

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: April 02, 2013*  
*Judgment Pronounced on: April 22, 2013*

+ **W.P.(C) 2683/2012**

RAJ KUMAR JHA .....Petitioner  
Represented by: Ms.Jyoti Singh, Sr.Advocate  
instructed by Mr.Sanjeev Chaswal,  
Ms.Saahila Lamba, Ms.Tinu Bajwa  
and Mr.Amandeep Joshi,  
Advocates

versus

UNION OF INDIA & ORS. .... Respondents  
Represented by: Mr.Rajinder Nishal, Advocate with  
Mr.Ashish Nischal, Advocates for  
R-1 & R-2  
Mr.Naresh Kaushik, Advocate  
with Ms.Aditi Gupta and  
Ms.Amita Kalkal Chaudhary,  
Advocates for UPSC

**AND**

**W.P.(C) 7710/2012**

UNION OF INDIA & ANR. ....Petitioners  
Represented by: Mr.R.V.Sinha and Mr.R.N.Singh,  
Advocates

versus

RAJ KUMAR JHA & ORS. .... Respondents  
Represented by: Ms.Jyoti Singh, Sr.Advocate  
instructed by Mr.Sanjeev Chaswal,  
Ms.Saahila Lamba, Ms.Tinu Bajwa  
and Mr.Amandeep Joshi,  
Advocates for R-1

Mr.Naresh Kaushik, Advocate  
with Ms.Aditi Gupta and  
Ms.Amita Kalkal Chaudhary,  
Advocates for UPSC

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**PRADEEP NANDRAJOG, J.**

1. The Indian Police Service (hereinafter referred to as the 'IPS') is one of the many All India Civil Services. The pay band(s) and grade pay(s) admissible to a member of the IPS are as follows:-

| S. No. | Name of Scale                                            | Eligibility Criteria              | Scale of Pay      | Pay Band | Grade Pay in ₹ |
|--------|----------------------------------------------------------|-----------------------------------|-------------------|----------|----------------|
| 1.     | Junior Scale                                             | Initial Appointment               | ₹15,600-39,100    | PB-3     | 5400           |
| 2(i)   | Senior Scale: (i) Senior Time Scale                      | Completion of 4 years of Service  | ₹15,600-39,100    | PB-3     | 6600           |
| 2(ii)  | Senior Scale: (ii) Junior Administrative Grade           | Completion of 9 years of Service  | ₹15,600-39,100    | PB-3     | 7600           |
| 2(iii) | Senior Scale: (iii) Selection Grade                      | Completion of 13 years of Service | ₹37,400-67,000    | PB-4     | 8700           |
| 3(i)   | Super Time Scale: (i) Deputy Inspector General of Police | Completion of 14 years of Service | ₹37,400-67,000    | PB-4     | 8900           |
| 3(ii)  | Super Time Scale: (ii) Inspector General of Police       | Completion of 18 years of Service | ₹37,400-67,000    | PB-4     | 10000          |
| 4(i)   | Above Super Time Scale:                                  | -                                 | ₹67,000 – (annual | -        | -              |

|        |                                    |   |                                            |   |   |
|--------|------------------------------------|---|--------------------------------------------|---|---|
|        | HAG Scale                          |   | increment @ 3%) – 79,000                   |   |   |
| 4(ii)  | Above Time HAG+ Super Scale:       | - | ₹75,500 – (annual increment @ 3%) – 80,000 | - | - |
| 4(iii) | Above Time Apex Scale Super Scale: | - | ₹80,000 (fixed)                            | - | - |

2. Appointment to the service is by direct recruitment as also promotion/induction of substantive members of State Police Services including the Delhi, Andaman and Nicobar Islands, Lakshwadeep, Daman and Diu and Dadra and Nagar Haveli Police Service (hereinafter referred to as the 'DANIPS'). Eligibility for appointment by promotion is 8 years of regular service in the post of Deputy Superintendent of Police or any other equivalent post.

3. As is clear from its nomenclature, DANIPS is a law enforcement police force in-charge of Delhi, Andaman and Nicobar Islands, Lakshwadeep, Daman and Diu and Dadra and Nagar Haveli. There are following 4 grades in DANIPS:-

| S. No. | Grades of the Service     | Eligibility Criteria                      | Scale of Pay   | Pay Band | Grade Pay in ₹ |
|--------|---------------------------|-------------------------------------------|----------------|----------|----------------|
| 1(a)   | Entry Grade (Group B)     | Initial Appointment                       | ₹9300-34800    | PB-2     | 4800           |
| 1(b)   | Entry Grade (Group B)     | Completion of 4 years of Approved Service | ₹15,600-39,100 | PB-3     | 5400           |
| 2.     | Selection Grade (Group A) | Completion of 8 years of Approved Service | ₹15,600-39,100 | PB-3     | 6600           |

|    |                                          |                                            |                |      |      |
|----|------------------------------------------|--------------------------------------------|----------------|------|------|
| 3. | Junior Administrative Grade-II (Group A) | Completion of 13 years of Approved Service | ₹15,600-39,100 | PB-3 | 7600 |
| 4. | Junior Administrative Grade-I (Group A)  | Completion of 18 years of Approved Service | ₹37,400-67,000 | PB-4 | 8700 |

4. In the two captioned writ petitions, we are concerned with the promotion/induction of officers of DANIPS in IPS.

5. The promotion/induction of an officer of a State Police Service, including DANIPS, in IPS is governed by 5 Rules viz.:-

- (i) IPS (Recruitment) Rules, 1954;
- (ii) IPS (Appointment by Promotion) Regulations, 1955;
- (iii) IPS (Pay) Rules, 2007;
- (iv) IPS (Regulation of Seniority) Rules, 1988; and
- (v) IPS (Uniform) Rules, 1954.

