

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

(1) **CWP No. 20282 of 2016 (O&M)**
Date of Decision: October 1st, 2021

Balwinderpal SinghPetitioner

Versus

State of Punjab and othersRespondents

(2) **CWP No. 6426 of 2016 (O&M)**

Arvind Parkash VermaPetitioner

Versus

State of Punjab and othersRespondents

(3) **CWP No. 3154 of 2016 (O&M)**

Avtar SinghPetitioner

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Vivek Sharma, Advocate
for the petitioner (in CWP-20282-2016).

Mr. Rajiv Atma Ram, Senior Advocate assisted by
Mr. Jatinder Pal Singh, Advocate
for the petitioner (in CWP-6426-2016).

Mr. D.S. Patwalia, Senior Advocate assisted by

Mr. B.S. Patwalia, Advocate
for the petitioner (in CWP-3154-2016).

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. Sanjay Kaushal, Senior Advocate assisted by
Mr. Arvind Seth, Advocate
for respondent Nos.4 to 9 (in CWP-3154-2016).
for respondents No. 5 to 9 & 11 to 13 (in CWP-6426-2016).

Mr. Gurminder Singh, Senior Advocate assisted by
Mr. Jatinder Singh Gill, Advocate
for respondent Nos.10 to 13 (in CWP-3154-2016).

None for applicant-proposed respondent Nos.14 to 16.

Mr. Ish Puneet Singh, Advocate
for respondent No.4 (in CWP-6426-2016) &
for respondent No.5 (in CWP-20282-2016).

MAHABIR SINGH SINDHU. J.

Since the grievance raised in all the above writ petitions is of similar nature, therefore, the same are being disposed off by this common order.

2) Petitioners, who are working as District Revenue Officers (*for short "DRO"*) in the Revenue Department, Government of Punjab, have filed the present writ petitions against non-inclusion of their names in Register A-1 maintained by the Chief Secretary for appointment to the posts of Punjab Civil Service (Executive Branch) (Class-I) [*for short PCS (EB)*].

3) The prayer made in all three cases can be summarized as under:-

- (i) to issue a writ in the nature of certiorari for quashing the corrigendum/letter dated 26.08.2015, vide which cut-off date for age and experience for recruitment to the posts of PCS (EB) relating to the process year 2013 has been changed from 01.11.2013 to 01.11.2014;

- (ii) to quash the panel/list dated 11.09.2015 containing names of 30 candidates for two process years (2013 & 2014), wherein name of petitioner-Balwinderpal Singh is excluded being over aged in view of the cut-off date fixed as 01.11.2014;
- (iii) to quash the recommendations/select-list dated 08.02.2016 made by the Commission for inclusion of the names of first 10 candidates (private respondents) in Register A-1 for appointment to the posts of PCS (EB) on the basis of select-list of 2013 & 2014;
- (iv) to issue writ in the nature of mandamus directing the official respondents to consider the claims of petitioners for inclusion of their names in Register A-1 and consequent appointment to the posts of PCS (EB) against the vacancies of 2013 & 2014 separately, along with all service benefits;
- (v) to issue any other appropriate writ, order or direction(s) as this Court deems fit in view of the facts and circumstances of the cases;
- (vi) to stay the further selection process on the basis of recommendations made by the Commission;
- (vii) in addition to above, petitioner-Balwinderpal Singh has also laid claim for consideration of his case for the process year 2012 as well.

4) The facts are not in dispute.

5) Brief factual background giving rise to the present controversy is as under:-

The Department of Personnel, Government of Punjab, vide letter dated 03.01.2014 initiated process to fill up 09 posts of PCS (EB) from Register A-1 for the process year 2013. It was made clear in this letter that the Financial

Commissioner Revenue (*for short* “FCR”) shall send a panel/list of 27 eligible candidates from DROs, Tehsildars and Naib Tehsildars, along with their service records by 15.01.2014. The cut-off date for determining the eligibility with regard to age and experience was fixed as 01.11.2013.

