs as withdrawn, the Special Commissioner and Transport Commissioner has sent a proposal to the Government on 19.7.2006, recommending the name of the petitioner for the post of Joint Transport Commissioner also after implementing the orders of the Tribunal and this Court, since the petitioner would reach that position if the orders are implemented properly. But, pending remarks from the Transport Commissioner, the Government issued G.O.2(D) No.111, Home (Trpt-II) Department dated 21.2.2007, temporarily promoting the petitioner as Regional Transport Officer and posted him at the office of the Regional Transport Officer, Chennai (West). According to the petitioner, the Special Commissioner and Transport Commissioner, by his considered remarks dated 10.05.2007, sent a proposal that his name has to be included in the list of panel of Regional Transport Officers for the year 1996, next to Mr. A.A. Khader Moideen, who was lastly promoted on 2.4.1996, vide G.O.Rt. No.831, Home (Tr-II) Department. According to the petitioner, while the above process was on, on some complaints by a dealer, whose irregularities were found out by him, certain charges were framed against the petitioner by the authorities and on enquiry, final orders were passed in favour of the petitioner. The petitioner would further contend that the properties purchase through the business income of his wife and her brothers were shown as his disproportionate assets, charges were framed against him, but on enquiry, they dropped on 15.12.2008, in consultation with TNPSC, and the former Principal Secretary and Transport Commissioner. In his letter dated 29.4.2010 addressed to the Director of vigilance and Anti-corruption denied permission to prosecute the petitioner. But, however, on the very same allegations, the succeeding Transport Commissioner, took a contrary view and accorded sanction for prosecution on 24.11.2010. But, again on 4.2.2011, the very same Transport Commissioner sent

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A remarks, by referring the pleading that a person once
convicted or acquitted shall not be tried for the same
offence again, and sent his remarks to the Government
stating that the Government is the competent authority to
withdraw the case referred to Tribunal for Disciplinary
B Proceedings, Trichy at any stage, as per Rule 8(b) of the
TNSC (D&A) Rules. A reminder was also sent by the said
authority on 20.6.2011 and the petitioner has also sent a
representation dated 14.7.2011, but no orders have been
passed till date by the Government.

C 7. A perusal of the entire materials placed on record,
prima facie, would establish the fact that in order to
deprive the petitioner from getting his accelerated
promotion as ordered by the Tribunal and by this Court,
D the respondents have adopted various dilatory tactics and
are trying to water down the order of the Tribunal and this
Court. When this Court has ordered to grant the petitioner
accelerated promotion as Regional Transport Officer, the
respondents have issued orders temporarily promoting
him to that cadre. Today, during the course of arguments,
E it has been submitted on behalf of the respondents that
there is a criminal case pending against the petitioner for
possessing assets disproportionate to his known sources
of income."

F 14. The appellants before us filed Petition for Special
Leave to Appeal (Civil) no. 3464 of 2012 on having realised,
that the claim raised by respondent no. 5, for promotion to the
post of Regional Transport Officer, had now fructified into a
reality. The reason for approaching this Court directly was, that
G it would be an exercise in futility for the appellants to approach
the High Court, as a Division Bench of the High Court had
already adjudicated the controversy, and while doing so,
examined the factual, as well as, the legal propositions involved.
And furthermore, a challenge raised to the order passed by the
Division Bench of the High Court, before this Court had been
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withdrawn. It was also their contention, that the petitioners (now the appellants before this Court) were never arrayed as party respondents in the litigation preferred by respondent no. 5, K.V. Karthalingan, even though their rights were liable to be prejudicially affected by the promotion of respondent no. 5, K.V. Karthalingan, to a higher post in the service. Since respondent no. 5 was junior to all of them, it was their submission, that they ought to have been arrayed as party respondents. Insofar as the instant aspect of the matter is concerned, it was pointed out, that whilst respondent no. 5, K.V. Karthalingan, was appointed against the post of Motor Vehicles Inspector (Grade II) on 9.2.1995, appellant no.1 P. Dharni was appointed as such on 18.1.1988, i.e., more than seven years before the appointment of respondent no.5. It was further pointed out, that even though respondent no. 5 was promoted as Motor Vehicle Inspector (Grade I) on 10.5.2000, appellant no. 1 P. Dharni was promoted as such, on 5.9.1994 i.e., almost six years before the promotion of respondent no. 5 K.V. Karthalingan as Motor Vehicles Inspector (Grade I). It was sought to be pointed out, that in the seniority list of the cadre of Motor Vehicles Inspector (Grade I), whilst the name of P. Dharni (appellant no. 1 herein) figured at serial no. 81, that of respondent no. 5, K.V. Karthalingan was placed at serial no. 141. In the above view of the matter it was submitted, that despite respondent no. 5 being 60 steps below the appellant P. Dharni, he was being promoted unjustifiably above him, and many other similarly situated persons, senior to respondent no. 5, K.V. Karthalingan. It was submitted, that even the other appellants were likewise superiorly placed vis-a-vis respondent no. 5, K.V. Karthalingan.

