

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:- 02.11.2018

CWP No.6801 of 2013(O&M)

Gurdial Singh & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

2

CWP No.2642 of 2012(O&M)

Iqbal Singh & Anr.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

3

CWP No.5310 of 2012(O&M)

Surinder Pal Singh & Anr.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

4

CWP No.5311 of 2012(O&M)

Rajinder Pal Singh Brar & Anr.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

5

CWP No.6430 of 2013(O&M)

Harmanbir Singh Gill & Anr.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

6

CWP No.13203 of 2013(O&M)

Ajay Maluja.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

**Present:- Mr. K.V.S. Kang, Advocate for
non-applicants/petitioners
(in **CWP No.6801 of 2013**).**

**Mr. D.S. Patwalia, Sr. Advocate, assisted by
Mr. Kanan Malik, Advocate for applicants/Petitioners
(in **CWP No.6430 of 2013**).**

**Mr. S.S.Narula, Advocate for the petitioners
(in **CWP No.13203 of 2013**).**

**Mr. D.V. Sharma, Senior Advocate assisted by
Mr. N.P.Sharma, Advocate for the petitioners
(in **CWP Nos.2642, 5310 & 5311 of 2012**).**

Mr. Onkar Singh Batalvi, Advocate for UPSC.

Mr. Arun Gosain, Advocate for Respondent No.2.

**Mr. Gurminder Singh, Senior Advocate assisted by
Mr. R.P.S.Bara, Advocate for Respondent Nos.3, 7 and
10 & applicant in **CM No.7209 of 2016**.**

**Mr. Akshay Bhan, Senior Advocate assisted by
Mr. Santosh Sharma, Advocate for Respondent No.13
(in **CWP No.6430 of 2013**) and
Respondent No.16 (in **CWP No.6801 of 2013**).**

Mr. Harsimran Singh Sethi, Additional Advocate General, Punjab &
Mr. Manoj Bajaj, Additional Advocate General, Punjab.

Mr. R. Kartikeya, Advocate for Respondent No.11
(in **CWP No.6801 of 2013**) and
Respondent No.8 in CWP No.6430 of 2013.

Mr. Brijeshwar Singh Kanwar, Sr. Standing Counsel for
U.O.I.

Mr. Puneet Gupta, Advocate, Sr. Panel Counsel for
Respondent No.2/U.O.I. in **CWP No.5311 of 2012**.

Mr. Rohit Sud, Advocate for Respondent No.6 in
CWP No.13203 of 2013.

JASWANT SINGH, J.

1. The matter involved, is an unfortunate litigation created by the Police Department of Punjab, who, despite numerous directions and interpretations of its Rules by this Court, as well as the Hon'ble Supreme Court in late 1970s and thereafter in rounds of litigation, refuses to comply with the same in terms of the directions, either intentionally or otherwise. The dispute pertains to the inter-se-seniority as well as order of confirmation between Promotees and Directly Appointed Deputy Superintendent of Police, Punjab (PPS) and all the writ petitions have been preferred by the Promotees, being aggrieved against the action of the State of Punjab as well as Union Public Service Commission (UPSC) at the time of issuance of orders for confirmation as well as finalizing the seniority lists.

2. The parties are *ad idem* that since the issues involved in bunch of Writ Petition CWP No.2642 of 2012, CWP No.5310 of 2012, CWP No. 5311 of 2012, CWP No. 6430 of 2013, CWP No.6801 of 2013 and CWP No. 13203 of 2013 is common, therefore,

they are taken up for disposal together and are disposed of by this common order. The petitioners are the promotee DSPs and are seeking the quashing of the order of confirmation dated 19.12.2011, the order dated 19.12.2011 regarding seniority of the Punjab Police Service Officers and orders of seniority dated 29.01.2013.

The petitioners are also seeking directions to the respondent State of Punjab to pass fresh orders of confirmation in respect of Punjab Police Service Officers in accordance with Punjab Police Service Rules, 1959, in consonance with the directions issued by this Hon'ble Court in CWP No. 12206 of 2005 in accordance with settled law against substantive vacancies which accrued up to 03.05.1994 against the total Cadre strength and not only against substantive vacancies which occurred against permanent posts and also pass fresh orders of seniority of Punjab Police Service Officers who have been appointed after 04.05.1994 in accordance with the provisions of Rule 8 of Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, on the basis of continuous length service on the post.

3. Before advertng to the factual matrix of the case, it would be appropriate to narrate certain undisputed facts, Rule position and the judicial pronouncements governing the very issues in question in the bunch of these Writ Petitions. In this regard to follow and appreciate the facts of the present bunch of Writ Petitions, the following Rules, and judgments governing the issues are considered as under :

(A) ***Punjab Police Service Rules, 1959***

(B) ***Hon'ble Supreme Court Judgment in :***

Paramjit Singh v. Ram Rakha, 1979 AIR (SC) 1073

Paramjit Singh v. Ram Rakha Mal, 1983 AIR (SC) 314

(C) *Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 notified on 04.05.1994*

(D) *Circulars and Instructions issued for converting Temporary posts into permanent and de-linking confirmation from seniority*

(E) *Division Bench of this Court in :*

Gurpreet Singh Bhullar vs. State of Punjab 2008(2) S.C.T. 632 (P&H)(DB)

4. The relevant provisions of the aforesaid statutes and the interpretations and directions issued by the Hon'ble Supreme Court and the Division Bench of this Court as are relevant to the issues in controversy are as under :

4.1 Punjab Police Service Rules, 1959

4.1.1 The recruitment and conditions of service of the Deputy Superintendent of Police in Punjab Police, are governed by the **Punjab Police Service Rules, 1959** (hereinafter referred to as '**1959 Rules**') notified on 01.12.1959. The primary dispute in this bunch of Writ Petitions is in respect of fixation of Seniority under Rule 10 of the aforesaid 1959 Rules.

As per the 1959 Rules, the recruitment to the services is required to be made 80% by promotion from the rank of Inspector and 20% by direct appointment. The Inspectors, who have got 6 years continuous service, officiating as well as substantive, are eligible for promotion. The promotion from amongst Inspectors is made from those inspectors, who are brought in List-'G'. Such list is prepared by the Department in consultation with the Government, whereas the

Direct Appointment to the service is required to be made as a result of competitive examination conducted by the Commission.

4.1.2 The relevant rules are being reproduced as under:-

Rule 2 (b) defines “Direct Appointment” as under :

2(b) “Direct Appointment” means an appointment made otherwise than by promotion of an Inspector”.

Rule 3 deals with the number and character of posts and provides as under :

“3. Number and character of posts

The service shall comprise of the posts specified in Appendix ‘A’ of these Rules.

Provided that nothing in these Rules shall affect the right of Government to make additions to or reductions in the number of such posts, whether permanently or temporarily.”

Rule 6 provides for the method of recruitment of the Deputy Superintendent of Police as under :

“6. Method of recruitment.

(i) Recruitment to the Service shall be made:-

(1) Eighty per cent by promotion from the rank of Inspector and twenty percent by direct appointment.

Provided that only those Inspectors will be eligible for promotion who.-

(a) in the case of Inspectors (both promoted from subordinate rank and directly recruited) have got six years continuous service (officiating as well as substantive) in the rank of Inspector;

(b) in case they are Prosecuting Inspectors, have got eight years continuous service (officiating

*as well as substantive) in the rank of
Prosecuting Inspector;*

- (2) *Appointments by promotion shall be made by the Government from the Inspectors brought on List 'G' which will be a list of Officers considered fit for promotion to the rank of Deputy Superintendent of Police, prepared by the Government in consultation with the Commission. The names in this list prepared at one time shall be arranged according to their inter se seniority. Xxx.*
- (3) *direct appointment to the service shall be made on the result of the competitive examination conducted by the Commission.....”*

Rule 8 of the 1959 Rule provide for the probation of the members of the Service as under :

8. *Probation of members of Service*

(a) *Members of the Service shall be on probation for two years, which shall include the period of training in the Police Training School, Phillaur, and in the Districts and in the case of members recruited by promotion, the Government may by a special order in each case permit periods of officiating appointment to the Service to count towards the period of probation.*

X x x x.

The 1959 Rules provided for the seniority of the members of the Punjab Police Service under **Rule 10** to the following effect :

“10. *Seniority of members of Service*

The Seniority of members of the Service shall be determined by the date of confirmation in the service.

Provided that if two or more members are confirmed on the same date

- (i) a member who is appointed to the Service by promotion shall be senior to the member appointed otherwise;*
- (ii) in the case of members who were appointed by direct appointment, the seniority shall be determined in accordance with their position in the competitive examination;*
- (iii) in the case of members who were appointed to the service by promotion, the seniority shall be determined in accordance with the date of their entry in promotion list 'G'.*

4.1.3 The 1959 Rules under the provisions of Rule 13 provide for the matters not expressly provided in the Rules that for all matters not specifically provided in the Rules, the members of the Service shall be governed by the General Rules framed by the Government under the provisions of the Constitution of India and further Rule 14 provides for the general power to relaxation of provisions of the 1959 Rules when the Government is of the opinion for the reasons to be recorded in writing that it is necessary or expedient to do so.

4.2 Hon'ble Supreme Court Judgment in :

Paramjit Singh v. Ram Rakha, 1979 AIR (SC) 1073

Paramjit Singh v. Ram Rakha Mal, 1983 AIR (SC) 314

4.2.1 Admittedly, the aforementioned 1959 Rules came for consideration before the Hon'ble Supreme Court for the 1st time in the year 1979 in the case of "**Paramjit Singh Vs Ram Rakha**", **1979 AIR (SC) 1073**. Gurdip Singh and Dalip Singh (Respondents 1 and 2 before Hon'ble SC in this case), filed a Writ Petition under Article 226 of the Constitution against the State of Punjab, Inspector General

of Police, Punjab, and six others including the Appellants Paramjit Singh, praying for a direction to confirm them in Punjab Police Service. The Writ Petitioners alleged that they were promotees to the cadre of Deputy Superintendent of Police of February 1961 and January 1961 respectively having been brought on 'G' List by an order dated 23rd February 1961. Paramjit Singh and others were recruited to the same cadre by Direct Appointment commencing from May 1961 to May 1965. The grievance of Respondents 1 and 2 Gurdip Singh and Dalip Singh in the petition filed by them was that recruitment to Punjab Police Service is made from two sources, namely, 80% by promotion and 20% by direct appointment but this quota rule is not adhered to at the time of confirmation in the service and, therefore, even though they were members of the service since a period earlier to Direct Appointee Respondents, they were not confirmed though the latter were confirmed and as seniority in the cadre of Deputy Superintendent of Police is reckoned under Rule 10 according to date of confirmation, the failure to confirm them in the post available to them, in breach of the relevant rules, has denied to them equality of opportunity enshrined in Article 16 of the Constitution to be considered for nomination to Indian Police service which is done according to seniority-cum-merit.

The Single Judge of this High Court was of the opinion that the quota rule is linked with the Seniority Rule and in order to give a reasonable interpretation and in order not to make the seniority rule unreasonable, upon a proper construction it must be held that the quota rule would operate not only at the time of initial recruitment but also at the time of confirmation. The Appeals being Letters Patent

Appeal No. 560/74 and Letters Patent Appeal No. 564/74 by the State of Punjab and the Inspector General of Police, Punjab, were preferred but dismissed and Civil Writ No. 6781/74 by another promotee Rakha Ram raising identical contentions and tagged with the aforementioned two Letters Patent Appeals was allowed.

4.2.2 After considering Rule 8 and 10 of the 1959 Rules, it was held that when the seniority Rule prescribes for recruitment from 2 sources, then quota rule should be co-related to the vacancies which are to be filled in. It was further held that whenever vacancies occur in service, the Appointing Authority has to carry the recruiting according to quota. In other words, whenever vacancies occur, first four promotees irrespective of factors or circumstances causing the vacancies and that as soon as four promotees are recruited, bring in a direct recruit. The relevant paragraphs of the judgment passed by Hon'ble Supreme Court are reproduced as follows:-

“x x x x x

12. *The recruitment to Punjab Police Service is from two sources. Recruits from both the sources have to be on probation. Adopting the construction as canvassed for and on behalf of direct recruits that the Proviso to Rule 8 (b) permitting a maximum period of probation of three years at the end of which the direct recruit would automatically be confirmed unless his services are dispensed with simultaneously enjoying seniority from the date of such automatic confirmation without applying quota rule at the time of confirmation, would put the promotee to an unintended disadvantage who may be continued in an officiating capacity without confirming him and consequently denying or relegating him down in seniority for years as has happened in the*

case of Respondents 1 and 2. Appellants who were recruited to the Service after Respondents 1 and 2, came to be confirmed at the end of two years' period of probation while Respondents 1 and 2 were not confirmed after more than 11 years of officiating service and there is not the slightest suggestion that the services of Respondents 1 and 2 were not satisfactory and that the confirmation was denied on any such ground thereby directly affecting their place in the seniority list. Such an approach would be wholly unreasonable.

13. Now, if the other view is taken that the quota rule would apply both at the time of recruitment and at the time of confirmation, Rule 10 which provides for seniority according to the date of confirmation would certainly be saved from the vice of unreasonableness. Is such a construction possible? One need not stretch the language to bring about the desired result but in this case upon a harmonious reading of Rules 3, 6, 8 and 10, the conclusion is inescapable that quota rule is operative both at the time of initial recruitment and at the time of confirmation. If the rule of seniority were one otherwise than according to date of confirmation it would not have become necessary to apply the quota rule at the stage of confirmation but in this case the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice it will be difficult to hold that the seniority rule is not unreasonable and does not offend. Article 16 (see S. G. Jaisinghani's case). Quota rule is linked up with seniority rule because, not the date of entry in service determines the seniority but the date of confirmation determines seniority and, therefore, quota rule is inextricably intertwined with the seniority rule and any delinking would render the seniority rule wholly unreasonable.

Any other view would lead to the most undesirable result wholly unintended by the framers of the rule. It

must be remembered that after recruitment, members of the service, though drawn from two different sources - direct recruits and promotees - constitute a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in the respective assignments.