Since the FCR did not send any list, therefore, Department of Personnel issued four different reminders on 13.03.2014, 04.04.2014, 04.11.2014 and 01.01.2015. Finally, upon consuming a period of more than one year and four months, the FCR sent a panel/list of 27 eligible candidates on 25.05.2015. It is necessary to mention here that in the panel/list, the names of petitioners Arvind Parkash Verma and Balwinderpal Singh were very much there at Serial Nos.13 & 14, respectively. The Department of Personnel, instead of forwarding the above list to the Commission, vide impugned corrigendum dated 26.08.2015 asked the FCR to send a panel/list of 30 eligible candidates against 10 vacancies (9+1) on the premise that 01 more vacancy for the process year 2014 has become available due to delay in the matter. Vide this corrigendum, the cut-off date for determining age and experience regarding both the years i.e. 2013 & 2014 was fixed as 01.11.2014. In pursuance thereof, the FCR sent a combined panel/list of 30 candidates on 11.09.2015 for process years 2013 & 2014, but name of petitioner-Balwinderpal Singh was excluded being over aged; as his date of birth is 19.12.1959, thus, he had completed the age of 54 years on 19.12.2013. On 01.10.2015, the panel/list was forwarded to the Commission by Department of Personnel. The Commission in its meeting dated 08.02.2016 recommended for inclusion of first 10 (9+1) candidates (private respondents) in Register A-1 for

appointment to the posts of PCS (EB) on the basis of impugned select list for the years 2013 & 2014, respectively.

5(A) Petitioner-Balwinderpal Singh (in CWP No. 20282 of 2016) was appointed as Naib Tehsildar on 02.01.1990; thereafter promoted as Tehsildar with effect from 08.09.1995. He was charge-sheeted vide order dated 13.03.2013 on his failure to produce the records in a court case, but the Inquiry Officer vide report dated 03.06.2015 came to the conclusion that charges were not proved against him. As a result thereof, disciplinary proceedings were dropped on 09.10.2015 and he was reinstated in service along with all consequential benefits. His suspension period was considered as on duty by the competent authority vide order dated 09.10.2015. Thereafter, he submitted representation to promote him as DRO with effect from 08.04.2013; upon consideration of the same, vide order dated 11.01.2016, he was promoted to the post of DRO with effect from 16.10.2014. Petitioner submitted another request to promote him DRO with effect from 08.04.2013 and on the basis of which his promotion was ante-dated to 08.04.2013, vide order dated 13.06.2016.

5(B) Petitioner Arvind Parkash Verma (in CWP No. 6426 of 2016) was promoted as Tehsildar on 30.05.1994. His name was included in both the panels/lists dated 25.05.2015 & 11.09.2015, but on account of pending disciplinary/criminal proceedings, the Commission declared him “unfit” vide impugned recommendations dated 08.02.2016.

5(C) Here, it is necessary to mention that against 10 vacancies for the year 2012, petitioners Balwinderpal Singh and Arvind Parkash Verma were considered, but both of them were found “unfit” by the Commission as per

recommendation dated 18.02.2014. Thereafter, out of 10 selected candidates, names of 09 were entered into Register A-1 as accepted candidates on 25.02.2014 in view of the fact that selection of 01 candidate was made provisional subject to the issuance of Integrity Certificate. In the present writ petitions, there is no challenge to the recommendations or acceptance relating to the process year 2012 by either of the petitioners.

5(D) Petitioner Avtar Singh (CWP No.3154 of 2016) was promoted as Tehsildar on 17.02.2006. Thereafter, he was promoted to the post of DRO with effect from 16.10.2014. In the first panel/list (25.05.2015) his name was not included due to the reason that he was not having 08 years experience, but in the second list (11.09.2015) his name was there. Although petitioner Avtar Singh has been assessed by the Commission as Very Good (Sr. no. 12) as per the impugned select list dated 08.02.2016, but being lower in merit, he was not selected.

6) It is contended on behalf of petitioner Balwinderpal Singh that he has been deprived of legitimate claim for consideration to the post of PCS (EB) without there being any fault on his part. He was unnecessarily kept under suspension from 15.12.2012 to 12.10.2015. Once after exoneration from disciplinary proceedings, it was decided to treat his suspension period towards duties, then he has to be treated on duty for all intents and purposes with effect from 15.12.2012. Consequently, petitioner deserves to be considered for promotion to the post of PCS (EB) from year 2012. Again contended that as per initial requisition dated 03.01.2014, the list of 27 eligible candidates was to be sent by the FCR upto 15.01.2014 while treating the cut-off date as 01.11.2013, but the same was sent on 25.05.2015. On account of delay in sending the list, the

cut-off date for the year 2013 has arbitrarily been changed to 01.11.2014 and due to that reason, the petitioner is deprived of his lawful claim for consideration being over aged. The delay, if any, for the process 2013 on the part of the official respondents cannot take away the legitimate rights of petitioner for consideration being eligible at the relevant point of time. Also contended that instead of completing the recruitment process for the year 2013, department of personnel vide impugned corrigendum dated 26.08.2015, clubbed 01(one) more vacancy for the year 2014 and changed the cut-off date from 01.11.2013 to 01.11.2014 for the process year 2013 in an arbitrary manner.