15. Based on the above pleas, this Court entertained the petition for special leave to appeal preferred by the appellants on 21.12.2011. While issuing notice in the matter, this Court also directed the parties to maintain status quo. After being served, all the respondents have filed counter affidavits. The appellants have also filed a rejoinder affidavit, to the counter affidavit filed by respondent no.5, K.V. Karthalingan. Pleadings

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A are, therefore, complete.

16. Having heard learned counsel for the rival parties we realised, that Original Application no.5918 of 1998 filed by respondent no.5 was disposed of (on 6.11.1998), without issuing notice to the State or the affected parties. Insofar as Original Application no.429 of 2002 is concerned, the same was disposed of (on 10.7.2002) without seeking a reply from the State, even though it had been duly served. In fact, in neither of the said Original Application, persons senior to respondent no.5 K.V. Karthalingan were impleaded as respondents, despite his claim for promotion before them. After the dismissal of Writ Petition no. 21562 of 2003 by the High Court, the Petitions for Special Leave to Appeal filed by the State Government, as also by a private individual, were withdrawn. There was therefore no adjudication on merits, by this Court. These factors persuade us to feel, that the questions raised had far reaching consequences, and therefore, needed to be examined on merits. Remanding the matter back to the Administrative Tribunal or the High Court, for re-determination of the issue, by affording an opportunity of hearing to the appellants before us, as also to those senior to respondent no. 5, K. Karthalingan, was one available option. Having heard learned counsel for the rival parties at great length, even on merits, we felt that it would be best for us to adjudicate upon the matter ourselves. It was possible for us to do so, because the rival parties had an opportunity for the first time before us, to raise their claims and counterclaims, through detailed pleadings and submissions.

17. During the course of hearing, submissions advanced at the behest of the appellants were based on the peculiar facts of the case, as also, purely on the basis of the rules regulating the conditions of service of the appellants, as well as, respondent no. 5, K.V. Karthalingan. Even though the chronological order in which the submissions were advanced during the course of hearing were different, we have chosen to

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deal with the same in a different sequence so as to bring out the true effect of the statutory rules, on the basis whereof rival claims were projected.

18. We shall first deal with the legal aspects in the matter. Principally the contention advanced at the hands of the appellants before us was, that Rule 36(b)(ii) of the Tamil Nadu State and Subordinate Services Rules relied upon by respondent no. 5, K.V. Karthalingan, as also the authorities which had recommended his claim for out of turn/accelerated promotion, is a part of the General Rules, as it figures in Part II of the Tamil Nadu State and Subordinate Services Rules. It was submitted, that the Special Rules override the General Rules. Based on the Special Rules framed under Section 42 of the Tamil Nadu Transport Subordinate Service, and under Section 28 of the Tamil Nadu Transport Service, it was sought to be contended, that Rule 36(b)(ii) of the General Rules relied upon by respondent no. 5, K.V. Karthalingan, could not have been taken into consideration, for granting him out of turn/accelerated promotion, as the same is in conflict with the Special Rules.