6. The Indian Police Service (Appointment by Promotion) Regulations, 1955 deal with the promotion of an officer of a State Police Service including DANIPS to the IPS. Being relevant for our discussion, Regulations 2, 5, 7 and 9 need to be noted. They read as under:-

**“2. DEFINITIONS: -**

*(I) In these regulations, unless the context otherwise requires:*

*(j) State Police Service means:*

*i) For the purpose of filling up the vacancies in the Indian Police Service cadre of the Arunachal Pradesh-Goa-Mizoram-Union Territories under rule 9 of the Recruitment Rules, any of the following services namely:-*

*a) The Delhi and Andaman & Nicobar Islands Police Service.*

## **5. PREPARATION OF A LIST OF SUITABLE OFFICERS:-**

*(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the Recruitment Rules.*

*(2) The Committee shall consider for inclusion to the said list, the cases of members of the State Police Services in the order of seniority in that service of a number which is equal to three times the number referred in sub-regulation (1).*

*Provided also that the Committee shall not consider the case of a member of the State Police Service unless on the first day of the January of the year for which the Select List is prepared he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government.*

X   X   X

## **7. SELECT LIST: -**

*(1) The Commission shall consider the list prepared by the Committee along with:*

*a) the documents received from the State Government under regulation 6;*

*b) the observations of the Central Government and unless it considers any change necessary, approve the list.*

*(2) ....*

(3) *The list as finally approved by the Commission shall form the Select List of the members of the State Police Service.*

(4) *The Select List shall remain in force till the 31<sup>st</sup> day of December of the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or up to 60 days from the date of approval of the Select List by the Commission under sub-regulation (1) or as the case may be finally approved under sub-regulation (2) whichever is later. (Emphasis Supplied)*

X X X

**9. APPOINTMENTS TO THE SERVICE FROM THE SELECT LIST:**

(1) *Appointment of a member of the State Police Service, who has expressed his willingness to be appointed to the service shall be made by the Central Government in the order in which the names of the members of the State Police he was Service appear in the Select List for the time being in force during the period the Select List remains in force.”*

7. The Indian Police Service (Regulation of Seniority) Rules, 1988 deal with the matter of fixation of seniority of the officers of the State Police Service who have been promoted to the IPS. Being relevant, Rules 2 and 3 of the said Rules need to be noted. They read as under:-

**“(2) Definitions**

(h) *‘Promotee officer’ means an officer appointed to the service in accordance with the provisions of the Indian Police Service (Appointment by Promotion) Regulations, 1955;*

(i) *‘Recruitment Rules’ means the Indian Police Service (Recruitment) Rules, 1954;*

(j) *‘Select List’ means the Select List prepared in*

*accordance with the Indian Police Service (Appointment by Promotion) Regulations, 1955;*

***(3) Assignment of year of allotment***

*(1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in these rules.*

*(2) .....*

*(3) The year of allotment of an officer appointed to the service after the commencement of these rules shall be as follows:*

*(i) the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held:*

*(ii) the year of allotment of a promotee officer shall be determined with reference to the year for which the meeting of the Committee to make selection, to prepare the Select List on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Police Service not below the rank of a Deputy Superintendent of Police or equivalent, upto the 31<sup>st</sup> day of December of the year immediately before the year for which the meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the Service, in the following manner:-*

*(a) for the service rendered by him upto twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years:*

*(b) He shall also be given a weightage of one year for every completed two years of service beyond the period of twenty one years, referred to in sub-clause (a), subject to a maximum of three years.*

**Explanation:** *For the purpose of calculation of weightage under this clause, fractions, if any, are to be ignored. Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on basis of an earlier select list.”*

8. Before proceeding further, let us see how Rule 3(3)(ii) of the IPS (Regulation of Seniority) Rules, 1988, dealing with fixation of seniority of the officers of the State Police Services who have been promoted to the IPS, works itself out.

9. Let us take a hypothetical case. An officer ‘A’ of DANIPS who has rendered 30 years service in DANIPS gets promoted to the IPS. As per Rule 3(3)(ii)(a), ‘A’ shall get a weightage of 1 year for every completed 3 years of service for 21 years service rendered by him i.e. a weightage of 7 years ( $21 \div 3 = 7$ ). Thereafter, for the remaining 9 years service, ‘A’ shall get a weightage of 1 year for every completed 2 years service, subject to a maximum of 3 years, in terms of Rule 3(3)(ii)(b) i.e. a weightage of 3 years ( $9 \div 2 = 4.5$  years). (Be it noted here that ‘A’ would not get a weightage of 4.5 years for the reason the maximum weightage an officer can get for service beyond 21 years rendered by him in state police service is 3, in view of the provisions of Rule 3(3)(ii)(b).) In all, ‘A’ would get a weightage of  $7 + 3 = 10$  years. Thus, upon his induction in the IPS, ‘A’ would be placed below such directly recruited officers in the IPS who would have been promoted to Junior Administrative Grade in senior scale of pay in the seniority list of the IPS, inasmuch as an officer of the IPS becomes eligible for being promoted to Junior Administrative Grade on completion of 9 years of service.

10. From the above illustration, it is clear that an officer of a State Police Service who gets promoted to the IPS will at best get a weightage

of 10 years for the service rendered by him in the State Police Service and will be placed below such directly recruited officers in the IPS who would have been promoted to a post in the Senior Time Scale or Junior Administrative Grade, depending upon the service rendered by him in the State Police Service, in the seniority list of the IPS.

11. Prior to the year 2007, IPS (Pay) Rules, 2007 envisaged that the pay of an officer of a State Police Service who gets promoted to the IPS shall be initially fixed in the Senior Time Scale of ₹15,600-39,100 in PB-III with Grade Pay of ₹6,600/-. Thus, prior to the year 2007, the salary of the officers of the State Police Service who got promoted to the IPS was fixed commensurate to their seniority in the IPS inasmuch as the pay of such promoted officer was fixed in Senior Time Scale and they were placed below such officers who had been promoted to the post drawing Senior Time Scale or Junior Administrative Grade, depending upon the service rendered by them in the State Police Service.

12. On December 31, 1997, September 27, 2008 and March 03, 2010 significant changes were made in the Indian Police Service (Recruitment) Rules, 1954 and Indian Police Service (Pay) Rules, 2007.

13. It would be relevant to note the following portion of the (amended) Rules 4 and 6 of the Indian Police Service (Recruitment) Rules, 1954:-

***“4. Method of recruitment to the Service:***

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

*(a) by a competitive examination;*

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

**x      x      x**

***6. Appointment to the Service:***

*(1) All appointments to the Service after the commencement*

*of these rules shall be made by the Central Government and no such appointment shall be made except after recruitment by one of the methods specified in rule 4.*

*(2) The initial appointments of persons recruited to the Service under clause (a) of sub-rule (1) of rule 4 shall be in the junior scale of pay.*

*(3) The initial appointments of persons recruited to the Service under clause (b) and (c) of sub-rule (1) of rule 4 shall be in the senior scale of pay.”(Emphasis Supplied)*

14. It would also be relevant to note the following portions of the (amended) Rules 3, 5 and Schedule I appended to the Indian Police Service (Pay) Rules, 2007:-

