

CASE NO.:
Appeal (civil) 7384-7388 of 2003

PETITIONER:
Govt. of A.P. & Anr

RESPONDENT:
G. Jaya Prasad Rao & Ors

DATE OF JUDGMENT: 21/03/2007

BENCH:
A.K.MATHUR & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

A.K. MATHUR, J.

These appeals are directed against the order dated 4th October, 2002 passed by the Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad in batch of Writ Petitions filed by the State against the common order passed by Division Bench of the Andhra Pradesh Administrative Tribunal (hereinafter to be referred to as 'the Tribunal') in batch of original applications on 12th July, 2002 in OA No. 9461/2001 & others.

The respondents herein were the petitioners before the Tribunal. They were all Inspectors of Police working at various places and in various wings in the police Department in the State of Andhra Pradesh. Most of them were working as Inspectors of Police in the city of Hyderabad. They approached the Tribunal with a prayer to declare insertion of Note-2 of Rule 3 and proviso to Rule 6 of the Andhra Pradesh Police (Civil) Service Rules, 1998 (hereinafter to be referred to as 'Rules of 1998') issued by G.O. Ms. No. 267, Home (Police-E) Department, dated 26th November, 2001 by amendment of Rule as arbitrary and discriminatory being violative of Articles 14, 16, 21 and 311 of the Constitution of India.

By this amendment a scheme was introduced for accelerated promotion for the outstanding work in the field of anti extremist operation. The Note 2 appended to Rule 3 reads as under:

"Note 2: The Government may consider the cases of deserving Inspectors of Police and Deputy Superintendents of Police (Civil), for accelerated promotions to the next higher ranks in recognition of their outstanding work in the field of anti-extremist operation irrespective of their seniority as an incentive by following the relevant procedure as specified by the Government from time to time in this regard."

And the Proviso to Rule 6 reads as under:

"Provided that in the case of the accelerated promotions, the minimum service as specified above shall not apply."

By virtue of these amendments in Service Rules of 1998, some Officers got accelerated promotions on account of their performance in extremist areas. The tribunal after elaborate consideration of the matter acceded to the prayer of the petitioners (respondents herein) and declared Note 2 to Rule 3 of the Rules and Proviso to Rule 6 being violative of Articles 14 & 16 of the Constitution and struck it down.

Aggrieved against this Order, a batch of writ petitions

were filed before the High Court.

The stand taken by the State before the Tribunal as well as before the High Court was that the State of Andhra Pradesh in order to tackle the menace of terrorism conceived this scheme as an incentive for the officers so that more and more officer could come forward to meet this menace to the society and therefore, as a measure of incentive this scheme was conceived by the State. It was pointed out that the scheme is neither arbitrary nor discriminatory and it is a scheme for a special class/category of persons who do the daring job in containing the menace of terrorism by naxal groups. Therefore, it is not discriminatory. It was also pointed out that a scheme had been prepared whereby the cases of such persons were screened at two to three levels and the guideline was issued by Government Order Ms No. 280 on 17.9.2002. As per this guideline, the Unit Officers/ Superintendents of Police/Commissioners of Police shall assess the outstanding work done in the Anti-Extremist Operations by the Police Officers working under them. They shall recommend the cases to the Director General & Inspector General of Police for consideration through their immediate superior Officer. The Unit Officers/Superintendents of Police/ Commissioners of Police while forwarding the recommendations of deserving cases shall broadly be guided by the under mentioned conditions, viz., that the Police Officer shall have;

- i) been an approved Probationer;
- ii) performed outstanding work in the filed of Anti, Extrimist Operations, (here the quality of work turned out shall be taken as criteria);
- iii) uniformly satisfactory records; and
- iv) clean defaulter sheet for the last (6) years without any major Punishments through out the service.