19. To substantiate the contention noticed in the foregoing paragraph, learned counsel for the appellants invited our attention to the Tamil Nadu State and Subordinate Services Rules. The aforesaid rules are divided into two parts. Part I bears the heading - "Preliminary", whereas Part II bears the heading "General Rules". Rule 36(b)(ii) relied upon by respondent no. 5, K.V. Karthalingan, falls in Part II - "General Rules". For all intents and purposes Rule 36(b)(ii) should therefore be perceived as a General Rule. In fact, for the instant inference, there was no dispute amongst the rival parties. Having substantiated that Rule 36(b)(ii) is a General Rule, learned counsel for the appellants, invited our attention to Rules 9 and 19 of Part I - "Preliminary", of the Tamil Nadu State and Subordinate Services Rules. The same are being extracted hereunder:-

A "9. "General Rules" shall mean the rules in Part II of these rules;

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B 19. "Special Rules" shall mean the rules in Part III applicable to each service or class of service;"

C Rules 9 and 19 extracted above, define "General Rules" and "Special Rules" respectively. It was reiterated, that it was further clear from the above definition of "General Rules" recorded in Rule 9 extracted above, that Rule 36(b)(ii) is a General Rule, because it is a rule in Part II of the Tamil Nadu State and Subordinate Services Rules.

D 20. Thereupon, it was submitted, that the rules referred to in the earlier part of this order, framed under Section 42 of the Tamil Nadu Transport Subordinate Service, and under Section 28 of the Tamil Nadu Transport Service, would fall in the category of Special Rules. For the said inference, reliance was placed on Rule 19 contained in Part I - Preliminary, of the Tamil Nadu State and Subordinate Services Rules. The above
E inference was drawn on the assertion that the said rules were framed specially to cater to posts in different cadres of the Transport Department. Again, for the instant inference, there was no dispute amongst the rival parties. We find merit in this
F contention as well, for the reasons expressed by the learned counsel for the appellants. Therefore, for all intents and purposes, the rules framed under the above provisions must be deemed to be Special Rule.

G 21. For demonstrating the superiority of one set of rules, over the other, learned counsel for the appellants brought to our attention, Rule 2 from Part II - "General Rules", of the Tamil Nadu State and Subordinate Services Rules, which reads as under:-

H "2. **Relation to the special rules** - If any provision in the general rules contained in this part is repugnant

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to a provision in the special rules applicable to any particular service, contained in Part III, the latter shall, in respect of that service, prevail over the provision in the General Rules in this part." **A**