Further contends that cut-off date for the years 2013 & 2014 ought to have been fixed separately i.e. 1st of November of the preceding year in view of the fact that vacancies pertain to different process years and the same cannot be clubbed in view of the law laid down by the Hon'ble Supreme Court.

Again contended that the impugned recommendations made by the Commission are liable to be set aside on the ground that it has ignored the minimum benchmark criteria in calculating the marks of Annual Confidential Reports and followed the rule of "seniority" alone instead of "merit-cum-seniority". The respondents No.6 & 7 (Paramjit Singh Sahota & Mukesh Kumar) had not cleared the mandatory departmental examination for the posts of Tehsildars, thus they were wrongly considered by the Commission.

6-A Mr. Rajiv Atma Ram, learned senior counsel while arguing on behalf of petitioner Arvind Parkash Verma, contended that as per the requisition dated 03.01.2014, the cut-off date was fixed as 01.11.2013, but it was intentionally changed to 01.11.2014 with a view to accommodate certain favorable candidates

who were promoted as DROs subsequently on 16.10.2014. According to him, the FCR was under obligation to submit the list of eligible candidates each year, as and when required by the Government, but a combined list of 30 candidates for the years 2013 & 2014 was sent. Also contended that official respondents have illegally placed candidates at serial Nos.2 to 12 in the select-list dated 08.02.2016 above the petitioner by taking subsequent developments into consideration which is not permissible in law. The cut-off date for both the process years i.e. 2013 & 2014 ought to have been fixed separately i.e. 01.11.2013 and 01.11.2014 respectively. As per rules, the vacancies of each year are to be filled up separately, but in the present case, this aspect of the matter has completely been ignored by the official respondents. The Commission recommended candidates solely on the basis of “seniority” while selecting first ten candidates, but ignored the criteria of ‘merit-cum-seniority’. The Commission has also ignored the minimum benchmark criteria in calculating the marks of Annual Confidential Reports of the candidates. Even the impugned recommendations are made against service records of the petitioner inasmuch three charge-sheets are stated to be pending against him; whereas, two charge-sheets had already been dropped and third is also finalized. With regard to pendency of FIR, the petitioner stands acquitted by learned Special Judge, Ludhiana vide judgment dated 25.03.2019. Thus, the claim of petitioner for consideration to the post of PCS(EB) cannot be ignored on the sole ground of pendency of charge-sheet or FIR. In such circumstances, official respondents were under obligation to consider his case for promotion provisionally subject to the outcome of above proceedings as envisaged under the Indian Administrative Service (Appointment by Promotions) Regulations, 1955 (for short ‘Regulations’).

6-B Mr. D.S. Patwalia, learned senior counsel appearing on behalf of petitioner-Avtar Singh submitted that petitioner has been shown at serial No.12 of the select list dated 08.02.2016 by the Commission, but keeping in view his service records, he ought to have been graded as “outstanding”. Mukesh Kumar-respondent No.5 & Paramjit Singh Sahota-respondent No.10 did not pass the mandatory departmental examination for the post of Tehsildar and both these officers were given promotion on notional basis with retrospective effect so as to place them above the petitioner in the impugned select list. He also submitted that due to punishment inflicted upon respondent-Pinki Devi, she was declared unfit for the year 2012; but much later i.e. on January 27th, 2016 the punishment was set aside and her name has been included among the selected candidates for the year 2013 . Paramjit Kaur Sandhu-respondent No.12 was abroad for the last many years and her ACRs were not recorded; rather shown as ‘NRC’ for all the consecutive five years, yet her name has been recommended by the Commission in complete disregard of the guidelines issued by the UPSC. Again contended that there is no difference in the assessment made by Reporting/Reviewing/Accepting Authority, therefore, the Commission ought to have avoided substituting new findings to upgrade or downgrade the assessment of candidates in the absence of any records to the contrary. The Commission has followed the criteria of ‘seniority-cum-merit’ instead of ‘merit-cum-seniority’ and as such, violated the relevant rules , regulations and guidelines issued by the UPSC.