These are the guiding factors. The recommended cases shall be reviewed by the Superior Officers and shall be forwarded to the Director General & Inspector General of Police with his remarks. The Director General & Inspector General of Police shall send all such cases received from the various Unit Officers/Superintendents of Police/Commissioners of Police to the Additional Director General of Police/Inspector General of Intelligence Department for scrutiny and his remarks. The Additional General of Police/Inspector General of Police of Intelligence department will in turn send such cases to the Special Intelligence Branch (SIB) of the Intelligence Department which exclusively monitors the Anti-Extremists Operations of the State for scrutiny and recommendations. Thereafter, the Inspector General/Deputy Inspector of Police of the Special Intelligence Branch will scrutinize all such cases thoroughly as to the quality of each such case and forward back the special remarks. The same shall be forwarded to the Director General & Inspector General of Police by the Additional Director General of Police/Inspector General of Police, Intelligence Department with his remarks. All such cases shall be placed before a Departmental Committee which shall have the;

1. Additional Director General of Police/Inspector General of Police (L&O), ... Chairman
2. Additional Director General of Police/Inspector General of Police(Admn.) \005 Member
3. Additional Director General of Police/Inspector General of Police (Intelligence) \005 Member
4. Additional Director General of Police/Inspector General of Police (Grey House) \005 Member

5. Additional Director General of Police/Inspector General of Police (Special Intelligence Branch)

\005 Member

After scrutiny by the High Level Committee the matter will be referred to State Government. It was also clearly mentioned that the aforesaid committee while forwarding the cases will keep in mind the guidelines mentioned above. The Additional Director General of Police/Inspector General of Police may order accelerated promotion on the basis of such recommendation from the rank of Police Constable to Sub-Inspector of Police to the next higher rank. The cases of the Police Officer and above the rank of Inspector of Police shall be forwarded to the Government by the Director General & Inspector General of Police for consideration of Accelerated Promotions and that shall be considered by a High Level Committee constituted by the Government. That Committee shall be headed by (i) Chief Secretary to Government as Chairman, (ii) Principal Secretary to Government, Home Department as Member, (iii) Secretary to Government, Home Department as member, (iv) Secretary to Government (Services), General Administration Department as member and (v) Director General & Inspector General of Police, Andhra Pradesh, Hyderabad as member. The Deputy Secretary or Joint Secretary or Additional Secretary who is dealing with the police subject in Home Department shall function as Secretary to this Committee. This Committee shall also be guided by the following eligibility conditions namely; the concerned Police Personnel shall have;

- i) performed outstanding work in the field of Anti-Extremist.

- ii) uniformly satisfactory record; and
- iii) a clean defaulter sheet for the last six years without any Major Punishments through out the service.

This committee shall meet once in three months to review such cases. These guidelines were issued for the performance of accelerated promotions. It is also pointed out that despite these incentive, few officers were prepared to accept the highly risky and challenging job. The Police Personnel right from the Constable to IPS Officer were targeted by the naxals more than 480 laid down their lives including an I.P.S. Officer. It was also pointed out that after introduction of accelerated promotion scheme naxal activities have considerably decreased to the extent of 1/3rd from 1997-2001.

Though the Tribunal as well as the High Court found that the amendment in Note 2 to Rule 3 as well as proviso to Rule 6 are held to be ultra vires as it has been observed by the High Court that it creates a class within class. The High Court held that the amendment did not satisfy the test of reasonable classification and it further observed that fortuitous circumstance cannot be made a basis for creating a separate class within the class. Therefore, the High Court came to the conclusion that the classification made upon such basis cannot be treated as a reasonable classification. It was also observed that fortuitous circumstances cannot be made the basis for creating class out of large number of persons similarly situated. It was also pointed out that just because some persons were lucky enough to get a posting in the naxal affected area, they got accelerated promotion but others who were not fortunate to get a posting in the naxal affected area, they were denied promotion. It was submitted that even the officers posted in same unit may not get posting in the Police-station where there is naxal affected area and others are lucky enough to get the posting, then they stand to

gain and others who are not lucky enough to get posting in that area they will be denied the opportunity. Therefore, it is discriminatory as there is a class within class, similarly situated persons are treated dissimilarly i.e. equals are treated unequally. Therefore, this classification, according to the High Court is not reasonable classification and it is not founded on intelligible differentia which distinguishes one group from the other.

Learned counsel for the appellant-State has pointed out that the reasoning given by the High Court is not correct. It is pointed out that the classification is based on intelligible differentia that those persons who have faced the bullets and did the outstanding job to check the naxal menace then they form class in itself and in order to confer the benefit to such persons the scheme was conceived. The object was to encourage more and more persons to come forward for this daring job. Therefore, it was submitted that the amendments have objects sought to be achieved and two class of persons can be distinguished with each other. The rational basis to distinguish one class from the other class is sacrifice of people to accept the challenge of naxal menace. Those who dare need to be rewarded. In order to substantiate his submissions learned counsel invited our attention to the decisions of this Court in Ravi Paul & Ors. v. Union of India & Ors. [(1995) 3 SCC 300] & Havaladar Bhagat Singh & Ors. v. State of Haryana & Anr. [(1996) 8 SCC 649].

