A AJAY KUMAR BHUYAN AND ORS.

v.

STATE OF ORISSA AND ORS.

DECEMBER 3, 2002

B [DORAISWAMY RAJU AND SHIVARAJ V. PATIL, JJ.]

Service Law:

C *Orissa Police Manual, 1940; Rule 862(b), Volume I and Appendix 41 of Vol.II; Orissa Ministerial Service (Method of Recruitment of Jr. Assistant in the Office of Head of Department) Rules, 1975:*

*Appointments of Assistants/Jr. Assistants in the Office of DGP/IGP—Temporary/***Adhoc** *appointments—Power to recruit vested with DGP/IGP—*
D *State Government granted exemption and DGP/IGP continue to appoint Temporary/***Adhoc** *Assistants till finalisation of Statutory Rules—Services of some of the recruits discharged and fresh appointments made—Challenge of—Tribunal directed their re-appointment till regular appointments made under the Statutory Rules—Recruits of 1981—83 filed petition for regularisation of their services under the provisions of Statutory Rules—No*
E *directions issued by Supreme Court—Some of recruits of 1985 were discharged and appeared in fresh recruitment test—Four of the unsuccessful candidates filed petitions for regularisation of their service—Tribunal allowed it contrary to its earlier decision as affirmed by this Court—On appeal: Held, After Statutory Rules framed, authorities under Police Manual ceased to exist; Consequently, continuance of appointments made by DGP/IGP thereunder*
F *are illegal and not justified—DGP failed to bring to the notice of the Supreme Court about the framing of Statutory Rules—Under the circumstances, earlier decision of Supreme Court to continue the appointments made in pursuance of earlier rules was justified.*

G **The Orissa Police Manual, 1940 empowered IGP/DGP to appoint ministerial staff. Subsequently, Orissa Ministerial Service (Method of Recruitment of Junior Assistant in the Office of Heads of Department) Rules, 1975 were framed which empowered the Board of Revenue to appoint staff for the DGP/IGP Office as well. However, State Government granted exemption from rules to DGP/IGP for appointment of its ministerial staff subject to**

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submission of draft rules regulating the recruitment, training and promotion of the staff so appointed. Statutory rules in this regard came into existence w.e.f. 26.4.1988. In the meanwhile, DGP/IGP made recruitment of 74 candidates under the Police Manual on temporary/*Adhoc* basis and discharged 34 of these candidates from service followed by appointment of 54 candidates. Some of them challenged the order of their discharge from service. Tribunal directed their re-appointment till regular candidates were appointed under statutory rules. On appeal by the DGP/IGP and others, this Court affirmed the order of Tribunal and directed the State Government to frame Statutory rules within a stipulated period and also issued certain incidental directions with regard to relaxation in age and qualification of the appellants while making regular appointments. DGP/IGP filed a Miscellaneous Petition in the disposed of appeals for direction to State Government for relaxation of provisions in the rules, regularising the service of temporary/*Adhoc* staff appointed by them, but no directions were issued in these matters. State Government also rejected the application of DGP/IGP on the same issue. Thereafter some recruits of 1985 were discharged and new appointments were made giving opportunity to the discharged candidates to appear in the Test. Some of the unsuccessful candidates challenged the validity of the recruitment before the Tribunal and separate applications were filed challenging the recruitments/regularisation of 1981-83 appointees. Tribunal allowed the earlier appointments by taking a view contrary to its earlier order and the view taken by this Court but disposed of the later application vide its order dated 2.1.1997 and subsequently the Review Petition by order dated 1.3.1997. Hence these appeals.

A B C D E

Dismissing the appeals, the Court

HELD: 1.1. Neither the fact relating to the coming into force of the statutory rules made in 1988 seems to have been placed before the Court nor the Court has specifically adverted to the declaration of law made by this Court on 19.1.1988 (except referring to the mere direction to frame rules) as to the character and efficacy of the provisions contained in the Police Manual or the nature of appointments made by the DGP under the provisions in the Police Manual. Another serious flaw and omission going to the root of the matter undermining the very basis of the order dated 12.4.1993 by this Court in appeals which seem to have gone unnoticed and not brought to the notice of the Court was that with the framing of statutory rules in 1975, the Police Manual ceased once and for all to have any relevance or force of law or of any consequence for appointing staff by the DGP-IGP and that the exemption

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A granted therefrom was to enable making of recruitment under separate rules to be made and not to making appointments under outlawed provisions in the Police Manual, which had no sanctity or legal authority. Consequently, in adjudging the issues raised in these appeals, it is justified and obliged to proceed on the basis of the law declared by this Court, in specific and unmistakable terms on 19.1.1988 in C.A.Nos. 267 and 268 of 1988 as the B one not only direct on the issue relevant and binding but determine the rights of parties accordingly on such indisputable premise. [476-A-E]