A perusal of Rule 2 extracted above, leaves no room for any doubt, that in case of repugnancy between the Special Rules and the General Rules, the Special Rules will prevail over the General Rules. We acknowledge and affirm the aforesaid inference. We may now summarise our conclusions. Firstly, that Rule 36(b)(ii) of the Tamil Nadu State and Subordinate Services Rules, falls in Part II - General Rules, is clearly a General Rule. Secondly, the rules prescribing the conditions of eligibility and the manner/method of appointment by promotion from the post of Motor Vehicles Inspector (Grade II) to the post of Motor Vehicles Inspector (Grade I), framed under Section 42 of the Tamil Nadu Transport Subordinate Service, are Special Rules. Thirdly, the rules prescribing the conditions of eligibility and the manner/method of appointment by transfer to the post of Regional Transport Officer, inter alia out of Motor Vehicles Inspectors (Grade I), framed under Section 28 of the Tamil Nadu Transport Service, are Special Rules. And fourthly, in case of a conflict between the Special Rules and the General Rules, the Special Rules will have an overriding effect over the General Rules. **B**
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22. The first contention advanced at the hands of the learned counsel for the appellants in order to demonstrate that Rule 36(b)(ii) of the Tamil Nadu State and Subordinate Services Rules, contained in Part II - "General Rules", is in conflict with the Special Rules, was sought to be substantiated by placing reliance on the Special Rules framed under Section 42 of the Tamil Nadu Transport Subordinate Service, which exclusively prescribe the conditions of eligibility and the manner/method of appointment by promotion from the post of Motor Vehicles Inspector (Grade II) to the post of Motor Vehicles Inspector (Grade I). Referring to Rule 2 of the Special Rules it **F**
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A was asserted, that the only avenue of promotion from the post
of Motor Vehicles Inspector (Grade II) is to the post of Motor
Vehicles Inspector (Grade I), and as such, on the subject of out
of turn/accelerated promotion, the claim of respondent no. 5,
K.V. Karthalingan, could only have been considered for
B promotion to the post of Motor Vehicles Inspector (Grade I).
Relying on Rule 5(b) of the above Special Rules it was
submitted, that for promotion to the post of Motor Vehicles
Inspector (Grade I) the concerned incumbent must have served
as Motor Vehicles Inspector (Grade II) for a period of not less
C than five years. Referring to Rule 9 of the said Special Rules it
was asserted, that a Motor Vehicles Inspector (Grade II) would
acquire eligibility after fulfilling the aforesaid eligibility criteria
with reference to 15th of March of the year in which he
completes the prescribed conditions of eligibility. Taking into
D consideration the fact, that respondent no. 5, K.V. Karthalingan,
was appointed as Motor Vehicles Inspector (Grade II) in 1995,
it was submitted, that he would acquire eligibility for promotion
to the post of Motor Vehicles Inspector (Grade I) only on 15th
of March, 2000. It was accordingly contended, that when
E respondent no. 5, K.V. Karthalingan, made his representation
dated 30.6.1998, seeking out of turn/accelerated promotion, he
was not even eligible for promotion to the post of Motor
Vehicles Inspector (Grade I). In the above view of the matter, it
was the contention of the learned counsel for the appellants,
F that granting promotion to respondent no. 5, K.V. Karthalingan,
prior to his having acquired the eligibility even for appointment
to the post of Motor Vehicles Inspector (Grade I), would violate
Rules 5 and 9 of the Special Rules.

23. Having given our thoughtful consideration to the
G contention advanced at the hands of the learned counsel for the
appellants, we are constrained to uphold the first contention
raised at the hands of the learned counsel for the appellants. It
is not as if we are oblivious of the fact that the question to be
considered is whether respondent no. 5, K.V. Karthalingan, has
H rightfully been granted out of turn/accelerated promotion to the

post of Regional Transport Officer, whereas, the instant first A
contention advanced at the hands of the learned counsel for the
appellants is with reference to promotion to the post of Motor
Vehicles Inspector (Grade I). The reasons for accepting the
instant contention will flow from the conclusions drawn by us with
reference to the next two legal submissions advanced at the B
hands of the appellants. All the same, we are satisfied, that even
if the claim of respondent no. 5, K.V. Karthalingan, was
considered for out of turn/accelerated promotion to the post of
Motor Vehicles Inspector (Grade I), such a claim could not have
been accepted without his having acquired eligibility under C
Rules 6 and 9 of the Special Rules. Allowing him out of turn
promotion even to the post of Motor Vehicles Inspector (Grade
I) by relying on Rule 36(b)(ii), would have violated the mandate
of the Special Rules. Rule 2 contained in Part II - "General D
Rules" of the Tamil Nadu State and Subordinate Service Rules,
itself specifically mandates, that in case of a conflict between
the Special Rules and the General Rules, the Special Rules will
prevail. Rules 6 and 9 being Special Rules must therefore, be
satisfied, before an individual can make a claim for out of turn/
accelerated promotion under Rule 36(b)(ii), which is a General E
Rule. For the reasons recorded hereinabove, we have no
hesitation in holding, that even if promotion had been granted
to respondent no. 5, K.V. Karthalingan against the post of Motor
Vehicles Inspector (Grade I), on out of turn/accelerated basis
by relying on Rule 36(b)(ii) of the General Rules, the same would F
have been unacceptable in law, and as such, would have been
liable to be set aside.