7) On the other hand, learned State counsel argued that the seniority lists of Tehsildars and District Revenue Officers were finalized only on 28.05.2014 and 11.03.2015 respectively, therefore, the first panel/list of eligible

27 candidates was sent by FCR on 25.05.2015. The delay in sending the panel occurred due to scrutiny of records of respective candidates; Since it was not conducive for the FCR to forward the panel as the recruitment process for the year 2012 had not been finalized by 15.01.2014 and the remaining candidates from that year were also to be considered for the year 2013, therefore, delay in sending the panel was on valid ground. Also argued that during the pendency of recruitment process for the year 2013, one more vacancy for the year 2014 became available and the Government decided to fill up that post along with the vacancies of year 2013. Thus, in view of this factual position, department of personnel, vide letter dated 26.08.2015 fixed the cut-off date for both the years as 01.11.2014 and in pursuance thereof, the FCR sent another panel of 30 eligible candidates on 11.09.2015. Further contended that cut-off date for determination of age and experience was rightly fixed as the 1st day of November of the preceding year, when the panel had been sent by the FCR. Thus, petitioner-Balwinderpal Singh was rightly ignored from consideration being over-aged for the year 2013.

7-A Learned State counsel further argued that name of petitioner Arvind Parkash Verma was considered in the meeting of Departmental Promotion Committee (for short "DPC") held on 20.08.2014 for the post of DRO. Since FIR No. 27 dated 19.09.2008 registered under Sections 7, 8, 13(2) of Prevention of Corruption Act and Sections 201 & 120-B IPC as well as two other charge-sheets were pending against him, therefore, his name was not recommended for promotion as DRO, rather the same was kept in a sealed cover. In departmental proceedings, punishment of stoppage of one increment without cumulative effect was inflicted upon him vide order dated 14.05.2015. As regards promotion of

respondent No.5-Paramjit Singh Sahota for the post of DRO is concerned, his adverse entries in ACR were expunged and during the pendency of an appeal, his case for promotion was considered but he was ignored for promotion to that post. When all the adverse entries were expunged against him, he was promoted as DRO from the date when his juniors were promoted. So far as promotion of respondent No.6-Mukesh Kumar as DRO is concerned, he was promoted in compliance of the order dated 26.04.1999 passed by this Court in CWP No. 14638 of 1998.

7-B Further contended that proposal for selection of PCS (EB) was received by the Commission from the Department of Personnel on 01.10.2015. The Commission sought a clarification from Department regarding the cut-off date for the purpose of eligibility of candidates for the years 2013 & 2014. In response thereto, Department of Personnel vide letter dated 31.12.2015 again clarified that cut-off date for both the process years be taken into consideration as 01.11.2014. Thereafter, the Commission in its meeting dated 08.02.2016 considered the name of petitioner (Arvind Parkash Verma), but keeping in view the pendency of departmental proceedings as well as criminal proceedings, he was graded as “unfit”. Even Integrity Certificate of the petitioner was also not issued by the competent authority. Also contended that names of all 30 candidates were considered by the Commission on the basis of their service record supplied by the Department along with ACRs for the years 2009-2010 to 2013-2014 for making assessment on individual basis. In addition to this, the integrity certificates, disciplinary proceedings/ punishments and pending Court cases were also taken into consideration. The Commission after due deliberation graded the candidates

after following the rule of 'merit-cum-seniority' and no candidate was selected on the basis of seniority alone. Petitioner- Avtar Singh has rightly been graded as "very good" by the Commission as per UPSC guidelines and placed him at Sr.No.12 of the select list.

8) Further argued that the instructions issued by the State Government regarding minimum benchmark criteria for calculating the marks of ACRs of the candidates are not applicable for the reason that selection is to be made by the Commission on merit-cum-seniority basis by adopting a procedure similar to that being followed by UPSC for elevation of officers of the State Services to All India Services. Thus, the reliance on these instructions is totally misplaced.