1.2. The Tribunal revelled in inventing reasons of straw not only stale but wholly irrelevant and impermissible too, in order to short circuit and C undermine the efficacy of the earlier judgment of the Tribunal which had been affirmed on merits besides giving specific directions as to what is to be done also thereafter by this Court, for granting somehow relief in favour of the appellants in terms directly running counter to the earlier decision of the Tribunal and that of this Court. The reasons, which appear to have weighed with the Bench of the Tribunal are not only faulty but perverse and demonstrate D lack of judicial discipline and propriety in attempting to find fault with not only an earlier binding decision but also the decision of this Court dated 19.1.1988. It is equally fallacious for the Tribunal to have quoted out of context some passages from the earlier decisions of this Court ignoring the very basis on which such observations came to be made therein. Unlike the factual basis E which existed in those cases, there was nothing on record in these cases to assume that all the so-called rules enumerated in the Orissa Police Manual, 1940 were issued under any statute or any particular statutory provision of any enactment. [477-A-E]

1.3. The entirety of the rules contained in the Manual are called rules F not because that everyone of them had statutory backing or source of its origin in a statute but where rules designed for uniform application in the Police Department at the level of DGP/IGP and below even at the district level. No serious effort seems to have been made to scan through the Police Manual which contains a preface note that the Orissa Police Mannual, 1940 contains the rules made by the State Government and rules and orders framed by the G IG of Police (Presently DGP/IG) with the approval of the State Government under the provisions of the Police Act, 1861 and are issued under the Authority of the Government to be binding on all the police officers and that it is an authoritative guide to the officers of the Department. In some only of the rules printed in the book in the manual an asterisks mark is assigned H with a foot note that they were rules made under Section 12 or 45 of the Police

Act, 1861. Again in respect of some of the other provision indication of the statutory provisions of the Criminal Procedure Code or other statutory provisions under which they have been made are specifically mentioned. In Chapter XX relating to appointments and engagement, a specific note is found printed that rules marked with asterisks have been sanctioned under Section 7 of the Police Act, 1861. The conspicuous omission or absence of such specific indication either in the top of chapter XXVII or in respect of anyone of the so-called rules enumerated thereunder, as to their nature and character or showing them to have any statutory origin, it has to be presumed reasonably and necessarily to be not statutory rules. [477-G, H; 478-A-C] A B

State of Rajasthan v. *Ram Saran,* AIR (1964) SC 1361; *State of Uttar Pradesh and Ors.* v. *Babu Ram Upadhya,* AIR (1961) SC 751; *Jagannath Prasad Sharma* v. *The State of Uttar Pradesh and Ors.,* AIR (1961) SC 751; *Union of India and Ors.* v. *Majji Jangammayya and Ors.,* AIR (1977) SC 757 and *B.N. Nagarajan* v. *State of Mysore,* AIR (1966) SC 1942, relied on. C

1.4. The position of law with reference to the nature and character of the powers of the DGP/IGP as well as the appointments made by him in his office and the status of such officers have been categorically declared to be that of *ad hoc* for all purposes, in those cases it was not only futile but also impermissible for a Bench of the Administrative Tribunal which subsequently decided the O.As. to treat them as regular appointments and to assume further that there were no vacancies to be filled up *vis-a-vis* the post held by such appointees, afresh under the new statutory rules. As long as the earlier decision of the Tribunal and that of this Court held the field which has been rightly considered and understood by the Government also at the relevant point of time to deny a request to regularize those appointments of the year 1981 and 1983 on a proper and correct understanding of the ratio of those decisions, there was no scope or justification in law for the other Bench of the Tribunal or the Government subsequently to make a somersault in derogation of the firmly settled legal position. [480-B-E] D E F

Dwarikesh Sugar Industries Ltd. v. *Prem Heavy Engineering Works (P) Ltd. and Anr.,* [1997] 6 SCC 450, relied on. G

1.5. Another fallacy which vitiates the judgment was the omission to give due effect to the rules which came into force in the year 1975 which had the inevitable consequence of replacing once and for all the earlier rules contained even in the Police Manual and that the exemption given in 1980 was only for the purposes of keeping the posts in the office of the DGP/IGP H

out of the 1975 rules and bring them under the rules to be made separately for such personnel and the orders of the Government could not be considered to have the effect of restoring even the provisions contained in the Police Manual which had been rendered obsolete by the statutory rules of 1975.

[480-F, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3978-3979 of 1998.