In the case of Havaladar Bhagat Singh and Ors Vs. State of Haryana and Anr reported in {(1996) 8 SCC 649}, the question was that the State Government issued a circular dated 7.10.1991 in respect of ex-servicemen who had entered military service before emergency, prohibiting the withdrawal of the benefits from them if they had joined the State Government service before the date of the amendment of the Rules and directing to withdraw the benefits from such of them as had joined the service of the State Government subsequent to the date of amendment of the rules. This withdrawal of the benefits were challenged that it was arbitrary and discriminatory. Considering the validity of this circular by the State of Haryana, their Lordships observed as under:

"It was open to the State to withdraw the offer, but not qua those who had already accepted the offer and joined the State Government service. Hence was rendered the decision in K.C. Arora case. The State Government did not withdraw the offer wholly but restricted it to those who had enrolled or were commissioned in the armed forces during the emergency. The State Government was entitled to do so. In our view, there is a clear and intelligible difference between those who had already chosen the armed forces as a career when the emergency was declared and those who, in response to the nation's call, joined the armed forces after the emergency was declared. It was in the country's interest at that critical juncture to make service in the armed forces attractive and compensate those who would otherwise have chosen other vocations. The grant of benefits to the latter class while denying them to the former class is in no way arbitrary or discriminatory."

In another case of Ravi Paul and Others Vs. Union of India and Ors reported in {(1995) 3 SCC 300} their Lordships observed as under:

"The ECOs who were absorbed/appointed to the BSF during the period 1967-71 had joined the

Army during the emergency in the wake of the Chinese aggression. By joining the Army when the country needed their services they had made a sacrifice. Moreover, they were absorbed in the BSF at a time when there was need for competent officers in the BSF and in order to attract such officers in the BSF it was considered necessary to give the benefit of the service of the Army for the purpose of seniority in the BSF to the officers who were appointed/absorbed in the BSF during 1967-71. The SSCOs had joined the Army as a career after the emergency resulting from the Chinese aggression was over. When they were absorbed/appointed to the BSF during the period 1974-78 there was a change in the policy of the Government of India and the benefit of the service in the Army was not to be given to the SSCOs who were absorbed/appointed in the BSF after release from the Army. This condition was expressly mentioned in their letters of appointment and they opted to join the BSF knowing fully well that their Army service would not be counted for seniority in the BSF. The ECOs who were absorbed/appointed in the BSF during the period 1967-71 and the SSCOs who were absorbed/appointed in the BSF during the period 1974-78 are officers belonging to two different categories and they cannot be regarded as persons similarly situate."

Therefore, in view of the fact that Officers who have joined the service to the State have been rewarded for their past service rendered during Chinese aggression and such class of persons were found to be treated as class apart.

Learned counsel for the respondents submitted that the respondents have nothing against the scheme and accelerated promotion but it is going to operate in a very discriminatory and arbitrary fashion. It was pointed out that in one unit if there are ten Police-stations and only three are naxal affected area and one of the Inspectors gets a chance to serve in that naxal affected area, he stands to benefit. Therefore, learned counsel for the respondents submitted that there is no criteria for posting person in any naxal affected area it gives unbridle power in the hands of unit head in choosing persons for such posting. He pointed out that so far as the condition for serving for two years in naxal affected area who had benefit of accelerated promotion is understandable but the question is how to pick such persons for posting in that area where he can show his chivalry or bravery.

We have heard learned counsel for the parties and perused the records. Before we advert to decide the issue on merits, it may not be out of place to mention the scheme of the Rules of 1998. The Rules of 1998 laid down the method of recruitment to the posts mentioned in the Andhra Pradesh Police service. Rule 2 contemplates the constitution of service. The service is divided into three categories. Category (1) consists of Additional Superintendent of Police (Non-Cadre) including Officer-on-Special Duty and Additional Deputy Commissioner of Police. Category (2) consists of Deputy Superintendent of Police including Assistant Commissioner of Police other than Assistant Commissioner of Police (Headquarters and City Armed Reserve). Category (3) consists of Inspector of Police and Inspector of Police (Women). Rule 3 deals with method of recruitment. Rule 3 with appended Note 2 is reproduced under :

" 3. Method of appointment:

Subject to the other provisions in these rules, the method of

appointment for the several categories mentioned in column (1) shall be by the method specified in the corresponding column (2) of the Table below:

TABLE

Category (1)	
Method of appointment (2)	
1, Additional Superintendent of Police including Officer on Special Duty and Additional Deputy Commissioner of Police By promotion of Deputy Superintendent of Police (Category -2)	
2. Deputy Superintendent of Police including Assistant Commissioner of Police other than Assistant Commissioner of Police (Headquarters and City Armed Reserve)	
(i) By direct recruitment; and	
(ii) By promotion of Inspector of Police (Category-3)	
3(a) Inspector of Police By appointment by transfer of Sub- Inspector of Police in the Andhra Pradesh Police (Civil Police) Subordinate Service.	
3(b) Inspector of Police (Women) By appointment by transfer of Sub-Inspector of Police (Women) in the Andhra Pradesh (Civil Police) Subordinate Service.	

Note 1: In every cycle of ten vacancies, the appointment to the post of Deputy Superintendent of Police shall be as follows namely:-

1st vacancy	By Direct Recruitment
2nd vacancy	By Promotion
3rd vacancy	By promotion
4th vacancy	By Direct Recruitment
5th vacancy	By Promotion
6th vacancy	By Promotion
7th vacancy	By Direct Recruitment
8th vacancy	By Promotion
9th vacancy	By Promotion
10th vacancy	By Promotion.

Provided that appointment by transfer to the posts of Inspectors of Police including Hyderabad City Police shall be made by the Deputy Inspector General of Police concerned, or as the case may be by the Commissioner of Police from a list of candidates approved by the Director General of Police in the order indicated therein.

Note 2: The Government may consider the cases of deserving Inspectors of Police and Deputy Superintendents of Police (Civil), for accelerated promotions to the next higher ranks in recognition of their outstanding work in the field of anti-extremist operation irrespective of their seniority as an incentive by following the relevant procedure as specified by the Government from time to time in this regard."

So far as the method of recruitment is concerned, a Deputy Superintendent of Police is entitled to be promoted to the post of Additional Superintendent of Police and the Deputy Superintendent of Police is to be recruited by two methods i.e. by direct recruitment or by promotion from the Inspector of Police. The Inspector of Police can be appointed by transfer of Sub-Inspector of Police in the Andhra Pradesh Police (Civil Police) Subordinate Service and Inspector of Police (Woman) can be posted by transfer of Sub-Inspector of Police (Woman) in the Andhra Pradesh Police (Civil Police) Subordinate Service. Note 2 contemplates additional method of recruitment by way of accelerated promotion out of the Inspectors of Police and Deputy Superintendents of Police to the next higher rank i.e. Deputy Superintendent of Police and Additional Superintendent of Police in recognition of their outstanding work in the field of anti-extremist operation irrespective of their seniority as an incentive measure as per the procedure laid down by the Government of Andhra Pradesh from time to time. Rule 4 makes reservation of appointment. Rule 5 lays down age and qualification with which we are not concerned. Rule 6 deals with minimum service which will be relevant for our consideration. It reads as under :

"6. Minimum Service :

No person shall be eligible for appointment by transfer or promotion unless he is an approved probationer and has put in service in the category from which promotion or transfer is made as specified below :

(a) not less than five years for a Deputy Superintendent of Police to be promoted as Additional Superintendent of Police (Non-cadre),

(b) not less than six years for Sub-Inspector of Police and for Inspector of Police to be promoted as Inspector of Police and Deputy Superintendent of Police respectively.

Provided that in the case of the accelerated promotions, the minimum service as specified above shall not apply."

As per Rule 6, a Deputy Superintendent of Police will not be entitled for promotion as Additional Superintendent of Police unless he has put in five years of service and not less than six years of service for Sub-Inspector of Police and Inspector of Police to be promoted as Inspector of Police and Deputy Superintendent of Police respectively, meaning thereby that a Sub-Inspector of Police in order to be promoted as Inspector of Police will have to put in six years of service and likewise an Inspector of Police will have to put in six years of service to be promoted as Deputy Superintendent of Police. The proviso to Rule 6 reads as under :

" Provided that in the case of the accelerated promotions, the minimum service as specified above shall not apply. "