***“Pay-Bands and grade Pays: -***

*(1) The pay bands and grade pays admissible to a member of the Service and the dates from which the said pay bands and grade pays shall be deemed to have come into force, shall be as follows:-*

***A. Junior Scale-***

*Pay-Band – 3: ₹15600-39100 plus Grade Pay ₹5400;*

***B Senior Scale-***

*(i) Senior Time Scale- Pay-Band – 3; ₹15600-39100 plus Grade Pay ₹6600;*

*(ii) Junior Administrative Grade-*

*Pay-Band – 3; ₹15600-39100 plus Grade Pay ₹7600;*

*(iii) Selection Grade-*

*Pay-Band – 4; ₹37400-67000; plus Grade Pay ₹8700.*

***C. Super Time Scale-***

*(i) Deputy Inspector General of Police-*

*Pay-Band – 4; ₹37400-67000; plus Grade Pay ₹8900;*

*(ii) Inspector General of Police-*

*Pay-Band – 4; ₹37400-67000; plus Grade Pay ₹10000;*

***D Above Super Time Scale-***

*(i) Additional Director General of Police-*

*HAG Scale ₹67000 (annual increment @3%)-79,000*

*(ii) HAG+: ₹75500- (annual increment @3%)-80000*

*Grade Pay: nil;*

*(iii) Apex Scale: ₹80000 or (fixed), Grade Pay: nil (by upgradation of one existing post of Director General of Police as head of police in each State cadre); (with effect from the date of issue of notification of the Indian Police Service (Pay) Amendment Rules, 2008);*

**Note 1:** *Appointment of a member of the Service to the Senior Time Scale and above shall be regulated as per the provisions in the Guidelines regarding promotion to various grades in the Indian Police Service.*

*Provided that a member of the Service shall be eligible for appointment to the Senior Time Scale on his completion of four years of service, subject to the provisions of sub-rule 2 of rule 6A of the Indian Police Service (Recruitment) Rules, 1954, to the Junior Administrative Grade on completion of nine years of service, to the Selection Grade on completion of thirteen years of service, to the Deputy Inspector General Super Time Scale on completion of fourteen years of service and to the Inspector General Super Time Scale on completion eighteen years of service.*

X X X

## **5. Fixation of initial pay –**

*(1) .....*

*(2) .....*

*(3) The initial pay of a State Police Service officer, on his appointment to the Service or on appointment to a cadre post in an officiating capacity in accordance with rule 9 of the Indian Police Service (Cadre) Rules, 1954, as the case may be, or officers recruited as Dy. Superintendent of Police in States and Assistant Commandant in Central Para Military Forces appointed to the IPS through Limited Competitive Examination shall be fixed as per the principles laid down in the Schedule I. Further pay and incremental benefits shall accrue to him under the other*

relevant provisions.

### **SCHEDULE I**

**[See sub-rule (3) of rule 5]**

#### ***Principles of pay fixation in cases falling under sub-rule (3) of rule 5***

*In this Schedule, the term-*

*(1) “actual pay” means the pay to which a member of the State Police Service is entitled by virtue of his substantive position in the cadre of that Service or by virtue of his having continuously worked in a temporary or officiating capacity in a higher post for a period of three years or more after following the prescribed procedure, provided the State Government has not revised the scales of pay applicable to the State Police Service after the 1<sup>st</sup> day of January 2006. If the pay scales have been revised subsequent to the 1<sup>st</sup> of January, 2006, the dearness allowance, dearness pay, interim or additional relief sanctioned by the State Government after the 1<sup>st</sup> day of January, 2006 and merged in the revised pay scales, shall be excluded;*

....

*(1) Notwithstanding anything contained in the first proviso to sub-rule (1) of rule 3, and the Notes thereunder, the initial pay of a promoted officer or an officer appointed by selection, as the case may be, shall be fixed in the pay band 3 or pay band 4 by adding one increment equal to 3% of the sum of the pay in the pay band and the grade pay applicable which will be rounded off to the next multiple of 10 and in addition, the grade pay of Senior Time Scale or Junior Administrative Grade or Selection Grade, corresponding to pay scale or grade pay in the State Service, shall be granted.”(Emphasis Supplied)*

15. From the afore-noted provisions of the (amended) Indian Police Service (Pay) Rules, 2007 it is evident that an officer of a State Police Service who has been promoted to the IPS will be granted initial pay-scale and grade pay in the senior scale of IPS corresponding to the pay-scale and grade pay drawn by him in the State Police Service. Thus, after

the year 2007, the matter of fixation of initial pay of an officer of a State Police Service who has been promoted to the IPS underwent a significant change for prior to the year 2007 the initial pay of such an officer was required to be fixed in the senior time scale.

16. At this stage it would also be apposite to note the following portion of Rule 17 of the Indian Police Service (Uniform) Rules, 1954:-

*“17. Badges of Rank- Silver metal. The State Emblem to be 5/32” by 3/4”. The stars to be of the “Star of India” (five pointed) pattern and 1” broad. The Deputy Directors, Intelligence Bureau, Commissioners of Police and Deputy Inspectors General of Police shall wear the three stars in the badges of their rank on the shoulder strap in the form of an equilateral triangle with apex upwards. The Strap should be slightly frosted but without any design in the centre. The crossed sword and baton will be worn so that the point of the sword is to the front, and the edge of the blade outwards or towards the arm. The sword should measure 7/8” and the baton 1-3/4”.*

*Embroidered badges of rank, worked in dark blue silk thread may be worn when wearing informal working dress, at the time of riots, dacoit operation and such other duties.*

....

|                                                            |                                       |
|------------------------------------------------------------|---------------------------------------|
| <i>(e) Superintendent of Police in the selection grade</i> | <i>The State Emblem and two stars</i> |
|------------------------------------------------------------|---------------------------------------|

....

|                                                                                                                                                            |                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>(g) All officers [other than those mentioned in (f)-(i) &amp; (ii) above] drawing pay in the senior time-scale who have 10 years' service and less”</i> | <i>The State Emblem</i> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|

17. On April 30, 1987, Raj Kumar Jha and Suvashish Choudhary (hereinafter referred to as the ‘Jha’ and ‘Choudhary’ respectively) joined

DANIPS. On April 17, 1997, Jha and Choudhary were promoted in the Selection Grade w.e.f December 09, 1995. Jha and Choudhary became eligible for promotion to the JAG-II and JAG-I in the years 2000 and 2007 respectively, but no meeting of the Departmental Promotion Committee was convened to consider said officers for promotion to the said grades till the year 2006. Finally, on May 5, 2007 and March 03, 2010, said officers were promoted to JAG-II and JAG-I respectively, but only on 'ad-hoc basis'.