X x x x

14. It may be pointed out that where recruitment is from two sources and the seniority in the cadre is determined according to the date of confirmation to accord utmost fair treatment a rotational system has to be followed while giving confirmation. the quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota. If the quota rule is strictly adhered to there will be no difficulty in giving confirmation keeping in view the quota rule even at the time of confirmation. A roster is introduced while giving confirmation ascertaining every time which post has fallen vacant and the recruit from that source has to be confirmed in the post available to the source. This system would break down the moment recruitment from either source in excess of the quota is made.

In fact a strict adherence to the quota rule at the time of recruitment would introduce no difficulty in applying the rule at the time of confirmation because vacancies would be available for confirmation to persons belonging to different sources of recruitment. The difficulty arises when recruitment in excess of the quota is made and it is further accentuated when recruits from one source, to wit, in this case direct recruit get automatic confirmation on completion of the probationary period while the promotees hang out for years together before being confirmed. In Mervyn Countinho's case this Court in terms said that rotational system of fixing seniority meaning thereby confirmation

followed by seniority does not offend equality of opportunity in Government service and recruitment not following the fixed quota rule need not be a ground for doing away with rotational system.

X x x x x

17. The High Court was, therefore, right in concluding that the quota rule would operate at both the stages. Accordingly both these appeals fail and are dismissed but in the circumstances of the case with no order as to costs.

x x x x”

4.2.3 This judgment came up for clarification on an application filed by one Jaspal Singh Dhaliwal, seeking quashing of the Tentative Seniority List prepared by the State of Punjab and published on 04.06.1981. The said Application was disposed of by the Order reported as **Paramjit Singh Sandhu Vs Ram Rakha Mal and others, AIR 1983 Supreme Court 314**. In the said judgment, the Hon'ble court held that there was no ambiguity in the judgment passed by it, however, it further clarified what it meant by implying the quota rule. The relevant paragraph No. 6 of the judgment is reproduced as follows:

6. In our opinion there is no ambiguity in the judgment. Ordinarily speaking, where recruitment is from two sources with a view to integrating recruits from both sources after the recruitment seniority is determined from the date of entry into the cadre except where there has been a substantial violation of the quota giving undeserved advantage to one or the other source. Seniority ordinarily speaking is determined with reference to the date of entry into the cadre which in service jurisprudence is styled the date of continuous officiation. These notions of service jurisprudence may

have to yield place to the specific rules and the fact situation with reference to Rule 10 did compel this Court to depart from the normal concept in service jurisprudence. However, introduction of a roster system is very well known in service jurisprudence. What this Court meant while saying that when a quota rule is prescribed for recruitment to a cadre it meant that quota should be correlated to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. Promotees who come to the service at an advanced age may retire early and direct recruits who enter the service at a comparatively young age may continue for a long time. If, therefore, in a given year larger number of promotees retire and every time the vacancy is filled in by referring to the source from which the retiring person was recruited it would substantially disturb the quota rule itself. Therefore, while making recruitment quota rule is required to be strictly adhered to. That was what was meant by this Court when it said : "The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota." The quota in the present case is 4 : 1 that is, four promotees to one direct recruit. Therefore, whenever vacancies occur in the service the appointing authority has to go on recruiting according to quota. In other words, whenever vacancies occur, first recruit four promotees irrespective of the factors or circumstances causing the vacancies and as soon as four promotees are recruited bring in a direct recruit. That was what was meant by this Court when it said that a roster has to be introduced and this roster must continue while giving confirmation. The sentence which seems to have created a difference of opinion reads as under :

" A roster is introduced while giving confirmation ascertaining every time which post has fallen vacant and the recruit from that source has to be confirmed in the post available to the source."

7. *The sentence cannot be read in isolation. It has to be read with the earlier sentence that the quota rule would apply to the vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota. The Court then proceeded to say that if the quota rule is strictly adhered to there will be no difficulty in giving confirmation keeping in view the quota rule even at the time of confirmation.*

8. *Introduction of a roster system is well known to service jurisprudence. When a roster is to be introduced it only means that ascertain the available number of vacancies and proceed to make recruitment keeping in view the quota. Now, if recruitment is strictly made according to quota there will be no difficulty in applying the very rule of quota even while giving confirmation. To illustrate, assuming there are five vacancies in a given-period, the recruitment will be four from the cadre from which promotion can be given and one would be a direct remit. Naturally when the date of confirmation comes it would obviously follow that confirmation will proceed along that very fine. In our opinion, therefore, there is neither any ambiguity nor any blurred area which requires to be explained.*

9. *There was some discussion that seniority list as at present drawn up is not in conformity with the judgment of this Court. The rule constituting the service were brought into force in 1959. Therefore, those who were recruited/promoted to the service prior to the constitution of the service under 1959 Rules would maintain their seniority as given and they cannot be*

disturbed by retrospective operation of the 1959 Rules. Subsequently Mr. Tarkunde, learned counsel for the State of Punjab, assured us that both the recruitment and confirmation have strictly been made according to the quota rule, namely, when vacancies occur recruit first four promotees and the fifth post will go to the direct recruit and the same rule is followed in confirmation.

x x x”

4.2.4 Thus, it was clarified that while making the recruitment, Quota Rule is required to be strictly adhered to. The Quota would apply to vacancies and recruitment has to be made keeping in view the vacancies available from the 2 sources. It was crystal clear that whenever vacancies occur, First FOUR (04) promotees, irrespective of the factors or circumstances causing the vacancies would be recruited and then the 5th Vacancy would go to a Direct Appointment. After saying so, the Hon’ble Supreme Court had recorded the assurance given by Counsel appearing for the State of Punjab that both the recruitment and the confirmation have strictly been made according to Quota Rule, namely, when vacancies occur, ‘recruit’ first FOUR promotes and the 5th Post will go to Direct Appointment and the same Rule is followed in ‘confirmation’. It is not in dispute that the said judgment has attained finality and in view of the statement given by the counsel for the State, the Punjab Police Department was required to follow the Quota Rule as prescribed in Paramjit Singh’s case.

4.3 Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 notified on 04.05.1994.

4.3.1 The State of Punjab on 04.05.1994 notified the **Punjab Civil Services (General and Common Conditions of Service) Rules, 1994** (hereinafter referred to as '**1994 Rules**') which were made applicable to the post of Deputy Superintendent of Police as well.. As per Rule 20, these Rules were to have an overriding effect over any Rules that were in force. A salient feature of these Rule was that a definite period was prescribed in Rule 7 for 'Probation' as per which, Promotee was to remain on probation for a period of one year and a Direct Appointment the was to remain on probation for a period of two years. Further, as per Rule 8, Seniority inter-se the cadre has to be determined by the length of continuous service on such post in that Cadre of the service. As per 'Note' appended to the said Rule 8, seniority of persons appointed on purely provisional basis or on ad-hoc basis is to be determined as and when they are regularly appointed keeping in view the dates of such a regular appointment. The relevant Rules are being reproduced as under:

As per **Rule 1**, the applicability of the 1994 Rules was prescribed as under :

1. Short Title, Commencement and Application.

(1) These rules may be called the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994.

(2) They shall come into force at once.

(3) They shall apply to all the posts in Group 'A', Group 'B' and Group 'C' services in connection with the affairs of State of Punjab.

Rule 7 deals with the provision of '**Probation**' for the members of the service as under :

7. Probation.

(1) A person appointed to any post in the Service shall remain on probation for a period of two years. If recruited by direct appointment and one year if appointed otherwise :

Provided that,—

- (a) any period, after such appointment spent on deputation on a corresponding or a higher post shall count towards the period of probation;*
- (b) in the case of an appointment by transfer, any period of work on an equivalent or higher rank, prior to appointment to the Service, may in the discretion of the appointing authority, be allowed to count towards the period of probation;*
- (c) any period of officiating appointment to the Service shall be reckoned as period spent on probation ; and*
- (d) any kind of leave not exceeding six months during or at the end of period of probation, shall be counted towards the period of probation.*

(2) if, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory or he has failed to pass the departmental examination, if any, prescribed in Service Rules within a period not exceeding two and a half years from the date of appointment, it may,-

- (a) if such person is recruited by direct appointment, dispense with his service or revert him to a post on which he held lien prior to his appointment to the Service by direct appointment; and*
- (b) if such person is appointed otherwise-*

- (i) revert him to his former post; or*
- (ii) deal with him in such other manner as the terms and conditions of the previous appointment permit.*

(3) On the completion of the period of probation of a person, the appointing authority may,—

- (a) if this work and conduct has in its opinion been satisfactory-*
 - (i) confirm such person, from the date of his appointment or from the date he completes his period of probation satisfactory, if he is not already confirmed ; or*
 - (ii) declare that he has completed his probation satisfactory, if he is already confirmed ; or*
- (b) if his work or conduct has not been, in its opinion, satisfactory or if he has failed to pass the departmental examination, if any, specified in the Service Rules-*
 - (i) dispense with his services, if appointed by direct appointment or if appointed otherwise revert him to his former post, or deal with him in such other manner as the terms and conditions of his previous appointment may permit; or*
 - (ii) extend his period of probation and thereafter pass such order as it could have passed on the expiry of the period of probation as specified in sub-rule (1):*

Provided that the total period of probation including extension, if any, shall not exceed three years.

Rule 8 of the 1994 Rules provides for the “Seniority” as under:

8. Seniority

The seniority inter se of persons appointed to posts in each cadre of the Service shall be determined by the length of continuous service on such post in that cadre of the Service :

Provided that in the case of persons recruited by direct appointment who join within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit determined by the commission or the Board, as the case may be, shall not be disturbed:

Provided further that in case a person is permitted to join the post after the expiry of the said period of four months in consultation with the commission or the Board, as the case may be, his seniority shall be determined from the date he joins the post:

Provided further that in case any person of the next selection has joined a post in the cadre of the concerned Service before the person referred to in the preceding proviso joins, the person so referred shall be placed below all the persons of the next selection who join within the time specified in the first proviso:

Provided further that in the case of two or more persons appointed on the same date, their seniority shall be determined as follows :—

- (a) a person appointed by direct appointment shall be senior to a person appointed otherwise;*
- (b) a person appointed by promotion shall be senior to a person appointed by transfer;*
- (c) in the case of person appointed by promotion or transfer, the seniority shall be*

determined according to the seniority of such persons in the appointments from which they were promoted or transferred ; and

(d) in the case of persons appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a person who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by their length of service in these appointments and if the length of such service is also the same, an older person shall be senior to a younger person.

Note : Seniority of persons appointed on purely provisional basis or on ad hoc basis shall be determined as and when they are regularly appointed keeping in view the dates of such regular appointment.

4.3.2 The Government is empowered by virtue of the provisions of Rule 19 to relax any of the provisions of the 1994 Rules when the Government is of the opinion for the reasons to be recorded in writing that it is necessary or expedient to do so and further under Rule 20 it has been provided that the 1994 Rules shall have effect notwithstanding anything contrary contained in any rules for the time being in force and provides as under :

20. *Overriding effect*

The provisions of these rules shall have effect notwithstanding anything contrary contained in any rules for the time being in force for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State.

4.4 *Circulars and Instructions issued for converting Temporary posts into permanent and de-linking confirmation from seniority*

4.4.1 The Hon'ble Supreme Court in Paramjit's Case (supra) considered the provisions of 1959 Rules including Rule 3 which specifically mentions that the Cadre in question consists of both permanent and temporary posts and ordered to firstly determine the vacancies and then fill it by following the Quota Rule on the ratio of 4:1 as mentioned above both at time of initial recruitment and at time of confirmation without any reference to working in a substantive capacity against a permanent post, still relevant to consider and mention that in the meantime, while all the aforesaid developments took place, the State of Punjab also passed the Policy regarding the conversion of the temporary posts into permanent ones. In said Policy dated 06.04.1968 (P-3 with CWP No. 6801 of 2013), the policy of the Government of India was decided to be adopted wherein 80% of the temporary posts other than Class IV posts are to be converted into permanent provided these have been in existence for a continuous period of not less than 3 years required for the work of a permanent nature. By the decision dated 04.07.1978 (P-4 with CWP No. 6801 of 2013), the Policy decision dated 06.04.1968 was reiterated. The temporary posts so mentioned had an element of permanence and were not a stop gap arrangement.

4.4.2 Thereafter, based on Government of India instructions, the **State of Punjab issued instructions dated 08.04.1991, delinking confirmation from availability of permanent posts.** The said instructions and other amendments as mentioned below have significance in view of the provisions of Rule 13 of the 1959 Rules. The said instructions gave out the procedure of confirmation which was missing in the 1959 Rules, even the definition of '**Lien**' was

accordingly amended. The relevant portions of the said instructions which are as follows:

“ The order of Confirmation of an employee should simultaneously follow when orders regarding satisfactory completion of the probation period is passed. It is also felt that it is equitable, fair and desirable to confirm a Government employee only once, in the service of his entry will stop they should be no need nor is there any justification for confirming him in different categories of services/posts during his subsequent career. It has now been decided to revise the following matters such as continuation, probation and lien as indicated below:

CONFIRMATION:

- i) Confirmation will be made only once in the service of an official which will be in the entry grade.*
- ii) **Confirmation is de-linked from the availability of permanent vacancy in the grade.** In other words, an officer who has successfully completed the probation may be considered for confirmation.*
- iii) The appointee should satisfactorily complete the probation.*
- iv) A specific order of confirmation will be issued when the case is cleared from all angles.*

LIEN:

*The concept of lien as the title of a Government servant to hold substantively a permanent post will undergo a change. Lien will now represent only the **right/title of Government servant to hold a regular post, whether permanent or temporary**, either immediately or on the termination of the period of absence.*

4.4.3 The said instructions were upheld by a Division Bench of this Hon’ble High Court vide judgment dated **20.05.2003 in CWP**

No.7821 of 2003 titled as “**Niranjan Singh Vs. State of Punjab**” while considering previous judgments, and agreeing with the judgments rendered in the case of ASI Sarabjit Singh, ASI Balwinder Singh (CWP No.4750 of 2000) while distinguishing the judgment rendered in the case of “ASI Bhupinder Singh & Ors. Vs. State of Punjab” decided on 28.02.2002.