Therefore, for accelerated promotion, the requirement of minimum service has been dispensed with. Rule 7 deals with probation and for direct recruitment to the post of Deputy Superintendent of Police (Category-2) the period of probation shall be two years and six months on duty within a continuous period of three years. Rule 9 deals with tests which are not relevant for our purpose in the present controversy. Rule 10 deals with the unit of appointment. It has relevant bearing on the issue involved in the present case. Therefore, it is reproduced as under :

" 10. Unit of appointment

For purposes of recruitment, appointment, discharge for

want of vacancy, re-appointment, seniority, promotion, transfer and posting and appointment as full member to the posts specified in column (2) of the table below, the unit of appointment shall be as specified in column (3) thereof-

TABLE

Category	Post	Unit of appointment
(1)	(2)	(3)
3. (a) Inspector of Police	Zone-I	Comprising Srikakulam Vizianaragam and Visakhapatnam districts
(b) Inspector of Police (Woman)	Zone-II	Comprising East Godavari, West Godavari and Krishna Districts
Zone-III	Comprising Guntur, Prakasam and Nellore Districts.	
	Zone-IV	Comprising Chittoor, Cuddapah, Anantapur and Kurnool Districts.
	Zone-V	Comprising Adilabad, Karimnagar, Warangal And Khammam Districts.
	Zone-VI	Comprising Nizamabad, Mahaboobnagar, Medak, Nalgonda and Ranga Reddy Districts.

Area under the jurisdiction
Of the Commissioner of
Police, Hyderabad."

Rule 11 deals with transfer and postings which reads as under :

" 11. Transfer and postings:

(a) A member of the service shall be liable to serve in any part of the State of Andhra Pradesh or when so ordered by the State Government in any part of India, outside in the said State:

Provided that nothing contained in this sub-rule shall effect the operation of the provisions of Chapter-XII in Part-VII of the Fundamental Rules in regard to transfer of officers to Foreign Service:

Provided further that no such member shall be posted or transferred to any post unless he possesses such special qualifications and has passed such special tests as may be prescribed for such post in these rules.

(b) A direct recruit Deputy Superintendent of Police, Category-2 shall be transferred and posted at Assistant Commandant, Andhra Pradesh Special Police Battalions and shall remain in the Battalions compulsorily for a period of three years. The Service rendered in the Andhra Pradesh Special Police Battalion shall be counted for the purpose of reckoning qualifying service for select list.

) The transfers and postings in the case of Additional Superintendent of Police (Non-Cadre) and Deputy Superintendent of Police, shall be made by the Government.

(d) In the case of Inspectors of Police, the transfers

and postings shall be made within the unit specified in rule-10, by the Commissioner of Police and the Deputy Inspector General of Police concerned except in the case of Units IV and V. The transfer and postings in the case of Inspectors of Police in Units-IV and V shall be made by the Deputy Inspector General of Police, Kurnool and Warangal, respectively."

Reading of Rules 10 and 11 says that there are six zones in the State comprising of various districts and so far as posting of Deputy Superintendent of Police and Additional Superintendent of Police is concerned, it has to be made by the State Government though there is no bar to posting any member of the service in any part of the State of Andhra Pradesh but for the convenient administrative control the State has been divided into various zones and each zone is headed by Deputy Inspector General of Police or Inspector General of Police, as the case may be. So far as the transfer and posting of Inspector of Police is concerned, it has to be made within the unit as specified in Rule 10, by the Commissioner of Police and Deputy Inspector General of Police concerned except in the case of Units IV and V. The transfer and postings in the case of Inspectors of Police in Units IV and V shall be made by the Deputy Inspector General of Police, Kurnool and Warangal, respectively. Rule 12 lays down uniforms grant etc. We are not concerned with other part of the Rules.

Now, in this backdrop of the administrative set up we will have to examine the amendment and the guidelines which have been issued by the Government of Andhra Pradesh by G.O.Ms. No.267 dated 26.11.2001. So far as the posting of the Deputy Superintendent of Police and Additional Superintendent of Police is concerned that is within the power of the State Government and so far as the Inspector of Police is concerned, it is within the power of Inspector General of Police i.e. the Police Commissioner or by the Deputy Inspector General of Police. We are primarily concerned in the present case with regard to the accelerated promotion of the Inspectors of Police to the post of Deputy Superintendent of Police and Additional Superintendent of Police. The State of Andhra Pradesh is divided into various zones as pointed out above and some of them are very sensitive areas. It has been pointed out that some zones i.e. Zones V & VI are by and large affected by the extremist operations. Therefore, it was submitted that some who could get posting in naxal area, he may stand to benefit and on account of that fortuitous circumstance he may get accelerated promotion and march over the persons similarly situated.