18. Thereafter Jha and Choudhary submitted a representation to the competent authority requiring the department to convene a meeting of the Departmental Promotion Committee to consider them for promotion to JAG-II and JAG-I on regular basis and promote them to said grades with effect from the date they become eligible for promotion to the said grades or at least from the date when vacancies fell in the said grades.

19. While the aforesaid representation submitted by Jha and Choudhary was pending consideration, on July 05, 2011 the Ministry of Home Affairs initiated the process for preparing a Select List of officers of DANIPS for promotion/induction in the IPS pertaining to the vacancies for the year 2010. On the same date i.e. July 05, 2011, Jha and Choudhary, who were eligible to be inducted in the IPS, were asked to submit an unconditional willingness for they being promoted/inducted in the IPS as also a consent to terminate their lien in the DANIPS.

20. On July 20 and 25, 2011, Jha and Choudhary submitted representations to the competent authority stating therein that the Ministry of Home Affairs should either defer the proposal to induct them in the IPS till they are promoted to JAG-II and JAG-I on regular basis or they should not be required to submit an unconditional willingness for being inducted in the IPS. In their representations, Jha and Choudhary

highlighted that if they were inducted in the IPS as ad-hoc JAG-II and JAG-I they will suffer immense loss in pay, seniority and rank etc. It was highlighted by them that there is a serious anomaly in the IPS (Regulation of Seniority) Rules, 1988 which governs determination of seniority of the officers of the State Police Service on promotion to IPS.

21. On October 19, 2011 the Ministry of Home Affairs rejected the representations dated July 20 and 25, 2011 submitted by Jha and Choudhary.

22. On December 14, 2011 the UPSC approved the Select List of officers of DANIPS prepared by the Ministry of Home Affairs for induction/promotion in the IPS, which included the names of Jha and Choudhary. They were called upon to submit an unconditional willingness for induction in the IPS before February 11, 2012.

23. Aggrieved by the aforesaid action of the Ministry of Home Affairs, in January 2012, Jha and Choudhary filed an application before the Central Administrative Tribunal canvassing therein:-

A Jha and Choudhary became eligible for promotion to JAG-II and JAG-I in the year 2000 and 2007 respectively, but the department did not take any steps to convene a meeting of the Departmental Promotion Committee and consider them for promotion to the said grades till the year 2006. Finally, on May 05, 2007 and March 03, 2010 they were promoted to JAG-II and JAG-I respectively, but only on 'ad-hoc basis' and not on regular basis. Thereafter Jha and Choudhary made several representations to the department to convene a meeting of the Departmental Promotion Committee to consider them for promotion to JAG-II and JAG-I on regular basis but till date no action has been taken by the respondents in said regard. Since they were promoted to JAG-II and JAG-I only on ad-hoc basis, they would be deemed to be working in

the Selection Grade on substantive basis which is in the pay-scale ₹15,600-39,100 in PB-III with grade pay ₹6,600/-. As per Rule 5(3) and Schedule I appended to the IPS (Pay) Rules, 2007, they would be entitled to be placed in PB-III i.e. pay-scale ₹15,600-39,100 with grade pay ₹6,600/-. Had they been promoted to JAG-II and JAG-I on regular basis in the year 2007 i.e. when the vacancies arose they would have been drawing pay in the pay scale ₹37,400-67,000 in PB-IV with grade pay ₹8,700/- (pay-scale of JAG-I) in the year 2012 and the same would have been their initial pay-scale and grade pay on their induction in the IPS. The inaction of the department in convening a meeting of the Departmental Promotion Committee to consider them for promotion to JAG-II and JAG-I on regular basis has caused immense loss to them pertaining to their initial pay being fixed as officers of the Indian Police Service.

B Jha and Choudhary joined DANIPS on April 30, 1987 and the select list in question was prepared to fill up the vacancies which had arisen in the IPS on January 01, 2010, meaning thereby, Jha and Choudhary had completed 22 years of service in DANIPS as on January 01, 2010. As per Rule (3)(ii)(a) and (b) of the IPS (Regulation of Seniority) Rules, 1988, upon their induction in IPS Jha and Choudhary would get a weightage of 7 years ( $21 \div 3 = 7$  years) for the service rendered by them in DANIPS. Thus, upon induction in the IPS, Jha and Choudhary would be placed below the officers who were directly recruited in the IPS in the year 2003, which officers are still in Senior Time Scale i.e. pay scale of ₹15,600-39,100 in PB-3 with grade pay of ₹6,600/-. As per Rule 5(3) read with Schedule I appended to the IPS (Pay) Rules, 2007, upon their induction in the IPS, Jha and Choudhary would be granted initial pay scale and grade pay of senior scale of IPS

corresponding to the pay scale and grade pay which they were drawing in the DANIPS. Jha and Choudhary were drawing pay-scale of ₹37,400-67,000 in PB-4 with grade pay of ₹8,700/- in DANIPS, which corresponds to Selection Grade in the senior scale of pay in the IPS. Meaning thereby, upon their induction in the IPS the initial pay-scale which would be granted to Jha and Choudhary would be ₹37,400-67,000 in PB-4 with grade pay of ₹8,700/-. Thus, a most anomalous situation would arise with regard to fixation of seniority and initial pay-scale and grade pay of the officers of State Police Service who get promoted to the IPS inasmuch as the officers of the State Police Service who get inducted in the IPS such as Jha and Choudhary would be placed juniors to such directly recruited officers in the IPS who are drawing much lower pay-scale and grade pay than the officers of the State Police Service. To further highlight said anomaly, Jha and Choudhary placed reliance upon Rule 17 of the IPS (Uniform) Rules, 1954. Whereas as per clause (e) of Rule 17 the officers who are in the Selection Grade such as Jha and Choudhary are required to wear State Emblem and 2 stars, the officers who are directly recruited in the IPS in the year 2003 (who would be senior to Jha and Choudhary in the IPS) are required to wear only 2 stars as per the provisions of clause (g) of said Rule. Jha and Choudhary highlighted that upon their induction in the IPS they would be required to report and salute to the officers who are junior to them in the rank. Jha and Choudhary canvassed that aforesaid anomaly is the result of the Ministry of Home Affairs not amending Rule 3(ii)(a) and (b) of the IPS (Regulation of Seniority) Rules, 1988 to bring it line with the amendments made in the IPS (Recruitment) Rules, 1954 and IPS (Pay) Rules, 2007 in the years 1997 and 2010 respectively to the effect that upon their induction in the IPS, the officers of the State Police Services

will be granted the initial pay scale and grade pay in the senior scale of IPS corresponding to the pay scale and grade pay which they were drawing in the State service. Jha and Choudhary pointed out that said anomalous situation can be remedied by placing them i.e. Jha and Choudhary below the officers who were directly recruited in the IPS in the year 1997 and became eligible to the grant of Selection Grade as on January 01, 2010 inasmuch as the pay-scale of Selection Grade is ₹37,400-67,000 in PB-4 with grade pay of ₹8,700 which corresponds to the pay-scale and grade pay drawn by Jha and Choudhary in the DANIPS.