24. The second contention advanced at the hands of the
learned counsel for the appellants was, that for the same G
reasons and on same logic as has been indicated above, for
demonstrating that promotion of respondent no. 5, K.V.
Karthalingan, to the post of Motor Vehicles Inspector (Grade I)
could not have been treated as valid under Rule 36(b)(ii), so
also, the promotion of respondent no. 5, K.V. Karthalingan, to
the post of Regional Transport Officer cannot be accepted as H

A valid. Insofar as the post of Regional Transport Officer is concerned, learned counsel for the appellant placed reliance on Rules 3 and 6 of the Special Rules framed under Section 28 of the Tamil Nadu Transport Service. To be eligible for appointment as Regional Transport Officer, a Motor Vehicles Inspector must have served for a total period of not less than five years as Motor Vehicles Inspector (Grade I), out of which not less than two years must be in a field office. It is also clear, that the aforesaid eligibility would be determined with reference to the 1st of July every year. Even if it is assumed, that respondent no. 5, K.V. Karthalingan, came to be promoted as Motor Vehicles Inspector (Grade I) immediately on completion of five years' service as Motor Vehicles Inspector (Grade II), he would still need another five years' service before he could be appointed as Regional Transport Officer. Out of the said service, two years ought to have been in a field office. In the above view of the matter it was submitted, that a minimum of 10 years of service must mandatorily be rendered by a Motor Vehicles Inspector (Grade II), before he can contemplate appointment to the post of Regional Transport Officer. In view of the fact that respondent no. 5, K.V. Karthalingan was appointed as Motor Vehicles Inspector (Grade II) on 9.2.1995, he would acquire eligibility for the same only on 1.7.2005. It was submitted, that if respondent no. 5, K.V. Karthalingan, was promoted as Regional Transport Officer, before fulfilling the aforesaid ten years of service, his promotion would be in violation of Rules 3 and 6 of the Special Rules referred to above.

25. We have given our thoughtful consideration to the second legal proposition canvassed at the hands of the learned counsel for the appellants. We find merit therein as well. The question to be considered is, whether the Special Rule prescribing the minimum period of eligibility for appointment to the post of Regional Transport Officer, can be overlooked while allowing out of turn/accelerated appointment to respondent no. 5, to the post of Regional Transport Officer. We are satisfied

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in answering the aforesaid query in the negative. We are of the view, that if promotion is granted to respondent no. 5, K.V. Karthalingan, under Rule 36(b)(ii) of the General Rules, prior to his having rendered five years' service as Motor Vehicles Inspector (Grade I), out of which two years must be in a field office, the same would violate the Special Rules. Since the Special Rules override the General Rules, the claim made by respondent no. 5, for out of turn promotion under Rule 36(b)(ii) of the General Rules, would be valid only if respondent no.5, had satisfied the conditions of eligibility stipulated in the Special Rules for appointment to the post of Regional Transport Officer. Insofar as the present controversy is concerned, even though respondent no. 5, K.V. Karthalingan, was appointed as Motor Vehicles Inspector (Grade II) on 9.2.1995, he made a representation on 30.6.1998 claiming out of turn/accelerated promotion. By that time, he had rendered just over three years of service as Motor Vehicles Inspector (Grade II). At that stage, there was no question of his being considered for appointment against the post of Regional Transport Officer, as he had by then, not rendered even a single days service as Motor Vehicles Inspector Grade-I (as against the prescribed five years' service). The instant issue can be examined from another angle as well. It would be legitimate to accept, that in the hierarchy of posts in the Transport Department, the post of Motor Vehicles (Grade I) must be treated as a post higher in stature, as compared to the post of Motor Vehicles (Grade II). At the juncture, when respondent no.5 had made his representation claiming out of turn/accelerated promotion he was not even eligible for promotion to the post of Motor Vehicles Inspector (Grade-I), as a minimum of five years' service as Motor Vehicles Inspector Grade-II is required before such promotion. Since a minimum of five years' service as Motor Vehicles Inspector (Grade I) is required before an individual can be appointed to the post of Regional Transport Officer, it is essential to further conclude, that respondent no. 5 ought to have fulfilled the prescribed condition, before claiming appointment as Regional Transport Officer. Having already concluded, that respondent