9) Mr. Sanjay Kaushal and Mr. Gurminder Singh, learned Senior Advocates while appearing on behalf of the private respondents defended the cut-off date as 01.11.2014 fixed vide corrigendum dated 26.08.2015 and supported the arguments raised by learned State counsel. Further argued that petitioner-Balwinderpal Singh has rightly been excluded from consideration being more than 54 years of age on 01.11.2014. So far as petitioner Arvind Parkash Verma is concerned, even if the cut-off date is to be considered as 01.11.2013, still he cannot succeed in view of pending disciplinary proceedings/ criminal case and non-availability of Integrity Certificate in his favour by the competent authority. The argument raised on behalf of petitioner that he was senior most Tehsildar except Pinki Devi is specifically refuted. Also argued that since petitioner has not challenged the promotion orders of Paramjeet Singh Sahota-respondent No.5 and Mukesh Kumar-respondent No.6 for the post of DROs, therefore, these orders have attained finality whereby they were given deemed promotion from the date

when their juniors were promoted. Moreover, the promotion was granted to both these respondents strictly as per law.

Further contended that petitioner-Arvind Parkash Verma cannot claim himself to be more meritorious than respondent No.9-Sanjeev Sharma. The claim of the petitioner that Sanjeev Sharma secured 19 marks equivalent to petitioner is only imaginary, thus without any substance. All the private respondents are senior to the petitioner as they were promoted as DRO much prior in time, whereas, petitioner is still working as Tehsildar. The assessment made by the Commission is in consonance with the procedure laid down under the Regulations as well as Guidelines framed by the UPSC, thus, does not require inference by this Court while exercising jurisdiction under Article 226 of the Constitution and reference in this regard is made to the judgments of Hon'ble Supreme Court in **(i) UPSC Versus H.L.Dev and others (AIR 1988 SC 1069)** and; **(ii) Dalpat Abasaheb Solanke Versus B.S. Mahajan, AIR 1990 SC 434.**

10) On behalf of respondent-Pinki Devi, it is argued that she was eligible for promotion to the post of PCS (EB) irrespective of the fact whether the cut-off date to be taken as 01.11.2013 or 01.11.2014 and as such there is no cause of action available to the petitioners against her. Also contended that the entry of Pinki Devi into Register A-1 has rightly been recommended by the Commission on the basis of select-list dated 08.02.2016 as her service record including ACRs for the last five years were either outstanding, very good or good. Also contended that her service record is absolutely clean and there is no criminal case or disciplinary inquiry pending against her as on today.

11) Heard learned counsel for the parties; perused the paper-books along with original records.

12) For proper adjudication of the matters in controversy, the points for consideration can be culled out as under:-

1. Whether the impugned corrigendum/letter dated 26.08.2015 while changing the cut-off date for the ongoing selection process for the year 2013 from 01.11.2013 to 01.11.2014 and sending fresh combined list dated 11.09.2015 of 30 candidates against 10 vacancies (9+1) for the years 2013 & 2014, respectively, are legally sustainable?
2. Whether in view of the facts and circumstances of the present case, the recommendations made by the Commission for entering the names of first 10 candidates (private respondents) in Register A-1 on the basis of select list dated 08.02.2016, warrants interference by this Court while exercising jurisdiction under Article 226 of the Constitution?
3. What appropriate order should be passed?

Point No.1.

13) It deserves to be clarified that due to interim stay operating in the matters, no appointments have been made on the basis of recommendations dated 08.02.2016. Even for the subsequent years also, no appointments were made for the post(s) of PCS (EB) from Register A-1. Learned State counsel, on instructions, submitted that as on today, 26 more vacancies have been accumulated due to pendency of the present writ petitions from this Register.

14) The appointment(s) to the post(s) of PCS (EB) are made by the Government in consultation with the Commission under rule 4 of Punjab Civil Services (Executive Branch) (Class-I) Rules, 1976, (for short “the rules”).

According to rule 2, the “Government” means the Punjab Government in the Personnel Department.