24. Since Jha and Choudhary were required to submit their unconditional willingness for induction in the IPS by February 11, 2012, else the Select List in question would lapse in view of the provisions of Regulation 7(4) of IPS (Appointment by Promotion) Regulations, 1955 and they would not be able to get induct in the IPS even in future, a prayer for interim relief was made by them before the Tribunal that the Select List in question should not lapse qua them till the disposal of their application by the Tribunal.

25. The aforesaid application was first time listed before the Tribunal on January 19, 2012, on which date following order was passed:-

*“Issue notice to the respondents returnable on 25.01.2012.  
Notice. Stay as well for the date fixed.  
Process **DASTI** only.”*

26. The matter then came to be listed before the Tribunal on January 30, 2012, on which date following order was passed:-

*“Learned counsel for the respondents seeks time to file reply. Mrs.Jyoti Singh, learned senior counsel representing the applicant would, however, insist upon interim direction for which notice was given.*

*Having heard learned counsel for the parties, we*

order that even if the applicants may not give any willingness by 11.02.2012, the select list qua them will not lapse.

*Respondents will file their reply two days before the next date fixed with an advance copy to the counsel opposite, who may file the rejoinder even in the court itself on the date fixed but with an advance copy to the counsel opposite.*

*List the matter on 10.02.2012. It is made clear that no further adjournment will be given and the matter will be finally disposed of on the date fixed.”(Emphasis Supplied)*

27. The matter was thereafter heard by the Tribunal on February 10, 2012, on which date following order was passed:-

*“Order dated 30.01.2012 reads as follows:*

*.....*

*The order was passed, as mentioned above, as the apprehension of the applicant was that if 60 days may elapse the respondents may take the plea that any further extension is beyond the regulation. Sixty days will expire on 11.02.2012. We only record at this stage that adjournment is necessitated because counsel for respondents states that short reply is being filed today but detailed reply will be filed later. This cannot be appreciated. If a detailed reply is to be filed, we do not think there is any necessity to file short reply. However, short reply is taken on record. Request of the respondents for adjournments is repeated.*

*List again on 24.02.2012. Consequences of expiry of sixty days in the context of the order passed today shall be examined on the final stage of the case.”(Emphasis Supplied)*

28. Thereafter the Ministry of Home Affairs filed its reply before the Tribunal, the relevant portion whereof reads as under:-

*“3.4 That the proposal for regularization in JAG-II*

*and JAG-I of DANIPS have been forwarded to UPSC in Nov. 2011. That the DPC for regular promotion into JAG-II for years 2003 onwards could not take place on account of seniority dispute between the officers promoted from feeder grade and those recruited directly through UPSC into the DANIPS which was agitated by the promotee and the direct recruited officers in several cases in past upto Supreme Court and presently still pending before the Delhi High Court...*

*3.6 That the pay of the DANIP officers induction into IPS are fixed as per extant relevant rule in the pay scale being drawn by the DANIP officer immediately before induction on regular basis. That once the officer is granted the higher pay scale on regular basis with retrospective effect after induction into the IPS, his pay will be re-fixed accordingly and this his pay will be ultimately protected.*

*3.14 That the pay and seniority are completely two different aspects of service. An officer who is junior may draw higher pay than his senior by virtue of greater length of service and higher pay of a junior should not be misconstrued as a yardstick for seniority in service in a particular grade.*

*3.15 That a junior can draw higher pay than a senior by virtue of longer length of service. The high pay is not a criteria of determining seniority. The two officers coming from different set of examination and selection process cannot be equated merely on the basis of pay.*

*3.16 That the All India Service Rules are framed and administered by the Department of Personnel and Training, Govt. of India and MHA being State Govt. for joint cadre of AGMU follows the rules and regulation promulgated by DOP & T from time to time and a reasonable and logical. It is submitted that as far as IPS Pay Rule is concerned it has no bearing on the*

*seniority as the pay and seniority are completely two different aspects of service. An officer who is junior may draw higher pay than his senior by virtue of greater length of service and higher pay of a junior should not be misconstrued as a yardstick for determining seniority in service in a particular grade.”*

29. The matter was finally heard by the Tribunal on March 03, 2012 and reserved for judgment. Vide order dated March 07, 2012 the Tribunal disposed of the application filed by Jha and Choudhary in the following terms:-

*“7. Having considered the totality of facts and circumstances of the case, we find that there is anomalous situation against the applicants insofar as DANIPS is concerned, as for the years they have been continuing on ad hoc basis in JAG-II and JAG-I grades. The respondents are responsible for not regularizing their services in the said grades may be due to the litigation. During the hearing, when this issue was discussed, ShriNischal has conceded that the respondents are keen to conduct the regular promotion to the DANIPS shortly and the applicants would get their rightful position in the JAG-II and JAG-I respectively for the year to which they would be selected. In this regard, we would only direct the respondents to convene the regular DPC for JAG-II and JAG-I for the relevant years and complete the process as expeditiously as possible but positively within a period of four weeks from the date of receipt of certified copy of this order.*

*8. With regard to the willingness to be conveyed by the applicants, learned Senior Counsel for the applicants has indicated during the final hearing that applicants would convey their willingness but they need to be protected with reference to their pay scales and assigned proper seniority after taking into account their regular promotion in the DANIPS. There is no dispute about this from the learned counsel from the respondents. We, therefore, direct that the applicants would convey their willingness*

*to the competent authority about their induction to the IPS within a period of two weeks from today. On receipt of their willingness, the respondents are directed to offer them the appointment for promotion to IPS, and protect their existing pay, which in any case would be provisional. Further, in the seniority and other associated aspects, the finalization of regular promotion of the applicants to the grade of JAG-II and JAG-I in DANIPS would be determined in the IPS. On receipt of appropriate orders in fixing their regular promotion to the JAG-II and JAG-I grades, the cadre controlling authority of the IPS, AGMU Cadre would fix their seniority and protect the revised pay for the applicants. If either in pay fixation or seniority applicants may be aggrieved, they may at that stage ventilate their grievances. Let this exercise, as ordained above, be completed within a period of three months from the date of receipt of orders regarding the applicants regular promotion to the JAG-II and JAG-I in DANIPS.*