4.4.4 Thereafter by the **Notification dated 28.05.1997**, the State of Punjab amended the Punjab Civil Services Rules w.e.f. 08.04.1991 thereby amending Rule 2.35 to mean RIGHT OR TITLE OF EMPLOYEE TO HOLD REGULAR POST, PERMANENT OR TEMPORARY, and omitting Rule 3.11 re SUBSTANTIVE APPOINTMENT AND LIEN.”

4.5 **Division Bench of this Court in :**

Gurpreet Singh Bhullar vs. State of Punjab 2008(2)
S.C.T. 632 (P&H)(DB)

4.5.1 It is not in dispute between the parties that vide Order dated 07/08.07.2005, the seniority list for the post of Deputy Superintendents of Police was finalized and this Seniority List came up for challenge before a Division Bench of this Court in CWP No. 12206 of 2005, which was decided on 10.04.2008 titled as “**Gurpreet Singh Bhullar Vs. State of Punjab & Ors.**” A perusal of the said judgment would reveal that based on the list of the Petitioners and Private Respondents with their service particulars, it was held by the Hon’ble DB that the fixation of seniority is not strictly as per the vacancies and in the ratio of four promotees and one direct recruit. The candidates have been neither recruited nor confirmed as per the vacancies available. It appears that 20% of the cadre strength was

kept in mind while granting seniority points to the direct recruits, though, even said assignment is not uniform.

4.5.2 The following findings and directions were given by the Hon'ble Division Bench in aforesaid CWP 12206 of 2005 :

19. The reasoning given by the State Government that the established practice of calculating the share of direct recruits and promotees on the basis of sanctioned posts of cadre is continuing for over 45 years, is in fact contradictory to the judgments of the Hon'ble Supreme Court. Such established practice, which is not in conformity with the enunciation of the law laid down by the Hon'ble Supreme Court, cannot be permitted to continue any longer. The recruitment and confirmation of the Officers has not been made as per the prescribed quota from the very inception of the cadre. It is also not correct when it is recorded by the State Government that issue of quota rule linked to vacancies was raised for the first time in the year 2000 in a writ petition filed by Shri A.S. Chahal. In fact, the quota rule linked to vacancies was a rule of law explained by the Hon'ble Supreme Court in the year 1979 itself. The Officers, who have been appointed to Indian Police Service otherwise than the seniority determined keeping in view the judgment of the Hon'ble Supreme Court cannot claim any legitimacy to continue as members of the Indian Police Service, though with a view to avoid hardship and to settle equities, we deem it appropriate not to order their reversion, but direct the respondents to consider the case of seniors ignored for appointment to the Indian Police Service with reference to the date of the empanelment of the juniors for appointment to the Indian Police Service. Therefore, we dispose of the present writ petitions and all miscellaneous applications by setting aside the order

of fixation of seniority list dated 7/8.7.2005 and all other orders of confirmation with directions to the State Government to finalise the seniority list within three months keeping in view the following principles :-

- 1. That the State Government shall firstly determine the vacancies available at the commencement of the Rules after taking into consideration the number of the Deputy Superintendents of Police available at the time of commencement of the Rules.*
- 2. Thereafter, the State Government shall assign seniority keeping in view the vacancies (not the posts), at the time of recruitment and confirmation as and when such vacancies arise from amongst the promotees and direct recruits in the ratio of 4 : 1. While assigning seniority to the promotees and direct recruits, the State Government shall also assign seniority to the candidates belonging to reserved categories in terms of the Rules and instructions applicable to such categories.*
- 3. If on re-determination of seniority, it is found that juniors have been appointed as members of Indian Police Service without considering the claim of seniors, the case of such seniors shall be considered for appointment with reference to the date on which juniors were appointed as IPS. However, this direction will be applicable only in respect of the candidates who are in service today. The cases of the candidates who have retired and are not members of the Service as on today, shall not be reopened and reconsidered. All future vacancies falling to the quota for*

promotees in the IPS shall be filled up in the above stated manner till such time the claim of all the seniors for empanelment to the IPS is considered, by the Review Departmental Promotion Committee.

4. The State Government shall not recommend any other member of the Service junior to Shri Lok Nath Angra for empanelment for appointment to the Indian Police Service till such time, claim for appointment to IPS of all seniors is considered as mentioned above.

4.5.3 Against the said judgment dated 10.04.2008, Review Application 19 of 2009 alongwith many other Review Applications were filed before the Hon'ble Division Bench and the said Review Applications were disposed of vide common Order dated 24.04.2009 by making the following observations :

“ x x x x

7. This Court has not issued any direction that the candidates have to be given seniority even if they are not eligible for appointment on a particular date. The eligibility conditions of appointment is a part of the Rules. Such Rules or any other Rules, as may be applicable, cannot be ignored while assigning seniority. Since it is only tentative seniority list, it shall be open to the promotee member of the Police Service to make a representation to the competent authority which shall be considered in accordance with law.

8. It has also been brought to our attention that the Punjab Civil Service (General and Common Conditions of Service) Rules, 1994 gives overriding effect to the Rules of seniority as contemplated in Punjab Police Rules, 1959. It shall be open to the members of the

Service to make a representation if such Rules have not been given effect to. Such representation shall be considered by the competent authority while finalizing the tentative seniority list.

9. It shall be open to any of the member of the Punjab Police Service, to submit his objections to the tentative seniority list which shall be taken into consideration and decided by the competent authority before finalising the seniority list.

X x x x”

4.5.4 Thus, it was observed that any Tentative Seniority List framed by the Department shall be subject to objections raised by the effected employees and after taking a decision on the said objections as well as the effect of 1994 Rules, fresh seniority list would be finalised within a period of 3 months from the date of passing of the order.

It would be appropriate to mention here that the aforestated judgment passed by the Hon’ble Division Bench was tested before the Hon’ble Supreme Court in case cited as “**M.S Sandhu and another versus State of Punjab and others**” **2014 (3) SCT 634**. The Hon’ble Supreme Court, while affirming the judgment passed by the Hon’ble Division Bench, held as follows:

“36. Notwithstanding the above, it would be appropriate to point out that the argument of the appellants that the operation of the rotational principle in quota would lead to inequitable results was refuted by the Respondents who submitted that by applying the principle as directed by this Court, the State Government has drawn out a seniority, the perusal of which shows that against the existing strength of the service of 450 there are 406 promotee officers as against 360 vacancies

falling to their share @ 80% and 44 direct recruits as against 90 vacancies to their share @ 20%. The further appointment to the promotion to the IPS cadre is made solely on the basis of merit and the ratio of officers which make it to the IPS from the State Service cannot be taken as an indicator of any discrimination resulting by virtue of the 1959 Rules. We find some substance in the aforesaid argument. Somewhat similar argument, as taken by the appellants before us, was commented upon by this Court in Maharashtra Vikrikar Karamchhari Sangathan v. State of Maharashtra, (2000) 2 SCC 552, at page 567:

"Lastly, it was contended on behalf of the appellants that some of the appellants have put in more than 17 years of service when a few of the direct recruits were either schooling and/or nor born in the cadre. If the appellants were to be pushed down, it would cause great hardship to them. We are unable to subscribe to this contention because if there is patent violation of the quota rule, the result must follow and the appellants who remained in the office for all these years cannot take the advantage of this situation. This submission is, therefore, devoid of any substance."

37. The operation of the Rules may result in harsh consequences as far as appellants are concerned. But on the vagaries of such outcomes, the Court cannot keep on interpreting a rule differently. It is more especially when the promotees being in excess of their quota have enjoyed the fortuitous appointment beyond their quota of vacancies.

38. Likewise, argument of the appellants that the quota rule had broken down would not cut much ice. First of all, such an argument was not even raised/pleaded, nor any material was placed on record

which shows that the adherence to the quota rule as possible leading to break down of the quota. Private respondents have made fervent plea that as a matter of record whenever State Government had endeavoured to make direct recruitment, vacancies had been duly filled with adequate number of candidates. Therefore, for want of any material no definite findings can be recorded on this aspect, more so, such a case was not pleaded before the High Court. May be, because of such situation recurring time and again either in favour of the promotees or in favour of the direct recruits, the Government has remedied the situation by amending the rules thereby bringing the rule of continuous length of service for determining the seniority. It is always open to the Government to take such steps for the benefit of all in the service and to ensure that the result is equitable. However, in the instant case, we do not find fault with the judgment of the High Court.

39. *We, accordingly, hold that the approach of the High Court in following the dicta laid down in Paramjit Singh was perfectly justified. Finding no merit in these appeals, the same are hereby dismissed. No costs. ”*

Meaning thereby, the crux of the matter that comes out is that the respondent-Police Department was required to draw the Seniority List as per the Roster System of 4 promotees followed by one direct Recruit, irrespective of the circumstances in which the post fell vacant and this process was to be followed at the time of recruitment as well as at the time of confirmation. Further, it was directed that the seniority list is to be drawn right after the framing of 1959 Rules till the latest Seniority List is drawn up. However, the effect of 1991 instructions and 1994 Rules were to be taken into

consideration by the Respondent-Police Department at the time of framing of the said Seniority List.

4.5.5 It is thus clear that in essence principle that was required to be followed also included that after the maximum extended period of probation, it would automatically be deemed that the candidate stands confirmed to the post and from that very day the seniority has to be reckoned.

4.5.6 Consequently, in compliance of the order dated 24.04.2009 passed in the Review Applications, the State of Punjab prepared a Seniority List on 16.12.2009, which was challenged before this Court in various Writ Petitions. During the pendency of the said Writ Petitions, Revised/Amended Seniority List was published on 07.09.2010 and 13.10.2010 respectively. However, vide order dated 20.05.2011, this Court ordered the Principal Secretary (Home) to file an Affidavit, explaining the basis of finalisation of the Seniority List, to which, he filed an affidavit dated 26.05.2011, which was later found to be contemptuous by the Hon'ble Division Bench of this Court. Nonetheless, a Seniority List of Officers up to 30.05.1994 was notified on 19.12.2011, wherein it was found that some were prematurely retired or dismissed from service or never confirmed were found unfit for Confirmation. On 18.12.2012, the State Government formed a Committee, which, in turn relying upon the recommendations made by the Ld. Additional Solicitor General, prepared the Seniority List dated 29.01.2013. **It is the lists dated 19.12.2011, the Confirmation Orders dated 19.12.2011, 05.03.2013 and Seniority List dated 29.01.2013 which are primarily under challenge in these set of Writ Petitions.**

5. Now, coming back to the facts of the present case, a brief factual background of each Writ Petition is being discussed as under:-

6. **CWP 6801 of 2013**

The 07 Petitioners are Promotees prior to 04.05.1994, had availed the benefit of relaxation of completion of 6 years of residency service as Inspectors by completing four years of service, have filed the present Writ Petition seeking quashing of the impugned Order of Confirmation dated 19.12.2011 (P-18) as well as Seniority Lists dated 19.12.2011 (P-19) and 29.01.2013 (P-25); with further directions to Respondent No. 1 - State of Punjab to pass fresh orders of Confirmation and Seniority in accordance with the Punjab Police Service Rules, 1959 in the light of the directions passed in CWP No. 12206 of 2005 decided on 10.04.2008 titled as **“Gurpreet Singh Bhullar Versus State of Punjab” 2008 (2) SCT 632 (P&H) (D.B).** The service particulars of both the parties i.e. the Petitioners as well as Private Respondents are as under:

Details of **Petitioners in CWP 6801 of 2013**

Sr.No	Petitioners	Date of Joining	Date of Confirmation	Seniority No. as per Seniority List (P-25)
1	Gurdial Singh	20.05.1993	04.05.1994	157
2	Rajpal Singh	11.05.1993	04.05.1994	165
3	Mandeep Singh	12.05.1993	04.05.1994	159
4	Manminder Singh	12.05.1993	04.05.1994	168
5	Ashok Kumar Bath	15.05.1993	04.05.1994	166
6	Opinderjit Singh Ghuman	07.10.1993	01.11.1995	234
7	Satinder Singh	12.04.1994	01.03.1997	295

Details of Respondents in CWP 6801 of 2013

Sr.No	Respondents direct recruit	by	Date Joining	of	Date Confirmation	of	Seniority number as per Seniority list (P.25)
3	Sukhawant Gill	Singh	08.08.1994		08.08.1996		5
4	Amrit Brar		16.08.1993		07.09.1996		469
5	Harcharan Singh		30.09.1993		08.08.1996		471
6	Charanjit Kumar		08.02.1994		08.08.1996		481
7	Jaspreet Singh		07.09.1994		08.08.1996		10
8	Gurmeet Singh		08.08.1994		08.08.1996		15
9	Naveen Saini		08.08.1994		09.08.1996		20
10	Sukhminder Singh		08.08.1994		10.08.1996		25
11	Surinderjit Singh		08.08.1994		08.08.1996		30
12	Snehdeep Sharma		09.08.1994		09.08.1996		40
13	Kanwaldeep Singh		10.08.1994		10.08.1996		45
14	Sandeep Goyal		11.08.1994		11.08.1996		50
15	Jasdev Singh		09.08.1994		09.08.1996		55
16	Sandeep Kumar		12.08.1994		12.08.1996		60
17	Parambir Singh		10.08.1994		10.08.1996		65
18	Rajbachan Singh		17.08.1994		17.08.1996		70
19	Gurpreet Singh		16.08.1994		16.08.1996		75
20	Rupinder Singh		16.08.1994		16.08.1996		80
21	Harbhajan Singh		19.08.1994		19.08.1996		85
22	Sarabjit Singh		19.08.1994		19.08.1996		90
23	Sushil Kumar		10.08.1994		10.08.1996		95
24	Harpreet Singh		19.08.1994		19.08.1996		100

7. CWP 2642 of 2012

The 02 Petitioners namely, Iqbal Singh and Rajindar Kumar Sharda are again the Promotees who were promoted prior to 04.05.1994 and are aggrieved against the order of Confirmation dated 19.12.2011 (P-28) as well as in Seniority List dated 19.12.2011 (P-29) issued by Respondent No. 1 with a similar prayer to direct the Respondent to reframe the Seniority and prepare the Confirmation Order as per law. The details of petitioners and the private respondents are as follows:

Details of Petitioners in CWP 2642 of 2012

Sr.No	Petitioners	Date of Joining	Date of Confirmation	Seniority number
1	Iqbal Singh	21.06.1989	01.06.1992	457
2	Rajinder Kumar Sharda	31.10.1989	01.11.1992	460

Details of Respondents in CWP 2642 of 2012

Sr.No	Respondents	Date of Joining	Date of Confirmation	Seniority number
5	Balkar Singh	21.04.1990	21.04.1990	399
6	Gurinder Singh Dhillon	21.04.1990	21.04.1990	400
7	Mohnish Chawla	21.04.1990	21.04.1990	401
8	SPS Parmar	21.04.1990	21.04.1990	402
9	Amar Singh	21.04.1990	21.04.1990	403
10	Jatinder Singh Aulakh	21.04.1990	21.04.1990	404
11	Mukhwinder Singh Chhina	21.04.1990	21.04.1990	405
12	Paramdip Singh Sandhu	21.04.1990	21.04.1990	406
13	Jaskaran Singh	21.04.1990	21.04.1990	407
14	Yurinder Singh	21.04.1990	21.04.1990	408
15	AK Mittal	21.04.1990	21.04.1990	409
16	Gursharan Singh	21.04.1990	21.04.1990	410
17	K.B Singh	21.04.1990	21.04.1990	411
18	S.K. Kalia	21.04.1990	21.04.1990	412
19	Parminder Singh	21.04.1990	21.04.1990	413
20	Shammi	21.04.1990	21.04.1990	414
21	Ranbir Singh Khatra	21.04.1990	21.04.1990	415
22	Tulsi Ram	21.04.1990	21.04.1990	416
23	Sukhdev Singh Bhatti	21.04.1990	21.04.1990	417
24	Dilbag Singh	21.04.1990	21.04.1990	418
25	Mohinder Singh	21.04.1990	21.04.1990	419
26	Baljot Singh Rathore	21.04.1990	21.04.1990	420

27	Gurpreet Singh Bhullar	04.01.1991	04.01.1991	432
28	Gurpreet Singh Gill	23.01.1991	23.01.1991	433
29	Surjit Singh	28.01.1991	28.01.1991	434
30	Harjinder Singh	30.01.1991	30.01.1991	435
31	Hardial Singh Mann	05.03.1991	05.03.1991	437
32	Harbaj Singh	05.03.1991	05.03.1991	438
33	Gurpreet Singh Toor	15.03.1991	05.03.1991	439

8. CWP 5310 of 2012

Civil Writ Petition 5310 of 2012 has been preferred by Surinder pal Singh and Rupinder Pal Singh Bajwa (who are Promotees prior to 04.05.1994) and have challenged the seniority list as well as Confirmation Order of even date dated 19.12.2011. The grievance of these Petitioners is that their names have neither been shown in the Confirmation Order nor in the Seniority List, despite the fact that in the Tentative Seniority List (P-10) upto 12 05/09/2024 (P10) their names were shown at Serial No. 75 and 82 respectively. The service particulars of the parties i.e. the petitioners as well as private respondents reads as under:

Details of Petitioners in CWP 5310 of 2012

Sr.No	Petitioners	Date of Joining	Date of Confirmation	Seniority number
1	Surinder Pal Singh	24.11.1989	01.04.1992	N.A.
2	Rupinder Pal Singh Bajwa	01.12.1989	01.04.1992	N.A

Details of Respondents in CWP 5310 of 2012

Sr.No	Respondents	Date of Joining	Date of Confirmation	Seniority number
4	Balkar Singh	21.04.1990	21.04.1990	399

5	Gurinder Singh Dhillon	21.04.1990	21.04.1990	400
6	Mohnish Chawla	21.04.1990	21.04.1990	401
7	SPS Parmar	21.04.1990	21.04.1990	402
8	Amar Singh	21.04.1990	21.04.1990	403
9	Jatinder Singh Aulakh	21.04.1990	21.04.1990	404
10	Mukhwinder Singh Chhina	21.04.1990	21.04.1990	405
11	Paramdip Singh Sandhu	21.04.1990	21.04.1990	406
12	Jaskaran Singh	21.04.1990	21.04.1990	407
13	Yurinder Singh	21.04.1990	21.04.1990	408
14	AK Mittal	21.04.1990	21.04.1990	409
15	Gursharan Singh	21.04.1990	21.04.1990	410
16	K.B Singh	21.04.1990	21.04.1990	411
17	S.K. Kalia	21.04.1990	21.04.1990	412
18	Parminder Singh	21.04.1990	21.04.1990	413
19	Shammi	21.04.1990	21.04.1990	414
20	Ranbir Singh Khatra	21.04.1990	21.04.1990	415
21	Tulsi Ram	21.04.1990	21.04.1990	416
22	Sukhdev Singh Bhatti	21.04.1990	21.04.1990	417
23	Dilbag Singh	21.04.1990	21.04.1990	418
24	Mohinder Singh	21.04.1990	21.04.1990	419
25	Baljot Singh Rathore	21.04.1990	21.04.1990	420
26	Gurpreet Singh Bhullar	04.01.1991	04.01.1991	432
27	Gurpreet Singh Gill	23.01.1991	23.01.1991	433
28	Surjit Singh	28.01.1991	28.01.1991	434
29	Harjinder Singh	30.01.1991	30.01.1991	435
30	Hardial Singh Mann	05.03.1991	05.03.1991	437
31	Harbaj Singh	05.03.1991	05.03.1991	438
32	Gurpreet Singh Toor	15.03.1991	15.03.1991	439

9. CWP No. 5311 of 2012

Civil Writ Petition No. 5311 of 2012 has been filed by

Rajindar Pal Singh Brar and Paramjeet Singh Grewal ((who are

Promotees prior to 04.05.1994) and have challenged the Seniority List as well as Confirmation Order of even dated 19.11.2012. The service particulars of the parties concerned is as follows:

Details of **Petitioners in CWP No. 5311 of 2012**

Sr.No.	Petitioners	Date of Joining	Date of Confirmation	Seniority number
1	Rajinder Pal Singh Brar	26.05.1986	01.04.1989	380
2	Paramjit Singh Grewal	05.02.1987	01.11.1989	392

Details of **Respondents in CWP No. 5311 of 2012**

Sr.No.	Respondents	Date of Joining	Date of Confirmation	Seniority number
4	Arpit Shukla	08.04.1987	08.04.1987	319
5	Paramraj Singh	03.09.1987	03.09.1987	332

10. CWP 6430 of 2013

The Civil Writ Petition is filed by 02 Petitioners who are Promotees confirmed after 04.05.1994 and have also taken the benefit of relaxation of experience from 6 years to 4 years being aggrieved against the Seniority List dated 29.01.2013 (P-1) and the Confirmation Order dated 05.03.2013 (P-1/A) and have sought the relief for framing Seniority in accordance with Punjab Civil Service (General and Common Conditions of Services) Rules, 1994 by considering their services as per Rule 8 of the 1994 Rules wherein the seniority is to be determined on the basis of continuous length of service. The service particulars of both the parties i.e. the petitioners as well as private respondents read as under:-

Details of the **Petitioners in CWP 6430 of 2013**

Sr.No	Petitioners	Date of Joining	Date of Confirmation	Seniority number
1	Harmanbir Singh Gill	12.04.1994	01.03.1997	296
2	Ashwani Kapur	28.04.1994	01.03.1997	297

Details of **Respondents in CWP No. 6430 of 2013**

Sr. No	Respondents by direct recruit	Date of Joining	Date of Confirmation	Seniority number
3	Sukhawant Singh Gill	08.08.1994	08.08.1996	5
4	Jaspreet Singh	07.09.1994	08.08.1996	10
5	Gurmeet Singh	08.08.1994	08.08.1996	15
6	Naveen Saini	08.08.1994	08.08.1996	20
7	Sukhminder Singh	08.08.1994	08.08.1996	25
8	Surinderjit Singh	08.08.1994	08.08.1996	30
9	Snehdeep Sharma	09.08.1994	09.08.1996	40
10	Kanwaldeep Singh	10.08.1994	10.08.1996	45
11	Sandeep Goyal	11.08.1994	11.08.1996	50
12	Jasdev Singh	09.08.1994	09.08.1996	55
13	Sandeep Kumar	12.08.1994	12.08.1996	60
14	Parambir Singh	10.08.1994	10.08.1996	65
15	Rajbachan Singh	17.08.1994	17.08.1996	70
16	Gurpreet Singh	16.08.1994	16.08.1996	75
17	Rupinder Singh	16.08.1994	16.08.1996	80
18	Harbhajan Singh	19.08.1994	19.08.1996	85
19	Sarabjit Singh	19.08.1994	19.08.1996	90
20	Sushil Kumar	10.08.1994	10.08.1996	95
21	Harpreet Singh	19.08.1994	19.08.1996	100

11. **CWP No. 13203 of 2013**

The Petitioner-Ajay Maluja is aggrieved against the decision dated 06.06.2013 (P-19) issued by Union Public Service Commission; Letter dated 04.06.2013 (P-18) written by Secretary Home, Government of Punjab whereby representation of petitioner against Seniority List dated 19.12.2011 (P-10) and 29.01.2013 (P-12) has been rejected; further praying for quashing of impugned Confirmation Orders dated 19.12.2011 (P-9) and 05.03.2013 (P-13), whereby Confirmation has been ordered to relate back to the date of actual/substantive appointment of an employee upon the successful

completion of probation period which according to the petitioner is illegal and arbitrary. The service particulars of both the parties i.e. petitioners as well as private respondents read as under:

Details of Petitioner in CWP No. 13203 of 2013

Sr.No	Petitioner (Promotee)	Date of Joining	Date of Confirmation	Seniority number
1	Ajay Maluja	12/05/93	12/05/94	167

Details of Respondents in CWP No. 13203 of 2013

Sr. No.	Respondents by Direct Recruit	Date of Joining	Date of Confirmation	Seniority No.
8	Amrit Brar	16.08.1993	16.08.1993	469
9	Harcharan Singh	30.09.1993	30.09.1993	471
10	Charanjit Kumar	08.02.1994	08.02.1994	481
11	Sukhwant Singh Gill	08.08.1994	08.08.1996	5
12	Jaspreet Singh	07.09.1994	07.08.1996	10
13	Gurmeet Singh	08.08.1994	08.08.1996	15
14	Naveen Saini	08.08.1994	08.08.1996	20
15	Sukhminder Singh	08.08.1994	08.08.1996	25
16	Surinderjit Singh	08.08.1994	08.08.1996	30
17	Snehdeep Sharma	09.08.1994	09.08.1996	40
18	Kanwaldeep Singh	10.08.1994	10.08.1996	45
19	Sandeep Goyal	11.08.1994	11.08.1996	50
20	Jasdev Singh	09.08.1994	09.08.1996	55
21	Sandeep Kumar	12.08.1994	12.08.1996	60
22	Parambir Singh	10.08.1994	10.08.1996	65
23	Rajbachan Singh	17.08.1994	17.08.1996	70
24	Gurpreet Singh	16.08.1994	16.08.1996	75
25	Rupinder Singh	16.08.1994	16.08.1996	80
26	Harbhajan Singh	19.08.1994	19.08.1996	85
27	Sarabjit Singh	19.08.1994	19.08.1996	90
28	Sushil Kumar	10.08.1994	10.08.1996	95
29	Harpreet Singh	19.08.1994	19.08.1996	100
30	Iqbal Singh (Promotee)	21.06.1989	01.06.1992	455

12. SUBMISSIONS OF THE PARTIES

12.1 The **Petitioners – Promotees** have raised their arguments in two parts i.e. **Firstly**, in respect of Seniority prior to 04.05.1994 which as per their submissions is to be guided and governed by Punjab Police Service Rules, 1959 and based on the

directions of the Hon'ble Supreme Court in case of "Paramjit Singh and others Versus Ram Rakha and others" 1979 AIR (SC) 1073 & "Paramjit Singh and others Versus Ram Rakha and others" 1983 AIR (SC) 314 as further guided by directions issued by the Hon'ble DB of this Court in "Gurpreet Singh Bhullar vs. State of Punjab, 2008 (2) S.C.T. 632 (P&H) (DB); and **Secondly**, in respect of the Seniority list w.e.f. 04.05.1994 based on Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 read with Punjab Police Service Rules, 1959:

12.2. In respect of the Seniority prior to 04.05.1994, it has been submitted on behalf of the Petitioners Promotees that:-

(i) Specific directions issued by the Division Bench of this Court in "Gurpreet Singh Bhullar vs. State of Punjab" are violated insofar as in the Seniority List dated 19.12.2011, Officers who were already in service prior to 01.12.1959 were also given a slot on the basis of the confirmation given after 01.12.1959. This despite the fact that the Division Bench had directed calculation of vacancies on 01.12.1959 and as per the settled law laid down by the Hon'ble Supreme Court in Paramjeet Singh's case.

(ii) While giving the date of confirmation, as against the rule of confirmation requiring minimum 2 years probation extendable by one year in case of Direct Recruits, confirmation was done from the initial date of appointment (on the pretext of availability of vacancies

available to the quota of Direct Recruits being prior to the date of Appointment).

(iii) Confirmation from the date of initial appointment and not on completion of probation is completely violative of Rule 8 of the 1959 Rules which has been interpreted by the Hon'ble Supreme Court in Paramjeet Singh's case.

(iv) Roster point have not been followed in the Seniority List dated 19.12.2011 which was liable to be followed at both stages-Recruitment as well as Confirmation

(v) Seniority list is intentionally manipulated by adopting different criteria at different points of time. While at the time of recruitment, no issue of "Substantive Vacancy" was introduced, however this was used at the time of Confirmation, so as not to confirm Promotee Officers, and thereby assigning them seniority from the date of such confirmation. This has been done despite confirmation for purposes of seniority not requiring a permanent post, and only vacancies. This anomaly is being created by the Respondents by using the word 'substantive vacancy' by completely misdirecting themselves for the reason that substantive appointment can be made against temporary post of permanent nature as well. In the Cadre of DSPs all posts, permanent as well as temporary, have been existing and continuing all along.