Rule 7 says that appointment to the service shall be made from amongst accepted candidates whose names have been duly entered in the Registers maintained under the rules by the Chief Secretary. Sub-rule 2 of rule 7 talks about various types of Registers which are as under:-

- (i) Register A-1
- (ii) Register A-2
- (iii) Register A-3
- (iv) Register-B
- (v) Register-C

The appointments to the service on the basis of above Registers is to be made keeping in view the slab of 100 vacancies in order of merit assigned by the Commission while selecting a batch for the particular Register and reference in this regard can be made to Rules 18 & 19, which read as under:-

“18. Appointment of accepted candidates to the service:-*The Government shall make appointments to the Service in pursuance of rule 7 from amongst the candidates entered on the various Registers in a slab of 100 vacancies as follows:-*

- (i) the first vacancy and thereafter every alternative vacancy shall be filled from amongst candidates borne on Register ‘B’.*
- (ii) the 2nd, 8th, 14th, 20th, 26th, 32nd, 38th, 44th, 50th, 56th, 62nd, 68th, 74th, 80th, 86th, 92nd, 96th and 100th vacancy shall be filled from amongst the candidates borne on Register A-I;*

- (iii) *the 4th, 10th, 16th, 22nd, 28th, 34th, 40th, 46th, 52nd, 58th, 64th, 70th, 76th, 82nd, 88th and 98th vacancy shall be filled from amongst candidates borne on Register A-II;*
- (iv) *the 12th, 30th, 42nd, 54th, 66th, 78th and 90th vacancy shall be filled from amongst the Excise and Taxation Officers accepted as candidates on Register A-III;*
- (v) *the 18th, 36th, 60th and 84th vacancy shall be filled from amongst the District Development and Panchayat Officers or Block Development and Panchayat Officers accepted as candidates on Register A-III; and*
- (vi) *the 6th, 24th, 48th, 72^d and 94th vacancy shall be filled from amongst the candidates on Register 'C':*

Provided that all such appointments shall in the first instance be either officiating or substantive provisional.

19. Order of appointment of candidates on the same Register:- *Candidates on the same Register shall be appointed to the Service in the order of merit assigned to them by the Commission while selecting as a batch for that particular Register."*

It deserves to be clarified that Register B relates to the entry of accepted candidates through competitive examination; whereas remaining Registers are meant for entry of names from the Punjab government employees. As mentioned in the beginning of this order, controversy in all these cases relates to non-inclusion of names of petitioners in Register A-1 (revenue department).

15) Rule 9, which was substituted by way of an amendment dated 28th July, 2011, deals with the selection of candidates for Register A-1 and the relevant part of the same reads as under:-

*“GOVERNMENT OF PUNJAB
DEPARTMENT OF PERSONNEL
(PCS BRANCH)
NOTIFICATION
THE 28TH July, 2011*

No. CSR.55/Const./Art.309/Amd.(9)/2011.-In exercise of the powers conferred by the proviso to article 309 of the Constitution of India and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules further to amend the Punjab Civil Services (Executive Branch), Rules, 1976, namely:-

RULES

1. (1) *These rules may be called the Punjab Civil Services (Executive Branch) (First Amendment) Rules, 2011.*

(2) *They shall come into force on and with effect from the date of their publication in the official Gazette.*

2.....

3. *In the said rules, for rule 9, the following rule shall be substituted, namely:-*

9. Selection of candidates for register A-1. (1) *The Financial Commissioner, Revenue shall prepare a list of eligible District Revenue Officers in order of seniority followed by eligible Tehsildars in order of their seniority and then Naib Tehsildars, if need be, keeping in view the guidelines issued in this behalf by the Government: Provided that the list prepared by the Financial Commissioner, Revenue shall not contain names exceeding*

thrice the number of candidates to be brought on Register A-1.

(2) The list prepared by the Financial Commissioner, Revenue under sub-rule (1), shall be submitted to the Chief Secretary for onward transmission to the Commission.

(3) The name of a person shall [not be included] in the final list unless he-*

(a) is a confirmed hand and has completed eight years service either as District Revenue Officer or Tehsildar or Naib Tehsildar or as District Revenue Officer, Tehsildar and Naib Tehsildar taken together;

(b) was under the age of fifty four years on the first day of November immediately preceding the date of submission of names by the concerned authorities; and

(c) is a graduate of a recognized university.

(4) Each year at such time, as the Government may require, the Financial Commissioner, Revenue, shall submit to the Government the list of eligible District Revenue Officers, Tehsildars and Naib Tehsildars as per sub-rule (1).

(5) The list of eligible persons submitted under sub-rule (4), along with the service records of the candidates, shall be forwarded by the Government to the Commission. The Commission shall make selection on merit-cum-seniority basis by adopting a procedure similar to that being followed by the Union Public Service Commission for the elevation of officers of State Service to All India Services by associating two representatives of the State Government, one serving as Secretary, Personnel and General Administration and the other senior IAS officer nominated by the Chief Secretary to Government of Punjab:

Provided that the members of the Commission and representatives of the State Government involved in the selection shall certify in respect of each candidates that they have no relation with him.