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A no.5 could not have legitimately been promoted to the post of Motor Vehicles Inspector (Grade-I), it is out of the question to accept or assume, that he could have nonetheless been promoted to the post of Regional Transport Officer, which required a further five years' service. Besides the above, we are of the view, that the Special Rules laying down the conditions of eligibility and the manner/method of promotion to the post of Regional Transport Officer, would stand violated if the claim of respondent no. 5, K.V. Karthalingan, for out of turn/accelerated promotion, was to be acceded to on the basis of his representation dated 30.6.1998. It needs to be kept in mind that respondent no. 5 had first approached the Administrative Tribunal for claiming out of turn/accelerated promotion in 1998 (having filed Original Application no. 5918 of 1998). He again approached the Administrative Tribunal in 2002 (having filed Original Application no. 429 of 2002) when his claim for out of turn/accelerated promotion was rejected by the State Government. In the instant latter case, his claim for out of turn/accelerated promotion to the post of Regional Transport Officer was accepted by the Administrative Tribunal (on 10.7.2002). At the cost of repetition, it may be noted, that a minimum of ten years service after appointment as Motor Vehicles Inspector (Grade-II) is required under the Special Rules, before an individual can be appointed as Regional Transport Officer (five years' service for promotion as Motor Vehicles Inspector (Grade-I), and another five years' service as Motor Vehicles Inspector (Grade-I) before appointment as Regional Transport Officer). Respondent No.5, K.V. Karthalingan, did not fulfill the prescribed minimum service for promotion, when the courts below directed his promotion to the post of Regional Transport Officer. It would not be out of place to mention, that he had neither fulfilled the conditions of eligibility of appointment to the post of Regional Transport Officer at the time of filing of the Original Applications, nor when his claim was allowed. We are, therefore of the view, that the order passed by the Administrative Tribunal, as also, by the High Court by relying

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on Rule 36(b)(ii) of the General Rules, was in clear derogation of the Special Rules referred to above. We may now summarize the conclusions drawn in the instant paragraph. Firstly, respondent no. 5, K.V. Karthalingan, could not have been appointed as Regional Transport Officer because he did not satisfy the conditions of eligibility expressed therefor in the Special Rules. Secondly, because respondent no. 5, K.V. Karthalingan, was not even eligible to be appointed to the lower post of Motor Vehicles Inspector (Grade I), it was out of the question to accept that he was nonetheless eligible to be appointed to the post of Regional Transport Officer, which required a further five years' experience. And thirdly, it needed a minimum of ten years' service to become eligible for being appointed as Regional Transport Officer. Since respondent no. 5, K.V. Karthalingan, had not even rendered such minimum service, his appointment to the post of Regional Transport Officer cannot be considered as valid. For all the above reasons, we are satisfied, that the order passed by the Administrative Tribunal, as also, the High Court directing the promotion of respondent no. 5, K.V. Karthalingan, to the post of Regional Transport Officer is liable to be set aside.

26. The validity of the claim of appointment of respondent no. 5, K.V. Karthalingan, against the post of Regional Transport Officer can be examined from another perspective. Rule 36(b)(ii) contained in Part II - "General Rules", of the Tamil Nadu State and Subordinate Services Rules, clearly envisage, that an employee can be given special promotion for conspicuous merit and ability. But then, the Special Rules framed under Section 28 of the Tamil Nadu Transport Service, laying down the conditions of eligibility and the manner/method of appointment to the post of Regional Transport Officer, do not postulate appointment to the post of Regional Transport Officer by way of promotion. Rule 2 of the Special Rules clearly envisage, that appointment against the post of Regional Transport Officer, would be made only by way of transfer, inter alia from amongst Motor Vehicles Inspectors (Grade I).