*9. With regard to the vires of the rules and regulations governing the IPS Pay, seniority, etc. learned Senior Advocate for the applicants would not take the arguments forward. Therefore, we refrain to offer any remarks on the said relief (s) prayed in challenging the vires of these rules and regulations.*

*10. Taking into account the totality of facts and circumstances of the case, we are of the considered opinion that the applicants should be granted their regular JAG-II and JAG-I promotion as expeditiously as possible and preferably within the time frame as stipulated above and on receipt of the willingness from the applicants the competent authority would offer them appointment to IPS and fix their seniority, pay scales, rank, etc. as per revised regular promotion order to be received in grade of JAG-II and JAG-I in DANIPS and also as per the law relating to those matters of IPS. Applicants were given interim promotion. They may now give their unconditional willingness for their induction in IPS within two weeks.*

11. *In terms of our above orders and directions, the OA is disposed of.*”(Emphasis Supplied)

30. Aggrieved by the statement contained in the judgment dated March 07, 2011 that the counsel appearing for Jha and Choudhary was not *taking forward* the argument relating to vires of rules and regulations, Jha and Choudhary filed a review application in the Tribunal. Vide order dated March 29, 2012 the Tribunal disposed of the said review application in the following terms:-

*“In case the applicant is required to challenge the vires of rules and regulations governing the IPS’s pay, seniority, then it may remain open to challenge it and the applicants will not be debarred from challenging the vires of the rules and regulations of the IPS’s pay, salary etc. We are conscious of the fact that there can be no estoppel against the law. If a rule or regulation is ultra vires, then it can be challenged at any stage. And in the present case, it has not been adjudicated. Hence, if a matter has not been adjudicated finally, then it cannot operate as res judicata or estoppel. We are of the opinion that even in the subsequent litigation, the vires of rules and regulations can be challenged by the applicants, if they need so.*

*3. It is also material that in the operative portion, it has been provided that two weeks’ time was provided to the applicant to give unconditional willingness for the induction in IPS, and the learned senior advocate for the applicants stated that two weeks’ time is likely to expire, and she wants one more week’s time from today to file this unconditional willingness for induction in IPS. Hence, this Review Application is disposed of with the above observations made in the body of this order.”*

31. Choudhary was fully satisfied with the judgment dated March 07, 2012 read with order dated March 29, 2012 passed by the Tribunal and

submitted an unconditional willingness to the Ministry of Home Affairs for his induction in the IPS on March 19, 2012

32. On the other hand, Jha was aggrieved by the judgment dated March 07, 2012 insofar it had not resolved the issue of seniority which would be assigned to him upon his induction in the IPS and thus filed W.P.(C) No.2683/2012 under Article 226 of the Constitution of India. Needless to state, Jha did not give an unconditional willingness for his induction in the IPS.

33. The aforesaid writ petition was first time listed before this Court on May 07, 2012, on which date following order was passed:-

**“CM No.5767/2012**

*Allowed, subject to just exceptions.*

**W.P. (C) No.2683/2012 & CM No.5766/2012**

*Issue notice.*

*The learned counsel for the respondent No.1 & 2 as well as the learned counsel for the respondent No.3 accept notice.*

*Renotify on 06.11.2012.*

*The learned counsel for the respondents state that no counter affidavit would be necessary and that they would rely on the record of the original application before the learned Tribunal.*

**In the meanwhile, the tenure of the select list would be subject to the final order that may be passed in this writ petition.”(Emphasis Supplied)**

34. In the meantime, on April 17, 2012 the Ministry of Home Affairs issued an order appointing Jha and Choudhary to the JAG-II of the

DANIPS in the scale of pay of ₹15,600-39,100 in PB-3 with Grade Pay of ₹7600 with effect from July 01, 2007. Thereafter on July 19, 2012 the Ministry of Home Affairs issued an order appointing Jha and Choudhary to the JAG-I of the DANIPS in the scale of pay of ₹37,400-67,000/- in PB-4 with Grade Pay of ₹8700 with effect from July 01, 2008.

35. While W.P. (C) No.2683/2012 filed by Jha was pending adjudication, the Ministry of Home Affairs filed W.P. (C) No.7710/2012 under Article 226 of the Constitution of India assailing the legality of the judgment dated March 07, 2012 read with order dated March 29, 2012 passed by the Tribunal.

36. In W.P. (C) No.7710/2012, the grievance raised by the Ministry of Home Affairs is that the direction relating to induction of Jha and Choudhary in the IPS passed by the Tribunal in its judgment dated March 7, 2012 is in violation of Regulation 7(4) of the IPS (Appointment by Promotion) Regulations, 1955. It was submitted that Regulation 7(4) of the IPS (Appointment by Promotion) Regulations 1955 prescribes that the *'Select List shall remain in force till the 31<sup>st</sup> day of December of the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or up to 60 days from the date of approval of the Select List by the Commission under sub-regulation (1) or as the case may be finally approved under sub-regulation (2) whichever is later'*. In the instant case, the UPSC approved the Select List in question on December 14, 2011. In terms of Regulation 7(4), the Select List was to remain in force for a period of 60 days from the date of approval of the Select List by the UPSC i.e. upto February 11, 2012. In other words, Jha and Choudhary were required to submit unconditional willingness for induction in the IPS till February 11, 2012. It was submitted that since Jha and Choudhary did not submit their

unconditional willingness before February 11, 2012 i.e. the period during which the Select List remained in force the Select List qua Jha and Choudhary lapsed after February 11, 2012 and they could not have been inducted in the IPS after the said date. It was submitted that the Tribunal committed an illegality in directing the Ministry of Home Affairs to induct Jha and Choudhary in the IPS when they had not submitted their unconditional willingness before February 11, 2012.

37. Since the Ministry of Home Affairs has raised an issue about the very induction of Jha and Choudhary in the IPS we first deal with W.P. (C) No.7710/2012 filed by it.

38. On July 05, 2011 the Ministry of Home Affairs initiated the process for preparation of a Select List of the officers of DANIPS for their promotion/induction in the IPS for the vacancies for the year 2010. As already pointed hereinabove, Jha and Choudhary were eligible to be inducted in the IPS.