(vi) The reasoning adopted by the State that Seniority List prepared on the basis of confirmation only in case of availability of 'substantive vacancy' (against permanent post only) completely nullifies the entire exercise taken by the Hon'ble Supreme Court in Paramjeet Singh's case. The issue of "confirmation only in case of availability of substantive vacancy (against permanent post)", has already been obviated by the Hon'ble Supreme Court in Para 3 of its judgment.

12.3 In respect of the Seniority List w.e.f. 04.05.1994, it has been submitted on behalf of the Petitioner Promotees that :

(i) the impugned orders of fixing the seniority and the Confirmation are liable to be set aside on the ground of complete non application of mind at the hands of respondent:-

(a) It does not record any 'vacancy' position of both the Streams i.e. direct recruits and the Promotees;

(b) Gives no subsequent finding regarding excess of any one quota viz-a-vis the other;

(c) Completely ignores Rule of Seniority as per 1994 Rules

(d) does not take note of any order of relaxation granted to the Direct Recruits in terms of Rule 19 of the 1994 Rules instead there is a general relaxation.

(e) Passes the order on same date of receipt of legal opinion.

(ii) Annexure P-18 (in CWP No. 6801 of 2013 i.e. Final Seniority List dated 19.12.2011) is contrary to the principle of natural justice since in the tentative Seniority List circulated on 01.01.2009 in compliance of the directions passed by the Division Bench of this Court in CWP No.12206 of 2005 titled "Gurpreet Bhullar Vs. State of Punjab" was to the satisfaction of the petitioners and there were no objections submitted against the same, therefore, while taking a decision vide the impugned Order the adverse material in the shape of the opinion was never put to the petitioners.

(iii) On facts, the orders of Seniority and Confirmation are erroneous.

(iv) Assume everything done in law is correct even then the mandate of the Division Bench Judgment is not implemented.

(i) direction qua determination of vacancies w.e.f. 01.12.1959 not determined and, as a direct consequence

(ii) the allocation/assignment towards the vacancy position existing on 04.05.1994 would not be correctly determined.

(v) On the promulgation of 1994 Rules and being operational at the time of finalization of the Seniority list of DSPs, the principles of 4:1 as interpreted to be followed as per 1959 Rules, could not be introduced while affixing of Seniority under the 1994 Rules.

(vi) Lastly the general relaxation given by invoking the Rule 19 of 1994 Rules in favour of the Direct Recruits in the impugned Seniority (P-25) without there being specific orders for reasons to be recorded and thereby giving the direct recruits their dates of entry as

the date of seniority before completion of their probation periods cannot be sustained, as per settled law.

12.4 The submissions of the State of Punjab as well as the private Respondents for Seniority List prior to 04.05.1994 are as under:-

(i) The Seniority List prepared is as per the directions given by the Hon'ble Division Bench of this Court in "Gurpreet Singh Bhullar versus State of Punjab and others" as well as of the Hon'ble Supreme Court in Paramjeet Singh's case.

(ii) In case it is assumed that continuous length of service is the only parameter then it would lead to an eventuality that only a particular category of DSPs would be considered for induction to the IPS and the non filling up of posts for year would prejudice a complete category of officers. Hence the issue with respect to confirmation viz-a-vis the seniority coupled with 4:1 provided in the Rules would settle the issue of seniority to be determined amongst the members of service alone to govern the field.

(iii) It is also argued that in the absence of any challenge laid by the Petitioners / Promotees for an order seeking confirmation of service for the last several years, it would itself negate the claim of the Petitioners / Promotees being hit by delay and laches. Furthermore, mere confirmation upon completion of probation itself is

not ipso facto confer a right to claim seniority unless there is availability of vacancy. Reliance in this regard is placed on “Kazia Mohd. Vs. State of Karnataka & Ors” 2010(8) SCC 155 whereby it has been held that deemed confirmation position follow unless specifically provided for in the Rules. Hence, it is argued that there is no such order on record that would show that under Rule 8-A, the Government had passed any speaking order with respect to confirmation of services of the petitioners.

(iv) So far as the issue with respect to the applicability of Punjab Civil Service (General & Common Conditions) Rules, 1994 is concerned, the Respondent have submitted that the applicability of the 1994 Rules would only arise in a situation, wherein, the 1959 Rules do not address for a particular situation. The mere fact that the seniority is to be determined as per continuous length of service, would not create any right in favour of the petitioners as to claim the said benefit, the employee concerned ought to have continuous length of service on a valid and available vacant post. Hence the employee ought to be a member of service and unless and until a employee becomes a member of service, no right accrues to him for claiming seniority in any respect whatsoever.

(v) The Seniority List has rightly been determined in light of the legal position as well as Statutory Rules. The

State Government has consciously maintained the balance and equities in the ratio of 4:1 and the petitioners have been granted seniority strictly in terms of the Rules. The pleadings and documents attached in support of the petition do not point any single order to support or prove the fact that the petitioners had been granted any benefit of seniority by virtue of any specific order of confirmation. There is nothing on record to support their claim of deemed confirmation and such principle of deemed confirmation cannot operate dehors the Statutory Rules which requires a specific order certifying satisfactory completion of probation period, thus, the claim of the petitioners is wholly misconceived and devoid of merits.

(vi) As far as the position with respect to the availability of vacancies is concerned, this Hon'ble Court directed the State Government on 19.12.2015 to file an Affidavit with respect to the position with respect to number of permanent and temporary posts. It is a matter of record that for the relevant time in question, 144 posts of permanent nature of DSPs were available coupled with certain additional posts. However, the State Government failed to provide details about the orders by which the temporary posts were converted. The State Government in its Affidavit dated 27.01.2016 clarified the position with respect to availability of posts and the petitioners have failed to support their claim by

filing any Affidavit or pleading in support of the stand taken by the State Government. The petitioners/Promotees were required to supplement their arguments in light of the vacancy position explained by the State Government in order to step into the shoes of the Private Respondents or to claim any benefit over and above them. The mere fact that no rejoinder/counter has been filed to the Affidavit dated 27.01.2016 and in light of the fact that the petitioners do not have any record to support their claim of deemed confirmation, the petitioners cannot be granted seniority on misplaced sympathies and the Writ Petition is wholly devoid of merits. Still further, it may be relevant to mention here that Government in its Affidavit has stated that there are total 85 temporary posts of DSPs as on 01.01.1988, whereas the order attached with the Affidavit whereby such temporary posts were created are only in relation to 38 posts of DSPs. The source of creation of remaining 47 posts is nowhere explained and cannot be read in favour of the Petitioners / Promotees in any manner whatsoever.

*(vii) The DSPs appointed after 04.05.1994 will be governed by rule of seniority from date of confirmation and availability of permanent posts. To claim any benefit of Seniority, an employee ought to be holding a substantive cadre post (reference **Tilak Raj Bhalla Vs. State of Punjab & Ors. 1988 (1) ILR 239**. The Hon'ble*

Supreme Court of India in “State of Rajasthan Vs. J.N. Chaturvedi” 2009(12) SCC 49 has held that to become a member of service a candidate must be appointed in substantive capacity; the post in service must be a substantive vacancy; should be made in accordance with Rule and within the prescribed quota prescribed by the source. It is submission of the respondents that the petitioners have failed to satisfy the test for claim benefit of a cadre post or to suggest that they were members of service at any period of time in the absence of any specific Rule supporting their claim of alleged deemed confirmation.

(viii) The claim of the petitioners is further proved to be devoid of merits in light of the fact that the State Government had admittedly forwarded the cases of the petitioners / Promotees and other officers to the PPSC for consultation as per the provisions of the Rules and approval for bringing them on List ‘G’ was granted by the Commission only on 09.12.1999 and the petitioner who were junior to them were brought to List ‘G’ thereafter hence they became entitled to promotion and seniority only thereafter. The service rendered prior to the mandatory consultation with the Commission cannot be counted for seniority. The Petitioners/Promotees have failed to establish that Commission while scrutinizing the records and passing the orders granted any retrospectivity to the process. The petitioner and

other offices have thus been granted benefit of the service prior to the consultative consent on the basis of equitable considerations.

(ix) *The 1994 Rules became applicable on Punjab Police w.e.f. 18.08.2010 i.e. the date on which 1959 Statutory Rules were amended to include the provisions of the 1994 Rules qua the rule governing seniority. It is further argued that the general rules cannot be applied when there are specific rules provided for the Punjab Police. The private respondents had also relied upon the seniority as per confirmation for this particular service of DSPs as settled by the Hon'ble Court in Paramjit Singh Vs. Ram Rakha 1979 AIR (SC) 1073.*

(x) *Regarding the applicability of 1994 Rules, the private respondents have argued that the Rules came into force on 04.05.1994 wherein the rule of seniority became the continuous length of service. Reliance have been placed on the affidavit dated 04.07.2018 filed by the State of Punjab that as on 04.05.1994, the cadre strength of DSPs was 346 and out of 346 144 were permanent posts while 202 were temporary posts. Against 144 regular posts 96 promotees were working and 48 direct recruits were working. Against the 202 temporary posts, 295 DSPs were working who were all promotees. It is argued that the petitioners promotees cannot claim seniority over and above the respondents beyond their cadre strength and quota and above the*

private respondents who were working within their quota.

(xi) It has been argued that the State Government forwarded the cases of petitioners and other officers to the PPSC for consultation for approval for bringing them on List G and said approval was only granted on 09.12.1999 when the petitioners could be brought on List G. Thus the petitioners can only be considered for promotion and become entitled to seniority only after they are brought on List G. There is no retrospectivity granted in the order bringing the petitioners on List G.

DISCUSSION

13. Based on the rival contentions and the pleadings of the parties, the findings of this Court are categorized in two categories based on the period from 01.12.1959 to 03.05.1994 (Seniority List dated 19.12.2011) and from 04.05.1994 onwards (Seniority List dated 29.01.2013) as under:

01.12.1959 to 03.05.1994.

14. The impugned Seniority List dated 19.12.2011 deals with the seniority of DSPs up to 03.05.1994 i.e. before coming into force of 04.05.1994 Notification (1994 Rules). This is a list which pertains to all 485 officers i.e. 418 Promotees and 67 Direct Appointees w.e.f. 01.12.1959 to 03.05.1994.

15. A perusal of the impugned Confirmation Order dated 19.12.2011 would show that it pertains to 418 promotees as well as 67 Direct Appointee Officers (total for 85) enumerated under 4

different Tables i.e. A, B, C and D and the details of which read as under:-

Table-A:- Pertains to 80 Promotee Officers and covers the period upto 31.12.1974.

Table-B:- Pertains to 17 Direct Appointee Officers and covers the period upto 31.12.1974.

Table-C:- Pertains to 338 Promotees (Sr.No.81 to 418) and covers the period w.e.f 01.01.1975 to 03.05.1994.

Table-D:- Pertains to 50 Direct Officers (Sr.No.18 to 67) and covers the period w.e.f. 05.11.1985 to 03.05.1994.

16. Seniority List (Annexure P-29) pertains to all 485 officers i.e. 418 Promotees as well as 67 Direct Recruits w.e.f. 01.12.1959 to 03.05.1994.

The Seniority List of Deputy Superintendent of Police from Direct Appointee and Promotee Quota upto 03.05.1994 is to be fixed in terms of the 1959 Rules and compliance of the directions given in the judgment passed in Hon'ble Supreme Court in Paramjit Singh v. Ram Rakha, 1979 AIR (SC) 1073 and clarified in Paramjit Singh v. Ram Rakha Mal, 1983 AIR (SC) 314 and further by the Hon'ble Division Bench of this Court in Gurpreet Singh Bhullar vs. State of Punjab dated 10.04.2008 and further clarified in Review Order dated 24.04.2009.

17. The Respondent State in the impugned Order dated 19.12.2011 has stated that the determining factors for the grant of confirmation from 01.12.1959 to 31.12.1974 is based on the Notification No. 8132/CON.5A-6 dated 04.06.1981.

Further for the period 01.01.1975 to 03.05.1994 in the impugned Confirmation List dated 19.12.2011, the Respondent State has treated the date of 'substantive appointment' as basis for the fixation of seniority. The State justifies such action on the ground that if an officer has successfully completed his probation then his confirmation whenever made should relate back to the date of his actual substantive appointment and none would suffer due to delay in confirmation. Even the Rota Quota rule is applied while determining the substantive vacancies against which the orders of confirmation are passed.

18. Further, in the affidavit dated 04.07.2018 filed by the Additional Secretary to Government of Punjab, Department of Home Affairs & Justice it has been admitted that the temporary posts have not been taken into consideration for confirmation upto 04.05.1994. Thus, only the permanent posts have been considered for confirmation thus the impact has come adverse to the seniority of the Promotee Officers of the Punjab Police Service.

19. The bare perusal of Table 'A' and 'B' in the Confirmation List read with Seniority List dated 19.12.2011 shows that the ***determination of the vacancies available at the Commencement of the Rules*** after taking into consideration the number of the Deputy Superintendents of Police available at the time of commencement of the Rules i.e. on 01.12.1959 has not been carried out and consequently the seniority has not been fixed keeping in view the vacancies, at the time of recruitment in the ratio of 4 : 1 by following the rotational system while giving confirmation. The quota rule has not been applied to vacancies (temporary or permanent

and filled in any manner by promotion, absorption, direct appointment) that arose between 01.12.1959 to 01.01.1975.

20. The Respondent State while fixing the seniority and passing the orders of confirmation have failed to determine the vacancies (temporary or permanent and filled in any manner by promotion, absorption, direct appointment) that arose between 01.12.1959 to 03.05.1994, thereafter, apply the Quota Rule 4 : 1 (Four Promotees to One Direct Appointment) on recruitment on such date be shown to be made keeping in view the vacancies available to the two sources according to the quota on the said date as directed by the Division Bench of this Court vide Judgment dated 10.04.2008 in **Gurpreet Singh Bhullar's Case (supra)**, duly upheld by the Hon'ble Supreme Court in **M S Sandhu's case (supra)** (as noticed hereabove in Para 4.4.2 to 4.4.4). The Respondent State was bound to consider that whenever vacancies occur in the service, the Appointing Authority will recruit according to Quota, wherein, first four promotees will be recruited irrespective of the factors or circumstances causing the vacancies and as soon as four promotees are recruited thereafter one direct recruit is to be recruited/placed and follow the same for the purpose of confirmation.