A Rule 36(b)(ii) of the General Rules does not postulate out of
turn/accelerated appointment by way of transfer. In the above
view of the matter we are satisfied, that Rule 36(b)(ii) of the
General Rules, would clearly be inapplicable for considering the
claim of respondent no. 5, K.V. Karthalingan, for appointment
to the post of Regional Transport Officer. For the instant reason
as well, the direction issued by the Administrative Tribunal, as
also, the High Court requiring the State Government to appoint
respondent no. 5, K.V. Karthalingan by way of promotion to the
post of Regional Transport Officer, is not acceptable in law.

C 27. There is another legal parameter on the basis of which
the validity of the claim of respondent no. 5, K.V. Karthalingan,
for out of turn/accelerated promotion under Rule 36(b)(ii) of the
General Rules, cannot be accepted. Insofar as the instant
parameter is concerned, it requires a close examination of Rule
D 36(b) of the General Rules. Rule 36(b) of the General Rules has
two clauses, clause (i) thereof deals with promotions by way
of selection, whereas clause (ii) thereof deals with promotions
on the basis of seniority alone. Respondent no. 5, K.V.
Karthalingan, as also, the various recommending authorities
E have referred to clause (ii) of Rule 36(b) of the General Rules,
while recommending the claim of respondent no. 5, K.V.
Karthalingan, for out of turn/accelerated promotion. We are of
the considered view, that the aforesaid clause (ii) of Rule 36(b)
of the General Rules, could have been invoked only in matters
F where promotions are to be made solely on the basis of
seniority. Rule 2(b) of the Special Rules laying down the
manner/method for promotion to the post of Motor Vehicles
Inspector (Grade I) clearly mandates, that promotion to the said
post, would be made on grounds of merit and ability, seniority
being considered only where merit and ability are
G approximately equal. It is, therefore apparent, that the post of
Motor Vehicles Inspector (Grade I) is a selection post. That
being the undisputed position, it would not have been possible
for the authorities to invoke Rule 36(b)(ii) of the General Rules,
even for promoting respondent no. 5, K.V. Karthalingan to the
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post of Motor Vehicles Inspector (Grade I). Insofar as the post of Regional Transport Officer is concerned, we have already expressed above that the same could be filled up only by way of transfer from amongst Motor Vehicles Inspectors (Grade I), and not by promotion. Even though the Special Rules do not lay down the method or manner of making appointments by way of transfer, Rule 36A (introduced with effect from 30.1.1996) contained in Part II - 'General Rules', of the Tamil Nadu State and Subordinate Services (extracted in paragraph 5 above), postulates, that appointment by transfer shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. In the aforesaid view of the matter, it is imperative to conclude, that even for appointments by way of transfer, the appointing authority must sieve the eligible candidates by adopting a process of selection. Since the post of Regional Transport Officer, is to be filled up by way of transfer, i.e., by way of selection amongst eligible candidates, Rule 36(b)(ii) of the General Rules would be inapplicable. Stated in other words, the General Rules contemplate out of turn/accelerated promotion, only in cases where seniority is the sole criterion for promotion, whereas, the post of Regional Transport Officer is not to be filled up on the basis of seniority. For the instant reason also, it is not possible for us to accept, that Rule 36(b)(ii) of the General Rules could have been invoked for granting out of turn/accelerated promotion to respondent no. 5, K.V. Karthalingan, against the post of Regional Transport Officer.

28. From the conclusions recorded by us, while considering the issue of out of turn/accelerated promotion, with reference to respondent no. 5, K.V. Karthalingan, we have repeatedly arrived at a firm determination, that for onward promotions (from the post of Motor Vehicles Inspector (Grade II) held by respondent no. 5, K.V. Karthalingan), the criterion to be adopted was that of selection. Seniority was only to be taken into consideration where merit and ability of two eligible candidates was found to be approximately equal. This would