From the Judgment and Orders dated 3.1.997 of the Orissa Administrative Tribunal in O.A. No. 206/89.

WITH

C.A. No. 3980 of 1998.

Jaideep Gupta, Jitendra Mohapatra, Ramchandra Rath and T. Raja, for the Appellants.

Raj Kumar Mehta, P.H. Parekh, D.P. Mohanty and Lalit Chauhan, for the Respondents.

The Judgment of the Court was delivered by

D. RAJU, J. Delay condoned.

C.A.Nos. 3978-3979 of 1998 have been filed challenging the orders of the Orissa Administrative Tribunal at Bhubaneswar in Misc. Petition (RP) No.17 of 1997 dated 1.3.1997 and O.A. No. 206 of 1989 dated 3.1.1997 by the parties, who were Private Respondents before the Tribunal and the State of Orissa as well as the Director General and I.G. of Police together filed C.A. No. 3980 of 1998 against the order dated 3.1.1997 in O.A. No. 206 of 1989. Heard Mr. Jaideep Gupta, learned Senior Advocate for the appellants, Shri R.K. Mehta, learned counsel for the State of Orissa and DGP appellants in C.A. No. 3980 of 1998 and of Mr. P.H. Parekh, learned counsel for some of the private respondents. They reiterated their respective stand taken before the Tribunal. Since the matter has a chequered history, a bird's eye-view of the salient features of the case becomes necessary to be noticed for a proper understanding as well as appreciation of the claims of contesting parties.

The Orissa Police Manual, 1940 contained a provision (Vide Rule 862(b): Vol. I and Appendix 41 of Vol. II) that the Assistant in the office of the IG

of Police since re-designated as the DGP and IGP shall be the appointing authority in respect of the ministerial staff of DGP and IGP office. Thereafter, Rules came to be issued under Article 309 of the Constitution of India, known as the Orissa Ministerial Service (Method of Recruitment of Junior Assistant in the office of Heads of Departments) Rules 1975, empowering the Board of Revenue to select LD Assistants (now called 'Junior Assistants') through competitive examinations to be held once every year, with further provisions for the constitution of Board, the necessary syllabus therefor, further enabling the Chairman of the Board to allot candidates, as a result of which the Ministerial Staff for the DGP and IGP also came to be recruited thereunder. When the IG Police sought exemption from those rules in respect of the Ministerial Staff for his office, the Government appears to have passed an Order dated 16.12.1980 granting exemption but at the same time calling upon, in the very same order, for submission of draft rules regulating the recruitment, training and promotion of Assistants in the Police offices, to the Government at an early date for its approval. While matters stood thus between the date of exemption 16.12.1980 and the actual making of the statutory rules, i.e., 28.4.1988, the DGP was now and then making recruitment of Assistants purporting to exercise the powers under the old Police Manual, by calling for names from the Employment Exchanges and holding a summary written examination and interview. A total of 74 candidates were said to have been so appointed between 1981and 1983, specifically mentioning in their appointment orders that they were being appointed on temporary basis and that their appointments are liable to be terminated at any time without prior notice. Of those 74, 58 persons were said to have been so appointed out of the selections made in 1981 and 16 were said to be of SC/ST candidates selected in 1983. In the year 1985, again 34 candidates appear to have been selected and appointed and this also was on ad hoc/temporary basis. On 3.12.1986, these 34 candidates, including Respondents 3 to 5 and 7 in these appeals, were said to have been discharged from service, followed by appointment of 54 candidates on 20.12.1986 in lieu thereof, again as a temporary/ ad hoc measure.

Of the 34 candidates discharged on 3.12.1986, about 25 persons appear to have filed two O.A. Nos. 246 of 1986 and 96 of 1987 challenging the same before the Tribunal. The Tribunal by its order dated 25.8.1987 set aside the order of discharge dated 3.12.1986 and directed their re-appointment within the time stipulated as ad hoc appointees till regular appointments are made under statutory rules or executive instructions, if any, issued therefor by the Government. One reason, which weighed with the Tribunal, was that the

A termination of those *ad hoc* appointees and their substitution by another set of ad hoc appointees was not warranted and was illegal. The Tribunal in unmistakable terms, while considering the nature of such appointments by the DGP and noticing the legal basis or provisions or powers, if any, for it held as follows :-