21. The date of 'substantive appointment' to become the basis for the fixation of seniority is against the judgment of the Hon'ble Supreme Court in the year 1979 and further explained in the year 1981 as also in complete overlooking of the provision of Rule 3 of 1959 Rules which provides that the service comprises of the posts including both permanent and temporary. The Cadre of the Deputy Superintendent of Police in Punjab Police Service consists of both

permanent and temporary posts and the recruitment and the confirmation of the Officers by following the quota rule cannot be restricted to the date of 'substantive appointment' and same has to be based on the availability of vacancies whether permanent or temporary. Ordinarily the availability of permanent posts may have relevance as a parameter for confirmation but in the instant case we are dealing with a cadre wherein recruitment is made from two different sources and they integrate into a common cadre wherein the seniority is to be determined according to the date of confirmation and the quota rule is to be made relatable to confirmation in various posts (both permanent and temporary) falling vacant in the cadre. It is in this context that the directions of the Hon'ble Supreme Court in Paramjit's case (supra) are relevant that whenever vacancies occur, First four (04) promotees, irrespective of the factors or circumstances causing the vacancies would be recruited and then the 5th Vacancy would go to a Direct Appointment and the same Rule is to be followed in 'confirmation'. **The State Government has acted in breach of the directions and the principles laid down by the Hon'ble Supreme Court in Paramjit Singh's case (supra) and the Judgment dated 10.04.2008 passed in CWP 12206 of 2008.**

22. It is required to be considered that "**Confirmation**" is a concept in service jurisprudence which is understood in a particular manner that the confirmation is to be made against a substantive vacancy so that the appointee has a lien against such post but in the peculiar facts of the case concerning the seniority of the DSPs in Punjab Police Service, the concept was diluted by the Hon'ble Supreme Court in case "**Paramjit Singh v. Ram Rakha**", 1979 AIR

(SC) 1073, wherein in Para 13 the following observations were made :

13. Now, if the other view is taken that the quota rule would apply both at the time of recruitment and at the time of confirmation, Rule 10 which provides for seniority according to the date of confirmation would certainly be saved from the vice of unreasonableness. Is such a construction possible? One need not stretch the language to bring about the desired result but in this case upon a harmonious reading of Rules 3, 6, 8 and 10, the conclusion is inescapable that quota rule is operative both at the time of initial recruitment and at the time of confirmation. If the rule of seniority were one otherwise than according to date of confirmation it would not have become necessary to apply the quota rule at the stage of confirmation but in this case the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice it will be difficult to hold that the seniority rule is not unreasonable and does not offend. Article 16 (see S. G. Jaisinghani's case). Quota rule is linked up with seniority rule because, not the date of entry in service determines the seniority but the date of confirmation determines seniority and, therefore, quota rule is inextricably intertwined with the seniority rule and any delinking would render the seniority rule wholly unreasonable.

Any other view would lead to the most undesirable result wholly unintended by the framers of the rule. It must be remembered that after recruitment, members of the service, though drawn from two different sources - direct recruits and promotees - constitute a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in the respective assignments.

In this background in **S. B. Patwardhan's case**, this Court held that if the promotees are treated with an evil eye and an unequal hand in the matter of seniority as was done under Rule 8(iii), the rule would suffer from the vice of unreasonableness and would offend Article 16 and it was actually struck down. An exactly identical situation would follow here if quota rule is applied at the stage of initial recruitment and wholly ignored at the time of confirmation because in that event while direct recruits will get confirmation automatically, the promotees would hang out for years and if they are not confirmed they would never get seniority and their chances of being considered for promotion to the higher post would be wholly jeopardised. To avoid this utterly unconscionable outcome the construction we have put on Rule 8 would be in consonance with justice and reason.

The said findings are to be read with Para 6 of the Judgment in **Paramjit Singh Sandhu v. Ram Rakha Mal**, 1983 AIR (SC) 314, wherein the following observations were made :

6. In our opinion there is no ambiguity in the judgment. Ordinarily speaking, where recruitment is from two sources with a view to integrating recruits from both sources after the recruitment seniority is determined from the date of entry into the cadre except where there has been a substantial violation of the quota giving undeserved advantage to one or the other source. Seniority ordinarily speaking is determined with reference to the date of entry into the cadre which in service jurisprudence is styled the date of continuous officiation. These notions of service jurisprudence may have to yield place to the specific rules and the fact situation with reference to Rule 10 did compel this Court

to depart from the normal concept in service jurisprudence. However, introduction of a roster system is very well known in service jurisprudence. What this Court meant while saying that when a quota rule is prescribed for recruitment to a cadre it meant that quota should be correlated to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. Promotees who come to the service at an advanced age may retire early and direct recruits who enter the service at a comparatively young age may continue for a long time. If, therefore, in a given year larger number of promotees retire and every time the vacancy is filled in by referring to the source from which the retiring person was recruited it would substantially disturb the quota rule itself. Therefore, while making recruitment quota rule is required to be strictly adhered to. That was what was meant by this Court when it said : "The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota." The quota in the present case is 4 : 1 that is, four promotees to one direct recruit. Therefore, whenever vacancies occur in the service the appointing authority has to go on recruiting according to quota. **In other words, whenever vacancies occur, first recruit four promotees irrespective of the factors or circumstances causing the vacancies and as soon as four promotees are recruited bring in a direct recruit. That was what was meant by this Court when it said that a roster has to be introduced and this roster must continue while giving confirmation.** The sentence which seems to have created a difference of opinion reads as under :

"A roster is introduced while giving confirmation ascertaining every time which

post has fallen vacant and the recruit from that source has to be confirmed in the post available to the source."

The Hon'ble Supreme Court have passed the aforestated directions by keeping into consideration the provisions of **Rules 3, 6, 8 and 10 of the 1959 Rules** and have considered in specific to the occurrence of the vacancies in context of Rule 3 of 1959 Rules to be the **vacancies both permanent and temporary** and not only the permanent vacancies.

23. Furthermore, in the instant case, there is no denial of the fact that State Government came up with a Policy for the conversion of 80% temporary posts into permanent posts and the criteria for the same was that said temporary posts are in existence for a continuous period of not less than three years and are required for the work of permanent nature and said Policy decisions were taken as back as 06.04.1968 and reiterated by the Policy dated 04.07.1978. Furthermore, on 08.04.1991, the confirmation of the Officer was de-linked from the availability of permanent vacancy. The whole exercise of the passing of the order of confirmation on availability of permanent post will not be applicable in the case as the relevant Rule 10 of the 1959 Rules was read by the Hon'ble Supreme Court in **Paramjit's case (supra)**. The availability of a substantive vacancy against a permanent post was not a criteria or requirement for the confirmation when the temporary posts with element of permanent work filled by following and fulfilling the eligibility criteria was fulfilled by the Officers promoted on such posts. The issue regarding the work in the substantive capacity though not against a permanent

post is well recognized in our service jurisprudence and discussed in detail in the following paragraph. **With the conjoint reading of the provisions of 1959 Rules including Rule 3 thereof, the Hon'ble Supreme Court made no distinction between the permanent and the temporary posts towards the application of the quota in the ratio of 4 : 1 for the Promotees and the Direct Recruits.**

24. Furthermore, the concept of confirmation and the temporary and permanent and the service in *substantive capacity* came up for consideration in ***Baleshwar Dass v. State of U.P.*, (1980) 4 SCC 226 : 1980 SCC (L&S) 531 at Page 241**

“29. Substantive capacity is a flexible expression which cannot be frozen by current officialese, nor by the conditions that obtained in the remote past when the rule was framed. On the contrary, its meaning must be consistent with Article 16 and must avoid the pitfalls of arbitrariness and irrational injustice. So viewed, we hold that the appointment need not necessarily be to a permanent post. It is sufficient even if it is to a temporary post of long duration. In a department which had permanent posts and temporary posts of a quasi-permanent nature, there is not much to distinguish the quality of service as between the two.

Patwardhan case [S.B. Patwardhan v. State of Maharashtra, (1977) 3 SCR 775, 793-795, 796 : (1977) 3 SCC 399, 417, 418, 420 : 1977 SCC (L&S) 391, 409, 410, 412] and Chauhan case [N.K. Chauhan v. State of Gujarat, (1977) 1 SCC 308, 328 : 1977 SCC (L&S) 127, 147 : (1977) 1 SCR 1037, 1057] have primarily or in passing clarified the equal value of officiating service.

30. In Patwardhan case [S.B. Patwardhan v. State of Maharashtra, (1977) 3 SCR 775, 793-795, 796 : (1977) 3 SCC 399, 417, 418, 420 : 1977 SCC (L&S) 391, 409,

410, 412] , Chandrachud, J. (as he then was) observed in the course of the discussion: [SCC p. 417: SCC (L&S) p. 409, para 33]

“There is no universal rule, either that a cadre cannot consist of both permanent and temporary employees or that it must consist of both.”

Later, the learned Judge observed in the same strain: [SCC p. 418: SCC (L&S) p. 410, para 36]

“ The fact that the permanent strength of the cadre was determined on the basis of permanent posts at any given time, as for example when the Bombay Government passed resolutions on March 22, 1937 and April 13, 1945 cannot detract from the position that even temporary posts of Deputy Engineers were treated as additions, though temporary, to Class II cadre. ”

X x x x x x

In Chauhan case [N.K. Chauhan v.State of Gujarat, (1977) 1 SCC 308, 328 : 1977 SCC (L&S) 127, 147 : (1977) 1 SCR 1037, 1057] this Court observed: [SCC p. 328 : SCC (L&S) p. 147, para 40]

“ Seniority, normally is measured by length of continuous officiating service — the actual is easily accepted as the legal.”

*Of course, an appointee to a permanent post acquires certain rights which one who fills a temporary post cannot claim. **Nevertheless, when the post is not purely temporary or ad hoc or of short duration or of an adventitious nature, the holder of such temporary post cannot be degraded to the position of one who by accident of circumstance or for a fugitive tenure occupies the temporary post for a fleeting term. We must make this distinction not only to be truthful to the***

facts of Service life but also to do justice to those who have otherwise rendered long and satisfactory work in the Irrigation Department. In short, while we do make a distinction between permanent and temporary posts, when we come to the dimension of mere seniority, we whittle down the difference considerably. A post of short duration, say of a few months, is different from another which is terminologically temporary but is kept on for ten or more years under the head “temporary” for budgetary or other technical reasons. Those who are appointed and hold temporary posts of the latter category are also members of the Service provided they have been appointed substantively to that temporary post.

31. What, in the context, is a substantive capacity vis-à-vis an appointment to a post? In our view, the emphasis imparted by the adjective “substantive” is that a thing is substantive if it is “an essential part or constituent or relating to what is essential”. [Black's Legal Dictionary, 4th Edn., p. 1597] We may describe a capacity as substantive if it has “independent existence” or is of “considerable amount or quantity”. What is independent in a substantial measure may reasonably be described as substantive. Therefore, when a post is vacant, however designated in officialese, the capacity in which the person holds the post has to be ascertained by the State. Substantive capacity refers to the capacity in which a person holds the post and not necessarily to the nature or character of the post. To approximate to the official diction used in this connection, we may well say that a person is said to hold a post in a substantive capacity when he holds it for an indefinite period especially of long duration in contradistinction to a person who holds it for a definite or temporary period or holds it on probation subject to confirmation.

32. *Once we understand “substantive capacity” in the above sense, we may be able to rationalise the situation. If the appointment is to a post and the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the tests prescribed have been taken and passed, if probation has been approved, one may well say that the post was held by the incumbent in a substantive capacity.*

33. *The Government will ascertain from this angle whether the capacity in which posts have been held was substantive or temporary. If it is not, the further point to notice is as to whether the appointments are regular and not in violation of any rule, whether the Public Service Commission's approval has been obtained and whether probation, medical fitness etc., are complete. Once these formalities are complete, the incumbents can be taken as holding posts in substantive capacities and the entire officiating service can be considered for seniority. For other purposes they may remain temporary. It may well be that another interpretation may make Rule 23 vulnerable. If a public servant serves for a decade with distinction in a post known to be not a casual vacancy but a regular post, experimentally or otherwise kept as temporary under the time-honoured classification, can it be that his long officiation turns to ashes like a Dead Sea fruit because of a label and his counterpart equal in all functional respects but with ten years less of service steals a march over him because his recruitment is to a permanent vacancy? We cannot anathematize officiation unless there are reasonable differentiations and limitations.*

X x x x ”

25. Further, the Hon’ble Supreme Court in **A.K. Subraman**

v. Union of India [(1975) 1 SCC 319] held that :

“ *The quota rule will be enforced with reference to vacancies in all posts, whether permanent or temporary, included in the sanctioned strength of the cadre (except such vacancies as are purely of a fortuitous or adventitious nature)*”

The Hon’ble Supreme Court further in ***P.S. Mahal v.***

Union of India [(1984) 4 SCC 545]

“ *It is therefore obvious that if a vacancy arises on account of an incumbent going on leave or for training or on deputation for a short period, **it would be a fortuitous or adventitious vacancy** and the quota rule would not be attracted in case of such a vacancy. But where a vacancy arises on account of the incumbent going on deputation for a reasonably long period and there is no reasonable likelihood of the person promoted to fill such vacancy having to revert, the vacancy would be subject to the quota rule It is, therefore, apparent that what has to be considered for the applicability of the quota rule is a vacancy in a post included in the sanctioned strength of the cadre*

26. The reliance placed by the Respondents on ***O.P. Garg v. State of U.P.***, 1991 Supp (2) SCC 51 is misplaced as the facts of the said case were different and the provisions of the Rules 1975 involved in controversy therein were not similar to Rule 3, 6, 8 and 10 of the 1959 Rules and the seniority for the posts in the cadre from the date of confirmation was not settled by the Hon’ble Supreme Court by laying the principle of 4:1 quota to be followed for the promotees and the direct recruits towards the fixation of their seniority upon confirmation.

In the instant case the vacancies in the posts of DSP by promotion against the temporary and permanent posts for continuous period were long term vacancies and they could not be regarded as fortuitous or adventitious in character and were to be considered as substantive vacancies for the purposes of confirmation. The stand of the Respondent State that the confirmation is to be made against a substantive vacancy against permanent posts is totally erroneous and is contrary to provisions of Rule 3, 6, 8 and 10 of the 1959 Rules.