A lead us to yet another relevant inference on the issue in hand. In the above view of the matter, every claim for onward promotion from the post of Motor Vehicles Inspector (Grade II) was liable to be considered on the basis of merit. Therefore, an individual with superior merit would steal a march over those
B less meritorious. Thus viewed, if respondent no.5, K.V. Karthalingan, was actually possessed of outstanding and exceptional merit, as is sought to be suggested, he would have stolen a march over his seniors even under the existing Special Rules. Thus viewed, even by the manner/method of onward
C progression postulated in the Special Rules, a person with conspicuous merit and ability (as postulated under Rule 36(b)(ii) of the General Rules), would overtake others without having to invoke Rule 36(b)(ii) of the General Rules. This does not seem to have happened in case of respondent no. 5, K.V.
D Karthalingan. On his consideration, after he had acquired eligibility for promotion to the post of Motor Vehicles Inspector (Grade I), he was promoted as such only on 10.5.2000. The merit and ability possessed by respondent no. 5, K.V. Karthalingan, is not shown to have resulted in his having
E superseded other members of the cadre senior to them. For the instant reason also, reliance placed by respondent no. 5, K.V. Karthalingan, for out of turn/accelerated promotion under Rule 36(b)(ii) of the General Rules deserves outright rejection.

29. We shall now deal with the factual aspect of the matter.

F It is clear from the factual narration recorded above, that the claim of respondent no. 5, K.V. Karthalingan, for out of turn/accelerated promotion was based on his alleged conspicuous merit and ability. The aforesaid exemplary and outstanding merit was based on actions allegedly taken by respondent no.
G 5, K.V. Karthalingan, while working as Motor Vehicles Inspector (Grade II). The very facts relied upon by respondent no. 5, K.V. Karthalingan, constituted the basis of the recommendations of various authorities supervising his work and conduct. Having examined the recommendations made in favour of respondent
H no. 5, K.V. Karthalingan (by the various authorities adverted to

above), the State Government vide its order dated 8.12.1998 concluded, that the factual basis relied upon by respondent no. 5, K.V. Karthalingan, would not entitle him to out of turn/accelerated promotion, as the instances of extraordinary service relied upon by him, were common in the Transport Department. Despite the aforesaid assertion of the State Government in its order dated 8.12.1998, the Administrative Tribunal adjudicated upon the said disputed question of fact. It reversed the factual finding recorded by the State Government. While doing so, the Administrative Tribunal did not await a response by the State Government. The matter came to be disposed of without any reply having been filed by the State Government. Even though the State Government while seeking recourse to the writ jurisdiction of the High Court, brought out other related facts showing that respondent no. 5, K.V. Karthalingan, could not be treated as an employee entitled to out of turn/accelerated promotion, the High Court rejected all those submissions and reversed the factual finding recorded by the State Government (in its order dated 8.12.1998). We find it difficult to appreciate the approach of the Administrative Tribunal, as also, the High Court. The simple reason depicted in the State Government's order dated 8.12.1998 was, that the instances of extraordinary service relied upon by respondent no. 5, K.V. Karthalingan, to claim out of turn/accelerated promotion, could not be treated as exceptional or unprecedented, as such instances were common in the Transport Department. Even though respondent no. 5, K.V. Karthalingan, had not disputed the aforesaid factual position, it is difficult to understand how the Administrative Tribunal, as also, the High Court had accepted the claim of respondent no. 5, K.V. Karthalingan, by concluding that he had actually rendered extraordinary and exemplary service. Since the factual assertion made by the State Government in its order dated 8.12.1998, had remained un rebutted, we are of the view, that the Administrative Tribunal, as also, the High Court, were wholly unjustified in recording such a conclusion. For the instant reason also, the impugned orders dated 10.7.2002 (passed by the

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A Administrative Tribunal) and 13.10.2004 (passed by the High Court) deserve to be set aside.

B 30. For the reasons recorded hereinabove, we find merit in the various contentions advanced by the learned counsel for the appellants. The order passed by the Administrative Tribunal on 10.7.2002 (while disposing of Original Application no. 429 of 2002) and the order passed by the High Court on 13.10.2004 (while disposing of Writ Petition (Civil) no. 21562 of 2003) directing the promotion of respondent no. 5, K.V. Karthalingan, to the post of Regional Transport Officer, are clearly unsustainable. They are accordingly hereby set aside.

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31. Allowed in the aforesaid terms.

K.K.T.

Appeals allowed.