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"Thus, the sole point for determination is whether in the circumstances aforesaid the selection and new appointments made can be held to be a regular recruitment. It is the admitted position that there is no statutory rule framed under Art. 309 of the Constitution. The Draft Rules are still in an inchoate state having not reached finality so far. The contention of the learned Standing Counsel that the D.G. Police as the Head of the Department was competent to adopt the modalities for recruitment envisaged in the Draft Rules and issue executive instruction in that behalf is totally untenable. The position of law, which is indisputable, is that in the absence of Rules framed under Art. 309 of the Constitution, executive instructions issued under Art. 62 have the same force. But the power to issue such instructions is vested in the same authority, which is competent to frame Rules under Art. 309, namely, the Governor or by a subordinate authority authorized by the Governor in that behalf. It being the admitted position that there was no such authorization in favour of the D.G. Police in terms of Art. 162, the action taken by him or under his orders for making the recruitment does not have the sanction of the law. Therefore, the exercise undertaken, for the recruitment test and the selection and appointments made in pursuance thereof do not qualify as a regular recruitment. It is no better than ad hoc appointment in the eye of law. The result is that the termination of the ad hoc appointment of these petitioners by substituting another batch of ad hoc appointees must be held to be illegal.

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Accordingly, we quash the impugned order dated 3.12.1986 terminating the services of the petitioners in both cases and direct that they be re-appointed forthwith, not later than one month from the receipt of copy of this order. Upon such re-appointment they shall continue on ad hoc basis until the posts are filled up by a regular recruitment held in pursuance of Rules or executive instructions. The petitioners shall be eligible to sit for such regular recruitment as and when held in due course. It is just and proper that the appropriate authorities should consider condoning the over-age in case of such

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of the petitioners who have crossed the upper age limit while employed on ad hoc basis." A

On appeals before this Court by the DGP and others in C.A. Nos. 267-268 of 1988, this Court on 19.1.1988, so far as the question of law and as to the nature and character of appointments that were made by the DGP, held as follows :- B

"Special leave granted. We have heard learned counsel for the parties as also the interveners.

The State Administrative Tribunal has vacated the recruitment made under the Authority of the Director General of Police *on the finding that he had no authority to make the recruitment and the rules which were intended to be brought into force under the proviso to Article 309 of the Constitution were still in a draft stage. In view of the intention evinced by the Govt. that statutory rules would be operative we are in agreement with the Tribunal that there was no scope for administrative instructions under Article 162 of the Constitution to cover the recruitment. Ad hoc recruits (respondents) and those who were recruited under the authority of the Director General of Police have thus been rightly equated by the Tribunal.* We see no justification to take a different view. C D E

The State of Orissa is not a party before us but in view of the admitted position that statutory rules were intended to be brought into force, we direct the State of Orissa to frame the rules within two months from today. At any rate, the rules shall become operative from 1st April, 1988. *Within three months from that date, the recruitment should be made under the Rules and the vacancies now existing and which may come to exist should be filled up in accordance with the provisions of the rules. We direct the State of Orissa to comply with this order."* (Emphasis supplied) F

Certain incidental directions were also issued to give appointments to four persons and it was further directed that the "four appointments which we have directed shall continue till recruitment is made under rules as indicated above". Necessary directions to accord relaxation in respect of age, when regular recruitment examination takes place, were also issued by this Court. G H

A The DGP, in a new twist of his own, seems to have attempted a deviation to be made in respect of the appointments he made between 1981 and 1983, in the same manner as the appointments made in 1985, which were the subject-matter of consideration in the above proceedings, and sought by his Letter dated 14.3.1988 orders of Government to issue appropriate rules to regularize appointments made till the commencement of rules on 1.4.1988. This B was followed up by a further Letter dated 5.5.1988. Apparently, after such correspondence, the Government in their order dated 13.5.1988, with pointed reference to the letter dated 5.5.1988, informed the DGP & IGP, as follows :-

"The Tribunal held that the position of law which is indisputable C is that in the absence of rules framed under Article 309 of the Constitution, executive instructions issued under Article 162 have the same force. But the power to issue such instructions is vested in the same authority, which is competent to frame rules under Article 309, namely, the Governor or, by a sub-ordinate authority authorized by the Governor in that behalf. It being the admitted position that there was D no such authorization in favour of the D.G. Police, in terms of Article 162, the action taken by him or under his order for making the recruitment does not have the sanction of the law. Therefore, the exercise undertaken for recruitment test and the selection and appointments made in pursuance thereof does not qualify as a regular E recruitment. If this decision of the Orissa Administrative Tribunal and the Supreme Court is made applicable to point No.1 it must be held that saving provision of the Recruitment Rules, 1988 will not make the appointment regular of the 54 Assistants under the authority of the DGP, which has no sanction of law in the absence of the valid authorization.

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In view of the specific direction of the Orissa Administrative Tribunal and the Hon'ble Supreme Court directing the State Government to frame rules to come into force from 1.4.88 and the recruitment should be made under the said Rules and the vacancies now existing and which may come to exist should be filled up with the provision G of the rules, the recruitment test shall not be confined to the two *ad hoc* groups. The answer to this point is therefore in negative.