39. Jha and Choudhary had raised grievances regarding fixation of their pay and seniority upon their induction in the IPS by way of filing representations before the competent authority, which representations were rejected vide order dated October 19, 2011.

40. On December 14, 2011 the UPSC approved the Select List of the officers of DANIPS prepared by the Ministry of Home Affairs for their induction/promotion in the IPS, which list included the names of Jha and Choudhary. Jha and Choudhary were called upon to submit their unconditional willingness for induction in the IPS before February 11, 2012.

41. In the month of January 2012, Jha and Choudhary filed an application before the Tribunal seeking resolution of their grievances relating to fixation of their pay and seniority upon their induction in the

IPS.

42. Since the period during which Jha and Choudhary were required to submit their unconditional willingness for induction in the IPS was coming to an end, Jha and Choudhary sought interim relief from the Tribunal that the Select List in question should not lapse qua them during the pendency of the application. Vide order dated January 30, 2012 the Tribunal directed that the Select List in question would not lapse qua Jha and Choudhary even if they do not give unconditional willingness before February 11, 2012. It is most significant to note that the aforesaid order dated January 30, 2012 passed by the Tribunal was not challenged by the Ministry of Home Affairs.

43. As already noted hereinabove, the matter then came to be listed before the Tribunal on February 19, 2012. On said date, the Tribunal expressed displeasure on the conduct of the Ministry of Home Affairs of delaying the matter and directed that 'consequences of expiry of sixty days in the context of the order passed today shall be examined on the final stage of the case.'

44. The matter was finally heard by the Tribunal on March 03, 2012 and reserved for judgment. Vide judgment dated March 07, 2012 the Tribunal disposed the application filed by Jha and Choudhary. In paragraph 8 of the judgment dated March 07, 2012 the Tribunal dealt with the issue of furnishing unconditional willingness by Jha and Choudhary in the following terms:-

*"With regard to the willingness to be conveyed by the applicants, learned Senior Counsel for the applicants has indicated during the final hearing that applicants would convey their willingness but they need to be protected with reference to their pay scales and assigned proper seniority after taking into account their regular promotion in the DANIPS. There is no dispute about this from the learned*

**counsel from the respondents” (Emphasis Supplied)**

45. From the afore-noted paragraph 8, it is clearly evident that the counsel for the Ministry of Home Affairs gave a concession before the Tribunal that Jha and Choudhary would be inducted in the IPS if they would give unconditional willingness after passing of the judgment in the case, notwithstanding the fact that they had not given unconditional willingness before February 11, 2012. It is not the case of the Ministry of Home Affairs before this Court that their counsel had not given aforesaid concession before the Tribunal. Having conceded before the Tribunal that Jha and Choudhary would be inducted in the IPS even if they do not submit unconditional willingness before February 11, 2012 it does not lie in the mouth of the Ministry of Home Affairs to contend that in view of the provisions of Regulation 7(4) of the IPS (Appointment by Promotion) Regulations, 1955 the Select List in question lapsed qua Jha and Choudhary on February 11, 2012 when they did not give submit unconditional willingness before that date.

46. Furthermore, vide order dated January 30, 2012 the Tribunal had directed that the Select List in question would not lapse qua Jha and Choudhary even if they do not submit unconditional willingness before February 11, 2012. As already noted hereinabove, the order dated January 30, 2012 has not been challenged by the Ministry of Home Affairs. Having not challenged the order dated January 30, 2012 it is not open to the Ministry of Home Affairs to contend that the Select List in question lapsed qua Jha and Choudhary on February 11, 2012 when they did not submit unconditional willingness before said date.

47. The matter can also be looked at from another angle.

48. In the instant case, when the Ministry of Home Affairs initiated the

process for induction of DANIPS officers in the IPS on July 05, 2011, Jha and Choudhary stood promoted to JAG-II and JAG-I on ad-hoc basis. It is an admitted fact that by that time Jha and Choudhary ought to have been promoted to JAG-II and JAG-I on regular basis but for the delay on the part of the Ministry of Home Affairs. It is further an admitted fact that had Jha and Choudhary got inducted in IPS without getting promoted to JAG-II and JAG-I on regular basis their pay in the IPS would have been fixed in the scale of pay of ₹15,600-39,100 in PB-3 with Grade Pay of ₹6,600 while had they got inducted in the IPS after getting promoted to JAG-II and JAG-I on regular basis their pay in the IPS would have been fixed in the scale of pay of ₹37,400-67,000 in PB-4 with Grade Pay of ₹8,700. This was one of the grievances which Jha and Choudhary wanted to be redressed before getting inducted in the IPS but their representations were rejected by the Ministry of Home Affairs. This problem in the matter of pay fixation of Jha and Choudhary in the IPS occurred due to the delay on the part of the Ministry of Home Affairs in promoting Jha and Choudhary to JAG-II and JAG-I on regular basis. Why should Jha and Choudhary suffer for the delay caused by the Ministry of Home Affairs in promoting them to JAG-II and JAG-I on regular basis?

49. In said regards, it would be most apposite to note the decision of the Supreme Court reported as AIR 2012 SC 1682 Union of India v Hemraj Singh Chauhan. In said case, the respondents therein were the members of the State Civil Services of Uttar Pradesh who had completed 8 years of service on July 23, 1985 and June 04, 1986 respectively. An officer of the SCS is entitled to be considered for appointment to the Indian Administrative Service after completion of 8 years of service in the SCS. Under Regulation 5(3) of the IAS (Appointment by Promotion) Regulations, 1955, members of the SCS who had attained 54 years of age

on the 1<sup>st</sup> day of January for which the Select List is prepared shall not be considered for promotion to the IPS. The Central Government was required to conduct a cadre review of a SCS to determine the number of vacancies of the IPS which would be filled from a particular SCS. In said case, the cadre review of the SCS of Uttar Pradesh was to be conducted in the year 2003 but the Central Government conducted the same in the year 2006. Due to such delay in conduct of cadre review, the determination of the vacancies for being filled up by promotion of the officers of SCS of Uttar Pradesh took place on February 01, 2006, by which date the respondents had crossed age of 54 years and thus could not be considered for promotion to the IPS. Noticing that grave prejudice has been caused to the respondents due to delay on the part of the Central Government, a Division Bench of this Court directed that the cadre review undertaken in the year 2006 be deemed to have undertaken in the year 2003 and on said basis the respondents be considered for promotion to the IAS, which direction was upheld by the Supreme Court in an appeal preferred by the Central Government. It would be relevant to note the following portion of the judgment of the Supreme Court:-