(6) The names of persons recommended by the Commission under sub-rule (5), shall be entered in register A-1 in the order in which they are recommended by the Commission.”

** words “not included” were substituted with “not be included” vide Gazette notification dated 2nd, November, 2011.*

According to sub-rule 1 of rule 9, the FCR shall prepare a list of eligible DROs in order of seniority followed by eligible Tehsildars as per their seniority and then Naib Tehsildars, if need be. The guidelines issued in this behalf by the Government are also to be kept in view. Proviso to sub-rule 1 says that the list prepared by the FCR shall not contain names exceeding thrice the number of candidates to be brought on Register A-1. As per sub-rule 2, the list prepared by FCR shall be submitted to the Chief Secretary for onward transmission to the Commission. Sub-rule 3 talks about certain conditions, according to which the name of a person shall not be included in the final list unless he is:-

- (a) confirmed hand and has completed eight years service either as DRO or Tehsildar or Naib Tehsildar or as DRO, Tehsildar and Naib Tehsildar taken together;
- (b) was under the age of 54 years on the first day of November immediately preceding the date of submission of names by the concerned authorities and;
- (c) is Graduate of a recognized university.

Sub-rule 5 says that the list of eligible persons submitted under sub-rule 4, along with the service records of the candidates shall be forwarded by the Government to the Commission. Thereafter, the Commission shall make selection on “merit-cum-seniority” basis by adopting the procedure similar to that being followed by the Union Public Service Commission (for short “UPSC”) for elevation of officers from State Service to All India Services. Sub-rule 5 further says that the Commission shall associate two representatives of the state government i.e. one serving as Secretary, Personnel & General Administration and one another senior IAS officer nominated by the Chief Secretary to government of Punjab. Proviso to sub-rule 5 talks about the certificate of no relationship by the members of Commission with the candidates. Ultimately, in terms of sub-rule 6, the names of persons are to be entered in Register A-1 as per the order of their recommendation made by the Commission.

16) This is an admitted position that the department of personnel in terms of sub-rule 4, vide letter dated 03.01.2014, asked the FCR for sending the panel/list of 27 eligible candidates against 9 vacancies for the year 2013. In this communication, it was specifically mentioned that cut-off date for ascertaining the age and experience shall be taken into consideration as 01.11.2013. The list along with complete service records of the candidates was to be sent by the FCR up to 15.01.2014. Since FCR did not send the list within stipulated period, therefore, department of personnel issued four different reminders dated 13.03.2013, 04.04.2014, 04.11.2014 & 01.01.2015. Ultimately, the list of 27 candidates was sent by the FCR on 25.05.2015.

17) The department of personnel instead of forwarding the above list to the Commission in terms of rule 5, preferred to seek the legal opinion from Legal

Remembrancer (*for short "L.R."*) on the premise of delay in the matter. In response thereto, the L.R., Punjab on 24.06.2015 (R-1 in CWP No. 6424 of 2016) while making reference to rule 9(3)(b), *inter-alia*, opined:-

"As per provisions made in rule 9(3)(b) of the Punjab Civil Service (Executive Branch) Rules, 1976, the cut off date to fill up the post of PCS (Executive Branch) from Register A-1 shall be considered as 01.11.2014 as the process to fill up the posts of PCS (Executive Branch) from the register A-1 has been initiated on 25.05.2015."

After consuming sufficient time, the Chief Secretary approved the above opinion on 13.08.2015.

Perusal of the opinion reveals that L.R., Punjab completely misunderstood the date of initiation of process on 25.05.2015. He did not realize that process to fill up 09 posts of PCS (EB) had started with the issuance of requisition dated 03.01.2014, but this aspect of the matter was completely overlooked. Thus, in such a situation, the date of sending the list by FCR on 25.05.2015 could not be construed as the date of initiation of process in any manner. It seems that the Chief Secretary also did not care to consider the gravity of the matter rather in routine, approved the opinion of L.R. without advertent to the initial communication dated 03.01.2014 which was akin to an advertisement for public employment. The word 'selection' and its stages are well defined by the Hon'ble Supreme Court in **A.P. Public Service Commission, Versus B. Sarat Chandra & Ors, 1990 SCC (2) 669**, in the following terms:-