In pursuance of the direction of the Tribunal and the Hon'ble Supreme Court, fresh recruitment test has to be conducting allowing H the discharged *ad hoc* appointees and the persons appointed by the

D.G. and the candidates from the open market. Age relaxation is to be considered in case of candidates to such ad hoc employees who have been age-bared in the meantime. A

Action may be taken accordingly."

In spite of such directions, the DGP and others recruited during 1981-83 seem to have moved this Court by filing applications in Civil Misc. Petition Nos. 15751-52 of 1988 in the disposed of C.A. Nos. 267-68 of 1988 seeking liberty to the State Government to grant regularization to the interveners in the appeals and other appointees so as to appoint them under the rules with particular reference to 58 recruits of the year 1981, 16 recruits of the year 1983 so that they may be excepted from undergoing the recruitment process under the new rules. Such claim was made in the light of Rule 32 of the new rules which provided that the Government may, if it considers necessary or expedient to do so, by order, for reasons to be recorded in writing, relax any of the provisions of the rules in respect of any class or category of persons in public interest. This Court on 19.7.1988 ordered as follows :- B C D

"We do not propose to pass any direction asking Government to exercise power under Rule 32 of the Rules framed under the direction of this Court. It is open to Government to make appropriate directions."

Once again when the DGP approached the Government, an order dated 1.9.1988 came to be passed informing the DGP and IGP as hereunder :- E

"With reference to your letter No. 32241/Admn. dated 22.7.1988 on the above subject, I am directed to say that in consideration of the orders of Hon'ble Supreme Court on the above Civil Misc. Petitions, it is felt that any relaxation of Rule 32 of the Orissa Ministerial Officers of the Office of the DG & IGP and certain other office (Method of Recruitment and Conditions of Service) Rules, 1988 in the facts and circumstances of the case cannot be said to have been done in the public interest and would naturally tend to invite public as well as judicial criticism. Government, therefore, regret to allow any relaxation from the above rules." F G

Thereupon, by an order dated 16.8.1988, about 66 recruits of the year 1985 were said to have been discharged with effect from 19.8.1988 P.M. Surprisingly, nothing appears to have been done so far as 1981-83 recruits are H

A concerned, even after all that has happened as narrated above and the orders of the Government. In the meantime, on 25/26.6.1988 fresh recruitment tests though held under 1988 rules, only candidates recruited in 1985 along with some others seem to have appeared and those who got appointed in 1981-1983 chose not to appear at all. Yet, they appeared to have been continued in their position, without disturbance. In the fresh recruitment test, about 68 B candidates were said to have been selected on 22.8.1988. About 11 persons, who were appointed in 1985, and who undertook fresh recruitment test and appeared for interview but could not be selected, were said to have filed four applications before the Tribunal O.A. Nos. 1179/88, 1081/88, 1087/88 and 114 of 1989 seeking for a declaration that their recruitments were valid; that the C 1988 rules will have no application to them and they should not be retrenched. At the same time, O.A. No. 206 of 1989 was also filed by persons, who are respondents Nos. 3 to 5 and 7 in these appeals, questioning the recruitment/regularization of the 1981-83 appointees, who are appellants in C.A. Nos. 3978-79 of 1998, as also the regularization of some of the unsuccessful candidates of 1985 batch and such other reliefs sought therein. Surprisingly, D a Bench consisting of two members of the Tribunal (the Vice-Chairman and one Judicial Member) seems to have taken up for decision the other four O.As. without taking along side for disposal of O.A. No. 206 of 1989 and allowed the four O.As., noticed above, on 22.10.1990 virtually taking a view directly contrary to the one taken by the Tribunal earlier, as also by this Court. E It appears that the DGP, has for reasons best known to him approached this Court against order passed in O.A. No. 1179 of 1988 by filing an SLP (c) No. 6798/91 and the same was on 7.5.91, summarily dismissed. SLP Nos. 14621-15623/91 filed against the other O.As disposed of alongwith O.A. No. 1179/88, with applications for condonation of delay in filing SLPs were dismissed on 3.9.91 on the ground of delay, summarily.

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O.A. No. 206 of 1989 later came to be disposed of separately by the Chairman sitting singly on 3.1.1997 and subsequently the Review Petition filed therein, came to be disposed of on 1.3.1997. These two orders are the subject-matter of the above appeals filed by the private parties in C.A. Nos. 3978-79 of 1998 and the State separately filed C.A. No. 3980 of 1998 against G the order dated 3.1.1997.