*“36. However, from the discussion made hereinbefore, the following things are clear:*

*(a) Both the appellants and the State Government in accordance with their stand in the subsequent affidavit accepted that Cadre Review in the State of U.P. was made in 1998 and the next Cadre Review in that State was due in 2003;*

*(b) Neither the appellants nor the State Government has given any plausible explanation justifying the delay in Cadre review;*

*(c) From the materials on record it is clear that the*

*appellant as the Cadre Controlling authority repeatedly urged the State Government to initiate the review by several letters referred to hereinabove;*

*(d) The only reason for the delay in review, in our opinion, is that there was total in-action on the part of the U.P. Government and lackadaisical attitude in discharging its statutory responsibility.*

*37. The Court must keep in mind the Constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a Welfare State.*

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

*X X X*

*49. Therefore, this Court accepts the arguments of the learned Counsel for the appellants that Rule 4(2) cannot be construed to have any retrospective operation and it will operate prospectively. But in the facts and circumstances of the case, the Court can, especially having regard to its power under Article of the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees. The Court is satisfied that in this case for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event this Court reiterates those very directions in exercise of its power under Article of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2)*

*of the said Cadre Rules cannot be construed retrospectively.”*

50. Thus, looked at from whichever angle, the W.P. (C) No.7710/2012 does not have any merit and is hereby dismissed.

51. We now proceed to deal with W.P. (C) No.2683/2012 filed by Jha. As already noted hereinabove, the grievance of Jha relates to fixation of his seniority in the IPS.

52. It is an admitted fact between the parties that as per the present position upon his induction in the IPS Jha would be made juniors to such officers who were directly recruited in the IPS and drawing lesser pay scale and grade pay and junior in rank to Jha.

53. Can a junior officer draw higher pay, more particularly grade pay, than his senior?

54. The answer to the aforesaid question lies in the following portion of the report of the VI Pay Central Commission:-

*“1.27 A major departure from the earlier Pay Commissions has been made in respect of pay scales. For the first time, the Commission is recommending running pay bands for civilian employees as well as for the Defence Forces. The Fourth Central Pay Commission had recommended running pay bands for Defence Forces that were implemented. The Fifth CPC, however, recommended specific pay scales for civilians as well as Defence Forces personnel. A conscious departure has been made in recommending running pay bands because of the inherent advantages of such pay scales.*

*2.2.11 Under the system of running pay bands being recommended by the Commission, all the employees belonging to the aforesaid 4 categories will be placed in distinct running pay bands. At the time of promotion from one post to another in the same running pay band, the grade pay (being a fixed amount attached to each post in the hierarchy) attached to posts at different levels within*

*the same running pay band will change. Grade pay will determine the status of a post with (apart from the two apex scales of Secretary/equivalent and Cabinet Secretary/equivalent that do not carry any grade pay) a senior post being given higher grade pay.*

*2.2.13 Introduction of running pay bands will have the following benefits:-*

*(vi) Seniority of a post will depend on the grade pay drawn. This will invariably be more for a higher level post. Pay scales will largely become irrelevant for purposes of computing seniority. Thus, the present situation where frequently a junior draws higher salary (albeit in lower pay scale) vis-à-vis his senior because of longer years of service, will no longer be of any essence for purposing of computing seniority.*

#### *Summary of main recommendations*

*11.4 All the employees belonging to Groups 'A', 'B', 'C' & 'D' to be placed in distinct running pay bands. Every post, barring that of Secretary/equivalent and Cabinet Secretary/equivalent to have a distinct grade pay attached to it. Grade pay (being a fixed amount attached to each post in the hierarchy) to determine the status of a post with (apart from the two apex scales of Secretary/equivalent and Cabinet Secretary/equivalent that do not carry any grade pay) a senior post being given higher grade pay. The total number of grades reduced to 20 spread across four distinct running pay bands; one Apex Scale and another grade for the post of Cabinet Secretary/equivalent as against 35 standard pay scales existing earlier. At the time of promotion from one post to another in the same running pay band, the grade pay attached to posts in different scales within the same running pay band to change. Additionally, increase in form of one increment to be given at the time of promotion. A person stagnating at the maximum of any pay band for more than one year continuously to be placed in the immediate next higher pay band without any change in*

*the grade pay.”*

55. From the above noted portion of the report of the 6<sup>th</sup> Central Pay Commission, it is crystal clear that a junior officer cannot draw a higher grade pay than his senior.

56. It is otherwise also settled legal position that a junior officer cannot draw a higher grade pay than his senior. (See the decision of the Supreme Court reported as 2009 (1) SCC (L&S) 578 Gurcharan Singh Grewal v. Punjab State Electricity Board.)

57. In view of the above, there can thus be no doubt that Jha is right in contending that there is a discord between Rule 3(ii)(a) and (b) of the IPS (Regulation of Seniority) Rules, 1988, which deals with fixation of seniority of the officers of State Police Service who get inducted in the IPS and IPS (Appointment by Promotion) Regulations, 1955 and IPS (Pay) Rules, 2007 for the reason the effect of said Rule is that officers working in State Police Service such as Jha are made juniors to the officers who were directly recruited in the IPS and drawing lesser pay scale and grade pay than them.

58. Since Jha has already been granted permanent/substantive appointment in Junior Administrative Grade-II as also Junior Administrative Grade-I with retrospective effect; the former being with effect from July 01, 2007 and the latter being with effect from July 01, 2008, we allow his claim as prayed for in the Original Application filed by him requiring it to be treated that the panel/select list prepared and approved by UPSC on December 14, 2011 did not lapse and thus he should be inducted in the Indian Police Service as per the select list/panel.

59. We further direct the Ministry of Home Affairs to amend Rule 3(ii)(a) and (b) of the IPS (Regulation of Seniority) Rules, 1988 to bring

it in line with the (amended) provisions of IPS (Appointment by Promotion) Regulations, 1955 and IPS (Pay) Rules, 2007. As a necessary corollary thereof, we direct the Ministry of Home Affairs to induct Jha in the IPS on his submitting an unconditional willingness in said regards and fix his seniority in the IPS as per the Rule 3(ii)(a) and (b) of the IPS (Regulation of Seniority) Rules, 1988 which would be amended in terms of above directions given by us.

60. W.P.(C) No.2683/2012 filed by Jha is accordingly allowed in above terms. W.P.(C) No.7710/2012 is dismissed.

61. No costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(PRATIBHA RANI)**  
**JUDGE**

**APRIL 22, 2013**

*mamta*