27. The linking of the recruitment and the following confirmation for the purpose of seniority with the availability of ‘substantive appointment’ against a permanent post by ignoring the temporary posts though officiation against such posts was in substantive capacity and the confirmation being made only against the permanent posts is wrong and is thus rejected and the Seniority List and Confirmation List dated 19.12.2011 is quashed.

04.05.1994 onwards

28. The impugned Order of Seniority and the Seniority List dated 29.01.2013 deals with the seniority of DSPs from 04.05.1994 onwards i.e. on coming into force of 04.05.1994 Notification (1994 Rules). This is a list which pertains to seniority of the Punjab Police Officers - Promotees and Direct Appointees w.e.f. 04.05.1994 onwards. As per the Order dated 29.01.2013, the Respondent State mentions that the State Government vide Notification dated 04.05.1994 has notified “Punjab Civil Services (General & Common Conditions of Service) Rules, 1994” and acknowledges the provisions that continuous length of service shall determine the seniority of

persons appointed to post in each cadre and not confirmation. The State Government in view of these provisions claims to have constituted a Committee for framing the seniority of PPS Officers w.e.f. 04.05.1994 onwards. It was based on the recommendations dated 15.01.2013 made by the said Committee, the provisions of Punjab Civil Services (General & Common Conditions of Service) Rules, 1994, instructions dated 08.04.1991 and the directions of this Hon'ble Court along with the opinion of the Additional Solicitor General of India, New Delhi and granting relaxation under Rule 14 of 1959 Rules, the seniority of the Punjab Police Service Officers w.e.f. 04.05.1994 onwards is formulated and finalized.

29. The Seniority List (Annexure P-29) pertains to all Punjab Police Service Officers w.e.f. 04.05.1994 stated to be in accordance with the provisions of the 1994 Rules but a bare perusal of the impugned Final Seniority List dated 29.01.2013 shows that the seniority has been given as per the date of joining but the ratio of 4:1 i.e. Four Promotees followed by One Direct Appointment irrespective of the continuous length of the service of the said Direct Appointment has been made basis for the fixing of the seniority which is contrary to the provisions of Rule 8 of the 1994 Rules.

30. It has been argued by the counsel for the respondents that the 1994 Rules have no applicability and the seniority of the PPS Officers will be guided by Rule 10 of the 1959 Rules only as the Special Law will have precedence over the General Law. In reply to the said argument, the counsel for the petitioners have made reference to the judgment of the Division Bench of this Court in “**Baldev**

Prasad Kashyap vs. State of Punjab”, (P&H)(DB) 2003(2) S.C.T.

113, wherein dispute arose between the applicability of the provisions of Punjab Town Planning State Service (Class-I) Rules 1972 under which seniority cum merit was the criteria for promotion, and Rule 8 of Punjab Civil Services (General and Common Conditions of Service) Rules 1994 under which merit-cum-seniority was the criteria for selection / promotion to the post of Chief Town Planner. According to Rule 20 of 1994 Rules, the provisions of the 1994 Rules shall have effect notwithstanding anything contrary in any rules for the time being in force for regulating the recruitment and conditions of service for the appointment to public service and post in connection with the affairs of the State. It was held that since following the 1994 Rules, the private Respondent therein was found above in merit to the petitioner therein, there was no illegality in the appointment by Selection. It was held that by virtue of Rule 20, the 1994 Rules have overriding effect notwithstanding anything contrary in any rules for the time being in force for regulating the recruitment and conditions of service under the State. The following Paragraph is relevant :

“7. A persual of Rule 20 of the 1994 Rules, shows that this Rule has overriding effect. In this Rule it is stated that "the provisions of these rules shall have effect notwithstanding anything contrary in any rules for the time being in force for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State." This being the position, the respondents have rightly promoted respondent No. 2 as Chief Town Planner who is above the petitioner in merit.”

Further in **Darshan Singh v. State of Punjab (P&H) 2011(4) S.C.T. 89**, the dispute between the applicability of the provisions of Rules 2, 5 and 7 of Punjab Animal Husbandry (Class I) Service Rules, 1996 and Rules 2, 6, 18 and 20 of Punjab Civil Services (General and Common Conditions of Services) Rules, 1994 (amended) was adjudicated towards promotion to post of Director Animal Husbandry and Fisheries, Punjab. The Petitioner therein challenged the promotion of Respondent No. 2 therein on the ground that he being more Senior should be considered for promotion and whether merit-cum-seniority or seniority-cum-merit is to be followed. It was held, that Rule 7 of the Animal Husbandry Rules, 1996 itself directs the application of 1994 Rules in respect of matters as are not specifically provided in the 1996 Rules and where there is any variance or conflict between the 1996 Rules and 1994 Rules with regard to method of recruitment, educational qualification and experience etc., the General and Common Conditions of Service Rules, 1994, would prevail. It was held that as per Rule 18 of the 1994 Rules, promotion to the post of Head of Department i.e. Director would be decided strictly on the basis of merit-cum-seniority and the minimum bench mark for such promotion would be 'Very Good' - The officer who is graded as 'Outstanding' would supersede the officer graded as 'Very Good'. Relevant Para nos. 16 and 17 of the cited judgment reads as under :

“16. The controversy can be conveniently and effectively resolved by interpretation of the two sets of rules. No doubt, the specific service/recruitment rules primarily and principally govern and regulate the service conditions of the members of service, however,

if, the rule itself provides a window for application of any other rule or law, such other rule or law has also its application to the extent so permitted by such window or if, any other law or rule contained a clause or stipulation for superseding any other rule or law to the extent of effect of supersession, the other rule or law would prevail. It is in this legal scenario the two rules are to be examined. Rule 7 of the Animal Husbandry Rules itself directs the application of 1994 Rules in respect of such matters as are not specifically provided in the 1996 Rules. Thus, when 1996 Rules were framed, the rule making authority was conscious of the existence of the 1994 Rules which may have the effect of even exclusion of specific service rules. Though, 1994 Rules are common to all the services but contain some special provisions by virtue of Rule 7 of 1996 Rules. These common service rules have been specifically applied to the extent there is no provision in the 1996 Rules. It is in disputed that 1996 Rules do not contain any specific provision for the post of Head of Department. It is equally admitted position that the Head of Department as also the post of Joint Director are Class-I posts with new nomenclature as Class-A by virtue of 2001 amendment to the common service rules. In absence of any specific provision in the recruitment rules i.e., Animal Husbandry Rules, the 1994 Rules would prevail by virtue of Rule 7 referred to herein above.

17. Apart from above Rule 6 of the 1994 Rules on which much emphasis has been laid by Mr. Atma Ram, itself provides that the method of recruitment and qualifications etc. as prescribed under the specific service rules are subject to the provisions of general and common conditions of service Rules, 1994. The opening sentence of Rule 6, thus reads "subject to the provisions of these rules". The service rules will govern the recruitment etc. Thus, where there is any variance or

conflict between the specific rules of a service and the general and common conditions of service rules in regard to the method of recruitment, educational qualification and experience etc. the general and common conditions of service would prevail. This position is further strengthened by virtue of Rule 20 of the general and common conditions of service rules which gives overriding effect to the common conditions of service rules over all other rules to the extent there is any contrary provision contained therein for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State. The non-obstante clause in Rule 20 is sufficient enough to ignore any rule to the extent of inconsistency with the general and common conditions of service rules. ”

The Hon’ble Supreme Court in “**M.S. Sandhu v. State of Punjab**” 2014(3) S.C.T. 634, while considering the controversy of the instant Cadre in reference to Punjab Police Service Rules 1959, and the *inter se* seniority between the direct recruits and promotees, in reference to the 1994 Rules, the following observations were made :

*“38. Likewise, argument of the appellants that the quota rule had broken down would not cut much ice. First of all, such an argument was not even raised/pleaded, nor any material was placed on record which shows that the adherence to the quota rule as possible leading to break down of the quota. Private respondents have made fervent plea that as a matter of record whenever State Government had endeavoured to make direct recruitment, vacancies had been duly filled with adequate number of candidates. Therefore, for want of any material no definite findings can be recorded on this aspect, more so, such a case was not pleaded before the High Court. **May be, because of such situation***

recurring time and again either in favour of the promotees or in favour of the direct recruits, the Government has remedied the situation by amending the rules thereby bringing the rule of continuous length of service for determining the seniority. It is always open to the Government to take such steps for the benefit of all in the service and to ensure that the result is equitable. However, in the instant case, we do not find fault with the judgment of the High Court. ”

31. In this regard it is also appropriate to appreciate the established principles for interpreting the effect of General Rules vis a vis the Special Rules. The law on this point is well settled to the effect that from the consideration of the general enactment if the intention of the legislature was to establish a rule of universal application, in such cases, a special provision must give way to the general provision. *In M/s Dalmia Dadri Cement Co. Ltd. v. The Commissioner of Income Tax, 1959 SCR 729 at 737*, the Hon’ble Supreme Court observed:-

“ Now the rule of construction expressed in the maxim generalia spcialibus non derogant is well settled, and we shall also assume in favour of the appellant that the agreement Ex. A, is a special law in the nature of a private Act passed by the British Parliament, and that accordingly Section 3 of the Ordinance should not be construed, unless the contrary appears expressly or by necessary implication, as repealing the provisions of Ex. A. But ultimately, the question is what does the language of the enactment mean? ”

It is settled law that if the language is clear and unqualified, general rule would prevail. In the case of *Ajay Kumar Banerjee v. Union of India, 1984(3) SCC 127* (Page 153) the

Hon'ble Supreme Court dealt with the rule of interpretation with regard to the general law as well as the special law and held as under :-

" The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied: (i) The two are inconsistent with each other. (ii) There is some express reference in the later to the earlier enactment. If either of these two conditions is fulfilled, the later law, even though general, would prevail."

The Court further held:

" From the text and the decisions, four tests are deducible and these are (i) The Legislature has the undoubted right to alter a law already promulgated through subsequent legislation, (ii) A special law may be altered, abrogated or repealed by a later general law by an express provision, (iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, Maxwell on the interpretation of Statutes, Twelfth Edition, pages 196-198."

Further, in the case of **R.S. Raghunath v. State of Karnataka and another, 1992(1) SCC 335 : 1991(3) SCT 355 (SC)**, the Hon'ble Supreme Court dealt with the Karnataka General Services (Motor Vehicle Branch) (Recruitment) Rules, 1976. In concurring judgment, Kuldip Singh, J. observed:

" Even the general law later in time, prevails over the earlier special law if it clearly and directly supersedes the said special law - is an unexceptionable proposition of law. "

The reliance on this judgment by the counsel for the private respondents to advance his arguments of primacy of the 1959 Rules is totally misplaced on a careful reading of the judgment.

32. Furthermore, against the said argument regarding the non applicability of 1994 Rules, it has been admitted stand of the Respondent State that 1994 Rules have been adopted and override the 1959 Rules with effect from 04.05.1994 i.e. order of Notification of the 1994 Rules. In this regard reference is made to the impugned Order dated 29.01.2013 wherein the following is mentioned:-

*" And whereas, State Govt. vide Notification dated 04.05.1994 has notified the Punjab Civil Service (General & Common Conditions of Service) Rules, 1994 in which it has been provided that continuous length of service shall determine the seniority of persons appointed to posts in each cadre and not confirmation...
..... "*

33. As noticed above, under the provisions of the 1994 Rules, Rule-8 provides that the seniority inter-se of persons appointed to posts in each Cadre of the Service shall be determined by the length of continuous service on such post in that cadre of the Service. Rule 8 of the 1994 Rules read in conjunction with Rule-3 of the 1959 Rules clearly shows that the seniority inter-se of Direct Recruits and Promotees Deputy Superintendents of Police in the Punjab Police Service shall be determined by the length of continuous service on such post in that Cadre irrespective of the fact whether such service

has been performed on a temporary or the permanent post in the Cadre of Deputy Superintendents of Police. In the Committee Report dated 15.01.2013 (Annexure P-12), admitted to have been relied by the Respondents in preparing the impugned Seniority List dated 29.01.2013, it is mentioned that the Committee was unanimous on certain points as mentioned Para 3 of the said Committee Report to the following effect:-

“a) According to the Punjab Civil Services (General & Common Conditions of Service) Rules, 1994, the seniority of PPS officers will be fixed on the basis of continuous length of service.

XXXXXX

c) Rule 3 of the Punjab Police Service Rules, 1959 read with the Rule 6 of the Punjab Civil Services (General & Common Conditions of Service) Rules, 1994, all the temporary and permanent vacancies will be treated as entire cadre.”

The Committee after consideration of Rule 3 of Punjab Police Rules, 1959 read with Rule 6 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 have concluded that all the temporary and permanent vacancies are treated as entire cadre.

34. The State Government in its affidavit dated 15.05.2013 submitted during the course of proceedings have admitted that the seniority of PPS officers prior to 04.05.1994 was governed by Rule 10 of Punjab Police Service Rules, 1959 and w.e.f. 04.05.1994 onwards seniority is to be governed by the provisions of Punjab Civil Services (General & Common Conditions of Service) Rules, 1994. It is clear from the provisions of Rule 3 of the Punjab Police Services

Rules, 1959 that the cadre (service) consists of both permanent and temporary posts.

35. Thus it can concluded on the basis of the above judicial pronouncements, the statutory provisions and conceded position by the Respondent State that 1994 Rules have overriding effect and have primacy over the provisions of 1959 Rules and will have applicability w.e.f 04.05.1994 and prevail over 1959 Rules in assigning the *inter-se* seniority of the cadre of Punjab Police Service based on the continuous length of service. An appointee shall become member of the service when he is appointed against a post (temporary or permanent) available in his prescribed quota. The argument of the Respondents that the 1994 Rules became applicable on Punjab Police w.e.f. 18.08.2010 i.e. the date on which 1959 Statutory Rules were amended to include the provisions of the 1994 Rules qua the rule governing seniority, is not tenable and hence rejected because the 1994 Rules by its enforcement on 04.05.1994 and by virtue of the provisions of Rule 20 therein had an overriding effect on anything contrary contained in the prevailing laws concerning the conditions of service. The amendments carried out in 1959 Rules in year 2010 was an abundant precaution to incorporate the applicable provisions in the 1959 Rules itself which were enforced and are applicable on the Punjab Police Service Officers w.e.f. 04.05.1994 itself.