Now, coming to the question whether this amendment of the rules and insertion of Note 2 in Rule 3 as well as proviso to Rule 6, could be declared ultra vires of Articles 14 & 16 of the Constitution of India. It may be said at the outset that these rules were amended looking to the dire need of the State in order to give some incentive to the Police Officers for voluntarily coming forward to meet the menace of extremist operations. The purpose is laudable one and nobody can take exception to this. In order to provide this incentive service Rules had to be amended. Those persons who are prepared to volunteer and take more risk in life why such kind of persons should not stand to gain as against those persons who do not want to take risk in their life. As a matter of fact those who take risk in their life and prefer to face hazardous duties, such kind of persons forms a class and such class of persons stand differentiated from other class of persons who are not prepared to take risk in their life and want to continue with the normal police duties and seek their promotion in due course of time. It is true that the Inspectors of Police form one category but in the same category it can have two classes, one who is desirous of taking risk in their life and do service to the society by taking hazardous assignment as against other persons who want to continue with their usual police duties. Such Classification cannot be looked down as arbitrary or violative of Articles 14 & 16 of the

Constitution of India. The classification is apparent which can be differentiated from the class of persons who are prepared to sacrifice their life as against the persons who want to do the routine policing duties. This cannot be said to be fortuitous classification. The classification is based on rational principle. Thus the object which is sought to be achieved in the present case is to meet the challenge of the naxals and to invite youth and courageous persons to accept this challenge. It is true that some may get an opportunity to serve and some may not but that is exigencies of service. Wooden equality is not possible. Similarly placed person cannot be treated dissimilarly. But that is not the case here.

We have already highlighted above the scheme/ guidelines issued under the Rules by the State Government. The guidelines are properly insulated against arbitrariness or discrimination. Principally four guidelines have been laid down, namely that a person who becomes eligible for accelerated promotion should be an approved probationer and he has performed outstanding work in the field of anti-extremist operations (here the quality of work turned out shall be taken as criteria); has uniformly satisfactory record and lastly, clean defaulter sheet for the last six years without any major punishments throughout the service. These factors are sufficient guidelines where any individual action can be tested. At one point of time, Mr. Verma, learned senior counsel appearing for the respondents submitted that the proviso to Rule 6 which dispenses with the minimum period of service would operate as arbitrary and it will give rise to picking and choosing. But one of the guidelines clearly lays down that a person should have at least last six years very good Annual confidential roll meaning thereby that he should have at least put in six years of service though under proviso to Rule 6, the minimum period of service for promotion has been dispensed with but nonetheless in the guidelines it has been clearly laid down that a person should have very good ACR for the last six years. That means though the rule provides that there is no necessity of minimum period of service yet in the guidelines criteria has been laid down that a person should have at least six years clean service record. Not only this, in order to promote a person on accelerated promotion the recommendations by the Unit Officers are filtered at various stages. After receipt of such recommendations it will go to the Committee of high ranking police officers and in that his performance in extremist area will be examined by the high power committee headed by the Director General and Inspector General of Police and proper investigation will be done by the Intelligence Branch and they will examine the detailed performance of the incumbent as to how he has performed. Proper investigation is to be done by the Intelligence Branch who are monitoring anti-extremist operation in the State. After proper scrutiny the matter will be placed before a still higher committee headed by the Chief Secretary with Home Secretary and Director General of Police. Therefore, in order to consider the case of accelerated promotion the matter has to be examined at various channels, first at the Unit head, thereafter a Committee constituted by the Police Department and then a Committee headed by the Chief Secretary to the State Government at the State level and after his prolonged examination a person will be eligible for accelerated promotion. Therefore, these guidelines have been made in order to check that there should not be any arbitrary promotion and there should not be any picking and choosing among the persons belonging to the same category. At one point of time, impression was sought to be created that there are no guidelines for giving such accelerated promotion but after going through the detailed G.O.Ms. No.280 dated 17.9.2002 as discussed above, we are satisfied that there are sufficient guidelines which check the arbitrary picking and choosing of the persons for accelerated promotion. After going through these guidelines we are of opinion that there is least possibility of picking and choosing of the persons under accelerated promotion scheme.