While matters stood thus, some of the junior clerks who were of appointed ad hoc initially for 89 days and continued thereafter but whose services came to be terminated with effect from 15.8.85 filed also O.A. Nos. 1201, 1226,1149 H and 1154 of 1987. The Bench of the Tribunal presided over by the Chairman

by an order dated 5.2.91, allowed the same but after adverting to the earlier orders in O.A. No. 246/86 and 96/87 as also the orders of this Court dated 19.1.88 in C.A. Nos.267 and 268 of 1988, held that they belonged to the same category or class of persons in O.A. No.246/86 and O.A. No.96/87 and issued similar directions to continue them till regular recruitment under the new rules was made, with appropriate directions to relax the age qualification to enable them to participate in the selections to be made under the rules. Once again the DGP and others filed SLP Nos.5425-28 of 1992 against the order in O.A. Nos.1201, 1226,1149 and 1154 of 1987. After issuing notices and on hearing parties, while granting leave this Court by an order dated 12.4.93 passed in these appeals (C.A.Nos.1935-38 of 1993) finally disposed the same as hereunder:

> "Under these circumstances, the appeals are allowed and the direction given by the Tribunal are set aside and the appointments made are valid according to existing rules. But, however, the State Government is directed to make statutory rules as expeditiously as possible and report to the registry of this Court."

It is rather unfortunate that the DGP and others who filed the appeals or the respondents have not properly brought, the correct position before the notice of this Court at that stage and appears to have very much contributed to the resultant mess. A copy of this order was made available when the arguments were completed and from the papers available in the records of this Court only we were able to ascertain the facts in those cases and the other details noticed, supra.

The State Government, in the cases before us has filed the notification No.PIA13/83/24398/p dated 28.4.88 issued by the Government of Orissa. Home Department containing the statutory rules viz., the Orissa Ministerial officers of the office of the Director General and Inspector General of Police and certain other officers (method of recruitment and conditions of service) rules, 1988 under Article 309 of the Constitution of India, pursuant to the directions of this Hon'ble Court on 19.1.88. It is also interesting to note that even before the Tribunal and the bench which decided on 22.10.90, O.A. Nos.1179, 1081, 1087 of 1988 and 114 of 1989, those statutory rules have been filed and is referred to in the order itself as "Annexure-3 to O.A. No.114 of 1989" and their promulgation on 28.4.88 itself. But, the fact remains that before this Court, on that occasion only the provisions contained in the Manual has been produced, necessitating a comment, on 12.4.93, "As stated earlier it is most unfortunate that the State had not till date framed the statutory rules. It is high time that

A statutory rules should be made instead of relying upon pre-existing administrative instructions. Under these circumstances, no discrimination has been shown between any of the candidates and the procedure under the administrative instructions is not ultra-virus the Constitution or arbitrary. It is not a case of replacing one set of temporary candidates by another set of temporary candidates. Under these circumstances, the appeals are allowed B and directions given by the Tribunal are set aside and the appointments made are valid according to existing rules." Neither the fact relating to the coming into force of the statutory rules made in 1988 seems to have been placed before the Court nor the Court has specifically adverted to the declaration of law made by this Court on 19.1.88 (except referring to the mere direction to C frame rules) as to the character and efficacy of the provisions contained in the Police Manual or the nature of appointments made by the DGP under the provisions in the Police Manual. An other serious flaw and omission going to the root of the matter undermining the very basis of the order dated 12.4.93 in C.A. Nos.1935-38 of 1993, which seem to have gone unnoticed and not brought to the notice of the Court was that with the framing of statutory rules D in 1975, the Police Manual ceased once and for all to have any relevance or force of law or of any consequence for appointing staff by the DGP-IG and that the exemption granted therefrom was to enable making of recruitment under separate rules to be made and not to making appointments under outlawed provisions in the Police Manual, which had no sanctity or legal E authority. Consequently, in adjudging the issues raised in these appeals, we will be justified and obliged to proceed on the basis of the law declared by this Court, in specific and unmistakable terms on 19.1.88 in C.A. Nos.267 and 268 of 1988 as the one not only direct on the issue relevant and binding but determine the rights of parties, accordingly on such indisputable premise.