Post 04.05.1994, the quota of 80% Promotee Officers and 20% Direct Recruits operate in its own field of recruitment to the Punjab Police Service and the date of confirmation will have its play towards the successful completion of probation but will have no concern and effect towards the fixation of the seniority of the Officers

in the Punjab Police Service Cadre as the inter-se seniority in the cadre of Punjab Police Service will be fixed based on the continuous length of service on the post (temporary or permanent) available in the prescribed quota in the Cadre alone without any reference to the ratio of 4:1.

36. The impugned Order dated 29.01.2013 regarding the seniority of the PPS Officers posts 04.05.1994 based on 4:1 principle i.e. the placing of Four Promotee based on their date of joining followed by One Direct Appointment based on his date of joining, applied to the vacancies post 1994 Rules is unlawful and illegal being contrary to and in conflict with the provisions of Rule 8 of the 1994 Rules cannot be sustained and is hereby set aside.

ANCILLIARY ISSUES

37. The respondents have raised the objection regarding the relaxation and the Petitioners (Promotees) not been borne in the cadre on the date they are seeking inclusion in the seniority list as the cases of the Petitioners were sent for List 'G' only around the year 1999 onwards only; and they cannot claim any service in the Cadre before this period. The plea / objection is untenable and hence liable to be rejected. In this regard, reference is made to the **Division Bench judgment dated **10.04.2008** of this Court in CWP No. 12206 of 2005, **Gurpreet Singh Bhullar Vs. State of Punjab 2008(2) S.C.T. 632 (P&H)**, wherein relying upon a earlier Division Bench judgment of this Court rendered in **“Tulsi Ram versus State of Punjab”**, which in turn relied on the Hon’ble Supreme Court Judgment in case of **“Direct Recruit Class– II Engineering Officers’ Association Vs State of****

Maharashtra” (1990) 2 SCC 715, as mentioned in Para 14 and 15, and held in case of seniority dispute of the present DSPs that,

*“14. It is also pointed out that the seniority as depicted in the gradation list got the approval of the Division Bench of this Court in the judgment reported as **Tulsi Ram v. State of Punjab and others, 2001(3) SCT 266 (P&H) : 2002(5) SLR 409**. Therefore, the same issue cannot be raised again. In the said case the writ petitioner was the directly appointed DSP appointed in pursuance of advertisement in the year 1989. The petitioner joined on 21.4.1990. The challenge was to the promotions made against 80% posts required to be filled up by promotion from amongst the candidates, inter alia, on the ground that their names were not brought on list 'G' without the approval of the Public Service Commission and in relaxation of the condition of 6 years experience. The promotions were made by relaxation of the qualification though the proposal of the State Government to amend the Rules so as to reduce the experience of continuous service as an Inspector for a period of 6 years to 4 years was not acceded to by the Public Service Commission.*

*15. This Court held that though initially appointment was not made in accordance with sub Rule 2 of Rule 6, but with the approval by the Commission, the promotee-DSPs are entitled to the benefit of their temporary service. It was held that the case of promotees is covered by proposition-B as held by the Supreme Court in the case of **Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra, (1990)2 SCC 715**. It was held by this Court to the following effect :-*

"When we consider the case of the private respondents in the light of the aforesaid two propositions it became crystal clear that their case is covered by proposition (B). Their initial appointment was no doubt not made in accordance with sub-rule (2) of Rule 6 of the Rules in as much the approval of the Commission had not been obtained when they were promoted

nor their names were brought on list 'G' but the promotees of the 1989 batch after their promotion concerned on the post uninterruptedly till their services were regularised by the Commission when it accorded approval to their names being brought on list 'G' with effect from the dates they were promoted. They are, therefore, entitled to the benefit of their temporary service which they rendered as DSPs and that service has to count towards their seniority."

*A perusal of the aforesaid judgment **concludes two issues; first**, that relaxation of six years continuous service to be eligible for promotion to four years is valid; and **secondly** the promotee-officers are entitled to count their temporary service towards seniority, even if their names were not brought on list-G. ”*

Emphasis supplied

From the above it is evident **(i)** that the relaxation of experience from six years to four years was held valid, and **(ii)** that even the delayed/later grant of List “G” would not preclude the Promotee Officers from claiming their seniority from the original dates of their promotion provided approval was granted by the Public Service Commission. To a pointed query, it was conceded that all the promotee officers sooner or later were granted List “G” and approval by the PPSC.

This finding is further fortified by the stand of the State (furnished alongwith brief synopsis by the counsel for the Petitioners and not objected to) before this Court in its reply filed in **CWP No. 15145 of 2001** titled **“Parambir Singh Parmar Vs State of Punjab and others”** involving the issue of requisite relaxation granted to promotees’ and inclusion of their names in List G much later than

their appointments as DSP. The relevant Para 5 of the same for ready reference is reproduced herein below :

“5. In reply to this para, it is submitted that the proposal was sent to the Govt vide memo No. 29/Con.SA-6 dated 23.10.1989 to relax the experience from 6 years to 4 years for promotion of Inspector to the rank of DSP as a one time exception under the provision of Rule 14 of the PPS Rules, 1959 which was accepted by the Gov vide Memo No 1/35/85-1H(I)/38122 dated 3.11.1989. This relaxation was, however, extended upto 31.2.1994 on year-to-year basis as Rule 14 of the rules ibid confers powers upon the Govt to relax any of the provisions of the rules when Govt is of the opinion that it is necessary or expedient so to do. This relaxation was ordered keeping in view the fact that many posts of DSPs were created under ‘Action Plan’ new police districts, Commando Units in Districts, 5 Commando Bns and 5 IR Bns etc and were lying vacant to meet out the operational necessity against the terrorists violence and the fact that eligible Inspectors having six years service were not available. The State govt allowed relaxation in service experience for the first time on 3.11.1989 and issued promotion orders of 44 Inspectors to the rank of DSPs on 23.11.1989 who assumed their charge on promotion as DSP in November/December 1989.

Thus, the relaxation given by the State Govt in this case is legal and not arbitrary in any manner under rule 14 of the PPS Rules, 1959 which confers the power upon Govt to relax any of the provisions of the said rules on the State Govt. This proposal was considered by the Govt in the Department of Home Affairs and Justice in consultation with the Department of Personnel and the same was accepted by the Government vide I.D. No. 9/16/62-4HI dated

22.10.1992. The state Govt promoted the Inspectors of Police having 4 years or more service on 23.11.1989 against the promotion quota posts and direct quota posts of DSPs were kept reserved from them and on receipt of recommendation from the P.P.S.C., the selected candidates including the petitioners were appointed as DSP on 8.2.1994 against their direct quota posts. The contents of the petitioners that the respondent State promoted numerous Inspectors of Police who were not even borne on List 'G' is wrong and denied as the P.P.S.C. have adjudged the suitability of promotee DSPs from the dates when they were promoted as DSP after taking them on List 'G' vide State Govt order No. 15/122/2000-1H3/1411 dated 23.4.2001, 1/352/H3/1496 dated 30.4.2001 and 15/123/2001/1H3/2016 dated 19.6.2001 and the promotions made by the Govt of the and 15/123/2001/1H3/2016 dated 19.6.2001 and the promotions made by the Govt of the Inspectors of Police to the posts of DSPs cannot be termed as irregular as contended by the petitioners. It is further submitted that the petitioners have misconstrued that the Inspectors who were promoted as DSP in relaxation of length of service (from 6 to 4 years) and were allowed next increment after completing 6 years service in the rank of Inspectors. Infact, granting of financial benefits has no concern with the fixation of Inter-se seniority between directly appointed and promotees as this version of the petitioner does not stand scrutiny of specific provisions made in Rule 10 of PPS Rules, 1959, regarding fixation of seniority of members of the service. It is further submitted that the averments made by the petitioner that the Rule 14 of the PPS Rules, 1959, subsequently was amended and the words Class and category were substituted for any particular case is denied being wrong as no such amendment was carried

out in the aforesaid rules.

”

Thus the objection raised by the respondents regarding the non inclusion of the names of the petitioners in List G at the time of their initial promotion (temporary or permanent) is without any basis and is rejected.

38. It is apposite to mention here that the action of the Respondent State in considering the availability of only the permanent posts of DSPs towards the fixing of seniority / dates of confirmation, to pre and post 1994 periods, is not only against the repeated directions passed by the Hon'ble Supreme Court and this Court, but also against the provisions of Rule 3 of the 1959 Rules, whereby the cadre of DSP includes both temporary and permanent posts. The said action is also contrary to the circulars and instructions issued by the State of Punjab as reproduced and discussed in Para 4.4 here above prohibiting conversion of temporary posts into permanent posts (as per norms) and de-linking confirmation from availability of permanent posts. Hence the said action is declared illegal.

39. At this stage and in view of the findings recorded above, this court is fully conscious of the impact of the re-framing of the seniority lists and confirmation Orders w.e.f. 01.12.1959 and it is in fact an admitted position that Officers of the Punjab Police Service based on the prevailing and impugned seniority lists have reached higher ranks and some have retired in those ranks earning pension commensurating with pay of such ranks. No fault can be attributed to the officers for the promotions and career advancement earned based on the erroneous seniority assigned by the act of the State Government. Furthermore, in a uniformed disciplined service, rank

has prominence and such rank is reflected by the badges - emblems and stars demonstrated on the shoulders of each officer. The re-framing of the seniority if resulting into reversions in rank or re-fixation of pension on a lower rank / scale appears to be rather unjust and would be unfair to such officers. This Court is of the considered opinion that the validly earned promotions of the Punjab Police Service Officers are protected and would not result in any reversion or down scaling of the pay and allowances of effected serving officers. Similarly, the rank and pay of the officers having retired with the earned promotions with the pensionary and retirement benefits is protected from the effects of the re-framing of the seniority and the confirmation list pursuant to the findings and the directions of this Court. This is the requirement of a fair and just treatment to the senior officers of the State who have earned their promotions fulfilling the eligibility conditions though based on their turn in the erroneous seniority lists and in any case will be a short term arrangement as the Promotee Officers have short span of remaining service after their promotion from the subordinate ranks and would be at the fag end of their career and on verge of their retirement.

40. Based on the aforestated findings, this court is not going into other arguments as the issue in controversy having been clinched by the aforestated findings and considerations.

41. Consequently, **the present Civil Writ Petitions are allowed, the impugned Seniority Lists dated 19.12.2011 and 29.01.2013 are set aside alongwith all orders of confirmation** with the following DIRECTIONS:-

1. The State Government shall exclude the names of the Officers / DSPs occupying posts before 01.12.1959; and seniority from 01.12.1959 to 03.05.1994 shall be assigned in consonance with the provisions of Rule 10 of the 1959 Rules by :

(a) Firstly, determining the vacancies of Deputy Superintendents of Police (whether against a temporary or permanent post) available and filled in any manner between 01.12.1959 to 03.05.1994 and place the appointed officers / DySPs to / against the said vacancies from the initial date, on principle of 4 : 1 (Four Promotees followed by One Direct Appointment) and the confirmation being followed on the same principle of 4 : 1 between the Promotee and the Direct Appointment respectively subject to the Promotee fulfilling the eligibility conditions for the said post (except where exempted by relaxation) and appointment having been validly made.

The Officers / DySPs shall be assigned seniority in the order of confirmation so arrived at upto the total sanctioned posts (both permanent and temporary) as on 03.05.1994.

This would be so because, no doubt, the confirmation has been de-linked from availability of permanent post in the quota, however, availability of sanctioned post, be it temporary or permanent would still be required for confirmation.

(b) No seniority shall be assigned to any Officer, validly appointed, prior to his joining in the Cadre of DySP on temporary or permanent basis. If there is non availability of Officer in the sequence of 4:1 at the relevant place/stage of the list of recruitment/ confirmation then a gap would be kept on such vacancy.

(c) When all the vacancies as determined between 01.12.1959 to 03.05.1994 are filled and seniority assigned on the aforesaid principle, then the seniority list of DySP appointed upto 03.05.1994 will be frozen. Some officers whether Promotee or Direct Appointment who remain to be adjusted, shall spill over to be governed by the rule of seniority as per the provisions of the 1994 Rules.

2. For the vacancies available as on 04.05.1994 and arising thereafter shall be determined and the persons appointed shall be assigned seniority on the basis of

continuous length of service against the post available in their quota. The State Government shall assign seniority w.e.f 04.05.1994 based on the continuous length of service on the post, both permanent or temporary in the Cadre subject to availability of that post within the assigned quota of 80% for promotee and 20% for direct appointee. There will be no applicability of principle of 4 : 1 between the Promotee or the Direct Appointment post 04.05.1994 for the purpose of fixing seniority;

3. The State Government while filling up the vacancies for both the aforesaid categories shall also give due regard to the percentage of reservation as per the Reservation Policies, applicable at relevant times and implemented through the roster points;

4. The State Government is directed to re-frame the seniority list on the aforesaid principles and conclude the exercise within the period of TWO MONTHS from the receipt of the certified copy of the order.

5. The re-framing of the seniority if resulting into reversion in rank or re-fixation of pension on a lower rank / scale shall not affect the pension of the retired officers and the rank of the serving officers and shall not result into reversion. The serving Officers who have earned higher rank and pay on existing seniority list and are effected by the re-framing shall hold their rank and pay on personal basis till they earn such rank and pay as per placement in the re-assigned seniority. But such

protection of the rank held by such officers shall be without the benefit of seniority for further promotion henceforth, which shall be earned only on the basis of the re-assigned seniority;

6. Since the matter has been deliberately delayed by the Respondent State by not following the principles enunciated and Rules framed, any further delay from the time bound directions mentioned above by the Authorities concerned will make such Authorities liable to be hauled up for contempt and compensatory costs will be personally borne by them.

42. All the aforementioned Writ Petitions are allowed in the above terms.

(JASWANT SINGH)
JUDGE

November 2nd, 2018

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>