However, learned counsel for the respondents submitted

that notwithstanding the fact that the amendment may not be ultra vires of Articles 14 & 16 of the Constitution, it is capable of being operated in an arbitrary fashion because the whole of the State of Andhra Pradesh is not naxal affected area and Zones V & VI are the only naxal affected areas and he tried to illustrate his point by an example that suppose an incumbent is working in Warangal district which comes under Zone V, which is said to be naxal affected area and in that zone some of the Police-stations may be ear-marked as extremist prone areas, incumbent may not get an opportunity of being posted in that Police-Station for showing his chivalry though he may be willing to work there. Therefore, there is no criteria laid down that how one can secure a posting in that particular area in order to show his chivalry and secure accelerated promotion. There is some truth in his submission but that is more imaginative than real. It depends upon the In-charge of the Unit, be it Commissioner of Police or the Deputy Inspector General of Police who has to see the worth of the incumbent who can deliver the goods. It will not be proper to interfere with his discretion as to who is suitable and who is not suitable to be posted in such naxal affected areas. Much depends upon his wisdom and suitability of the incumbent. It is true that sometime it may operate as fortuitous circumstance that some gets an opportunity and some may not get the same. But by that fortuitous circumstance the rule cannot be held to be bad. It is possible that in implementation of the rule, some arbitrariness or some favouritism may be shown, that can be challenged as an individual action. Therefore, one has to make distinction between the validity of the Rules and the misuse of the Rule. In case of misuse of the rule, that individual action can be challenged and it can be challenged on its merits but by that the whole scheme which has been introduced for the laudable purpose, cannot be said to be bad.

In this connection, learned counsel for the appellant- State has invited our attention to a decision of this Court in Ram Sharan v. The Dy. Inspector General of Police, Ajmer & Ors. [AIR 1964 SC 1559]. This was a case which arose from the Rajasthan Police. In that three tier system of the Police administration was there in the State headed by the Inspector General of Police, Deputy Inspector General of Police and Superintendent of Police. It was pointed out that under Section 2 of the Police Act, one Police force is in the State and the Police administration under the Inspector General of Police could have ranges headed by the Deputy Inspector General of Police and the districts are headed by the Superintendents of Police. It was pointed out that it was necessary for efficient functioning of the Police force. It was pointed out that looking to the local conditions and for efficient functioning of the police force recruitment at the Constable level is done district-wise basis and promotion as Head Constable is also done on district-wise basis by the Superintendent of Police who is expected to know their work. Same idea was apparent at the second tier by which Head Constables in a Range are treated as one unit for promotion to the rank of Sub-Inspector which is vested with the Inspector General of Police. By providing promotion within the range, the area is a little widened as compared to a district. It is only when one reaches the third tier and come to promotion of Sub-Inspectors of Police as Inspectors of the Police that local knowledge is not insisted upon so much as the work of Inspectors of Police and those above them is more of a supervisory nature. It was pointed out that because the Constable, Head Constable and Sub-Inspector deal with the public directly and in such a situation local knowledge certainly plays an important part in the matter of efficiency of the Police force and in that background their Lordships considered that if the police administration works in three tier system then such administration in three tier system cannot be struck down being discriminatory. However, the Court was cognizant of the fact that abuse of the power of transfer by Inspector General of Police for one Sub-Inspector from one range to another, a case of glaring denial of

equality before the law or glaring denial of equal opportunity for employment in the service of the State may arise. But the Court cannot strike down a system on the supposition that an Inspector General of Police may abuse his power and create glaring instances of denial of equality before the law or of equal opportunity of employment in the service of the State. In case of abuse in individual case same can be struck down and not the system. Therefore, simply because a particular provision is capable of being abused is no ground to strike down the whole system.

In the case of S.I.Paras Kumar & Ors. V. S.I. Ram Charan & Ors. [(2004) 6 SCC 88] the question arose with regard to out of turn promotion on the performance of some of the Constables, Head Constables and Assistant Sub-Inspectors of Police in the anti-terrorist areas of Punjab though there was no such provision under the Rules. Their Lordships observed that though the rule does not permit such promotions out of turn for such activities, or for sports activities but in order to recognize the services rendered by such persons Government shall frame necessary rules for such kind of services rendered by the personnel in the anti-terrorist operation. Therefore, this Court recognized that though the rule does not contemplate such promotion, the courage shown by the persons in anti-terrorist operations should be recognized by framing necessary rules. There is no gainsaying that those who have performed in extreme situation they deserve better treatment but this has to be done within the four corners of the Rules. In order to achieve that objective in view, this accelerated promotion was conceived and necessary amendments were made in the Rules and scheme/ guidelines were issued by the State of Andhra Pradesh. Therefore, reading the amended rules with scheme/ guidelines together it leaves no manner of doubt that such amendment cannot be said to be discriminatory or arbitrary.