F So far as the other four O.As., noticed above, are concerned, which came to be disposed of on 22.10.1990, the Tribunal seems to have arrived at the conclusion that the persons appointed by the DGP/IG under the Police Manual was one under an existing law protected under Article 313 of the Constitution; that the recruitment made by the office of the DGP was after an G elaborate examination for recruitment by theoretical and *viva voce* test; that since there was delay in publication of results, *ad hoc* appointments were made by a summary manner of test which was no test at all; that no order from the Governor under Article 162 of the Constitution is required to authorize the DGP to make the recruitment since he had such power under the Police Manual Regulations and consequently, the recruitments and appointments H made by him before the rules came into force during 1981-83 did not violate

any of the existing law or rules. Accordingly, the orders of the DGP terminating the appointments of the petitioners in those cases as well as the other appointments made out of the result of the 1985 examination were quashed and they were declared deemed to be continuing from 20.12.1986 without any break. Such an opinion was rendered by the Vice-Chairman and though the Judicial Member who constituted the Bench wrote a separate order agreeing with the ultimate conclusion and decision of the Vice-Chairman, he chose to rest his decision only on one reason, namely, that the case of the petitioners in O.A. No. 246/86 and O.A. No.96/87 stood on different footing and that the earlier orders of the Tribunal and the Supreme Court did not deal with the claims of appointees during 1981-83.

The Tribunal, particularly the Vice-Chairman seems to have revelled in inventing reasons of straw not only stale but wholly irrelevant and impermissible too, in order to short circuit and undermine the efficacy of the earlier judgment of the Tribunal which had been affirmed on merits besides giving specific directions as to what is to be done also thereafter by this Court , as noticed supra, for granting somehow relief in favour of the appellants before us in terms directly running counter to the earlier decision of the Tribunal and that of this Court. The reasons, which appear to have weighed with the Bench of the Tribunal are, to say the least, not only faulty but perverse and demonstrate lack of judicial discipline and propriety in attempting to find fault with not only an earlier binding decision but also the decision of this Court dated 19.1.88. It is equally fallacious for the Tribunal to have quoted out of context some passages from the earlier decisions of this Court in AIR 1961 SC 751; AIR 1967 SC 1910 and AIR 1966 SC 1942, ignoring the very basis on which such observations came to be made therein. Unlike the factual basis which existed in those cases, there was nothing on record in these cases to assume that all the so-called rules enumerated in the Orissa Police Manual, 1940 were issued under any statute or any particular statutory provision of any enactment. By making certain general observations that the provisions contained in the said Police Manual are "rules", that they have been "prescribed" the real nature and character of them has not only been lost sight of but that it had no legal or statutory basis has been also totally ignored.

We have gone through the Police Manual. The entirety of the so-called rules contained in the Manual are called rules not because that everyone of them had statutory backing or source of its origin in a statute but where rules designed for uniform application in the Police Department at the level of DGP/

A IG and below even at the district level. No serious effort seems to have been made to scan through the Police Manual which contains a preface note that the Orissa Police Manual, 1940 contains the rules made by the State Government and rules and orders framed by the IG of Police (Presently DGP/IG) with the approval of the State Government under the provisions of the Police Act, 1861 and are issued under the Authority of the Government to be binding on all B the police officers and that it is an authoritative guide to the officers of the Department. In some only of the rules printed in the book, on going through the body of the Manual we find that an asterisks mark is assigned with a foot note that they were rules made under Section 12 or 45 of the Police Act, 1861. Again in respect of some of the other provisions indication of the statutory C provisions of the Criminal Procedure Code or other statutory provisions under which they have been made are specifically mentioned. At the top of some of the chapters, particularly chapter XX relating to appointments and engagement, a specific note is found printed (that rules marked with asterisks have been sanctioned under Section 7 of the Police Act, 1861. The conspicuous omission or absence of such specific indication either in the top of chapter D XXVII or in respect of anyone of the so-called rules enumerated thereunder, as to their nature and character or showing them to have any statutory origin, it has to be presumed reasonably and necessarily to be not statutory. In *State of Rajasthan* v. *Ram Saran,* AIR (1964) SC 1361 this Court had an occasion to consider this aspect and hold that only the rules or orders passed by the E Government under Section 2 of the Police Act, 1861, alone can be held to constitute conditions of service. The rules envisaged to be made by the Inspector General subject to the approval of the State Government even under Section 12 of the Police Act was considered to be not such which could deal with or relatable to the service condition of the officers recruited to the police force. Even the decisions relied upon by the Tribunal for its conclusions in F *State of Uttar Pradesh and Ors.* v. *Babu Ram Upadhya,* AIR (1961) SC 751; *Jagannath Prasad Sharma* v. *The State of Uttar Pradesh and Ors.,* AIR (1961) SC 1245 would go to show that what was considered to be continued by virtue of Article 313 of the Constitution of India as 'existing law' were only those statutory rules or regulations made in exercise of the powers conferred G on the Government under the Police Act, 1861 which stood preserved under Section 243 of the Government of India Act, 1935 and, therefore, held to continue to be in force even after the Constitution, so far as they are consistent with the provisions of the Constitution. 'Laws in force' for the purposes of Article 313 of the Constitution of India were considered to be only those which were framed in exercise of various statutory powers vested with the H Government including the powers under Section 7 of the Police Act and not