Learned counsel for the appellant- State has invited our attention to the pleadings to show that none of the Inspectors of Police who filed the petitions before the Andhra Pradesh Administrative Tribunal has nowhere alleged that at any point of time one of them came forward to go to the naxal affected area and their request had been turned down. We examined the matter and we found that there is no such allegation made in the original application nor learned counsel for the respondents could give us any satisfactory reply whether any of these respondents came forward for going to the naxal affected area and his request has met with refusal. But the learned counsel for the respondents only submitted that it is not for the incumbent to make a request but it should come from the State. Be that as it may, learned counsel for the State has a point that when the respondents have not come forward for going to the naxal affected areas, it does not lie in their mouth to challenge the scheme. However, we have examined the validity of the amendment in the light of the submissions made by parties and our answer is in negative.

Before parting with the matter, in order to further safeguard that in case of postings, though Rule 10 covers, but especially when the postings are done in specially naxal affected areas out of the persons posted in that zone, the concerned Unit in charge, be it Inspector General of Police or the Deputy Inspector General of Police or Police Commissioner, may informally seek voluntary option from the Officers working in that zone whether they are willing to be posted in the naxal affected police-stations so that even the remote possibility of picking and choosing can be avoided. However, it is still discretion of the concerned Unit in charge, he may after going through the records may turn down the option of the incumbent if he finds that he may not come up to the expectation in that area. But the grievance of the person that he was willing to go for an-extremist operation still he was not chosen by the Unit in charge, could be

redressed. This could be done by issuing a circular seeking the option for such preferential posting in the unit but the last choice remains with the Unit head and he may, for reasons to be recorded, come to the conclusion that the incumbent may not be suitable for the job and may turn down the request but at least the incumbent will have the choice to serve in anti-extremist operation.

An allegation was also made by some of the persons who have been given ad hoc promotion under the scheme of accelerated promotion for not being made parties. However, they were permitted as intervenors. Learned counsel for the intervenors was also heard in the matter. He invited our attention to a decision of this Court in Union of India & Ors. v. E.S.Soundara Rajan etc. [AIR 1980 SC 959] on the question of discrimination and in that case the argument of discrimination among the Railway Officials was not upheld. It was also pointed out by learned counsel for the intervenors that the present appeals as well as the original applications filed before the Andhra Pradesh Administrative Tribunal and High Court should be dismissed on the question of non-joinder of necessary parties. Mr. Verma, learned senior counsel for the respondents submitted that since the validity of the rule has been challenged, therefore the petition before the A.P. Administrative Tribunal or the writ petition before the High Court cannot be dismissed on the ground of non-joinder of necessary parties. It was also submitted by him that when the question of validity of the rules are concerned, it is not necessary to implead all the persons likely to be affected while challenging the validity of the rules and in support thereof Mr.Verma invited our attention to the following decisions of this Court.

- i) 1971(1) SCC 749
Makhanlal Waza & Ors. v.
State of Jammu & Kashmir & Ors
- ii) (1974) 4 SCC 335
The General Manager, South Central Railway,
Secunderabad & Anr. v. A.V.R.Siddhantti & Ors.
- iii) (1983) 3 SCC 601
A. Janardhana v.Union of India & Ors.

It is true that when the validity of the rules is challenged it is not necessary to implead all persons who are likely to be affected as party. It is not possible to identify who are likely to be affected and secondly, the question of validity of the rule is a matter which is decided on merit and ultimately, if the rule is held to be valid or invalid, the consequence automatically flows. Therefore, the original application filed before the Andhra Pradesh Administrative Tribunal or for that matter before the High Court does not suffer from the vice of non-joinder of necessary party.

Since we have already held the rule to be valid, therefore, there is no question of setting aside the promotions which have already been made. Hence, as a result of our above discussion, we find that the judgment and order of the High Court cannot be sustained and consequently the orders passed by the Andhra Pradesh Administrative Tribunal and the High Court of Andhra Pradesh are set aside. The appeals are allowed with no order as to costs.