to confer such statutory character to each and everyone or the other of the so-called rules. As a matter of fact in *Union of India and Ors.* v. *Majji Jangammayya and Ors.*, AIR (1977) SC 757, repelling a similar plea urged in respect of an administrative instruction of the Government conveyed through the Central Board of Revenue, it was observed that an administrative instruction or order is not a statutory rule, and that "Article 313 does not change the legal character of a document and "Article 313 refers to laws in force which mean statutory laws and administrative instruction or order is not a statutory rule". The rules that were under consideration in the decision in *B.N. Nagarajan* v. *State of Mysore,* AIR (1966) SC 1942, were held though not to be made under Article 309 but traceable to the powers of the Government under Article 162 of the Constitution of India, and therefore binding in the absence of rules under Article 309. The same cannot be said of the Police Manual of the year 1940. Consequently the baseless assumption of the Tribunal which rendered the decision on the view that the rules noticed by it had the status of 'existing law' without specifically pointing out under what provisions of law they were or could have been made is totally erroneous and for that reason also dehors the binding nature of the earlier decisions of the Tribunal, as well as of this Court and despite the judicial norms, proprieties and decorum violated also, cannot be justified in law on merits as well.

It becomes once more necessary for this Court to remind and reiterate to all the Courts, Tribunal and Authorities in the country, what has been stated earlier in *Dwarikesh Sugar Industries Ltd* v. *Prem Heavy Engineering Works (P) Ltd. and Anr.*, [1997] 6 SCC 450, as follows:

> "32.When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders, which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

So much said regarding Courts would apply with equal if not more, force to Administrative Tribunals and it is beyond comprehension as to how an Administrative Tribunal could have hazarded a decision like the one rendered

A on 22.10.90, which both in law and for all purposes must be treated as 'non est', and at any rate not binding upon the Bench of the Tribunal (Chairman) who decided the applications on 3.1.97 and rejected the Review Petition therein on 1.3.97.

The Chairman of the Tribunal though sitting singly, in our view has
B rightly exposed the serious infirmities not only in the reasoning of the bench of the Tribunal headed by the Vice-Chairman but also spelled out the correct position of law emanating from the ratio and principles laid down as well as the directions contained in the earlier decisions of the Tribunal as well as the judgment of this Court noticed above. The position of law with reference to the nature and character of the powers of the DGP/IG as well as the
C appointments made by him in his office and the status of such officers have been categorically declared to be that of *ad hoc* for all purposes, in those cases and it was not only futile but also impermissible for a Bench of the Administrative Tribunal which subsequently decided the four O.As to treat them as regular appointments and to assume further that there were no
D vacancies to be filled up vis-a-vis the post held by such appointees, afresh under the new statutory rules. As long as the earlier decision of the Tribunal and that of this Court held the field which, in our view, has been rightly considered and understood by the Government also at the relevant point of time to deny a request to regularize those appointments of the year 1981 and 1983 on a proper and correct understanding of the ratio of those decisions.
E there was no scope or justification in law for the other bench of the Tribunal headed by the Vice-Chairman or the Government subsequently to make a somersault in derogation of the firmly settled legal position.

Yet another fallacy which vitiates the said judgment was the omission to give due effect to the rules which came into force in the year 1975 which
F had the inevitable consequence of replacing once and for all the earlier rules contained even in the Police Manual and that the exemption given in 1980 was only for the purposes of keeping the posts in the office of the DGP/IG out of the 1975 rules and bring them under the rules to be made separately for such personnel and the orders of the Government could not be considered
G to have the effect of restoring even the provisions contained in the Police Manual which had been rendered obsolete by coming into force of the statutory rules of 1975.

In the light of the above, we see no merit or force whatsoever in the challenge made to the impugned orders of the Tribunal passed by the Chairman
H on 3.1.97 as well as on 1.3.97. Inasmuch as the Chairman in the orders under

challenge has only declared what was the inevitable conclusions which necessarily flow from the earlier decisions and merely applied them to the case on hand as was obligatory for the Tribunal, no exception whatsoever could be taken to the orders under challenge. The Tribunal rightly, in our view, now felt not bound by the decision rendered in the four O.As on 22.10.90 even without any reference to the claims that were pending even as on that date in O.A. 206 of 1989. The appeals, therefore, fail and shall stand dismissed but with no order as to costs.

S.K.S. Appeals dismissed.