"If the word 'selection' is understood in a sense meaning thereby only the final act of selecting candidates with preparation of the list for appointment, then the conclusion of the Tribunal may not

be unjustified. But round phrases cannot give square answers. Before accepting that meaning, we must see the consequences, anomalies and uncertainties that it may lead to. The Tribunal in fact does not dispute that the process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Rule 3 of the Rules of Procedure of the Public Service Commission is also indicative of all these steps. When such are the different steps in the process of selection, the minimum or maximum age for suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific, and determinate as on a particular date for candidates to apply and for recruiting agency to scrutinise applications. It would be, therefore, unreasonable to construe the word selection only as the factum of preparation of the select list. Nothing so bad would have been intended by the Rule making authority.”

In view of the above, it can safely be concluded that selection process to fill up 09 posts of PCS (EB) from Register A-1 was initiated with the issuance of requisition dated 03.01.2014 and not on 25.05.2015.

18) Despite above, the department of personnel vide impugned corrigendum/letter dated 26.08.2015 decided to fill-up 01 vacancy of the year

2014 along with 09 vacancies for the process year 2013 and fixed the cut-off date as 01.11.2014 for both the years while writing to the FCR in the following manner:-

*“Punjab Government
Department of Personnel (PCS Branch)*

Sub: Regarding filling 9 and 1 posts of the Punjab Civil Services Executive Branch recruitment process year of 2013 and 2014 vide Register A1 of District Revenue Officer/Tehsildar/Naib Tehsildars.

Secretary Punjab Government Department of Revenue, Rehabilitation and Disaster Management may kindly refer to letter No. 1/1/14-MA-1(1)/46610, dated 25.05.2015 of your Department on the subject above and letter NO. 3/10/2013-2 PCS/59-61, dated 03.01.2014 of Government.

2. Your Department vide above referred letter, had sent a panel of 27 officers along with their service record for consideration into PCS Executive Branch Recruitment Process year 2013.

3. Government vide above referred letter dated 03.01.2014 had asked for the panel of officers along with their service record to be sent till 15.01.2014 while keeping cut-off date as 01.11.2013 for determining the eligibility with regard to age and experience of service. But your department has sent this panel vide above referred letter dated 25.05.2015. Because of this reason there is undesirable delay in the recruitment process for the year 2013.

4. That now the Government has decided to fill the 01 vacancy of the year 2014 along with 9 vacancies of the recruitment process year 2013 for Register A-1. For this purpose cut off date is decided to be 01.11.2014 for the recruitment process of the year 2013 and 2014.

5. It is being written to you with regard to panel sent by you vide above referred letter that it must be made clear and verified that no eligible candidate is left to be included in the panel keeping in view cut-off date as 01.11.2014 for the recruitment process of year 2013 and 2014. It must further be ensured that the officers included in the panel have their service record in accordance with the letter

dated 28.02.2013 of Personnel Department. So, the file completed in all aspects of subject above and self declaration be sent to this Department till 31.08.2015, so that there is no delay in the recruitment process of year 2013 and 2014.

6. This letter be given priority and be treated as urgent.”

19) From perusal of the above impugned corrigendum, it is nowhere discernible that initiation of process for the year 2013 was taken as 25.05.2015 in consonance with the opinion of LR; rather it simply says that 01 vacancy has become available for the process year 2014 and only on that count, the selection process for the year 2013, already in pipeline was derailed by the department of personnel.

The cut-off date regarding age and experience for the ongoing selection process for the year 2013 was changed from 01.11.2013 to 01.11.2014. Since petitioner-Balwinderpal Singh was born on 19.12.1959, therefore, he crossed the age of 54 years on 19.12.2013. As a result thereof, he was debarred from consideration against 09 vacancies for the year 2013 being over aged. Apart from changing the cut-off date, the FCR was asked by the Department of Personnel to send a list of 30 candidates against 10 vacancies (9+1) and as such clubbed the selection process for two years i.e. 2013 & 2014 in an arbitrary manner without there being any enabling provisions in this regard under rule 9. In pursuance of the impugned corrigendum, a panel/list of 30 candidates was sent by FCR on 11.09.2015 and on the basis thereof, the Commission made the impugned recommendations dated 08.02.2016 for entering the names of first 10 candidates (private respondents) as per select-list for the years 2013 & 2014.

20) It is well settled by the Hon'ble Supreme Court that in such like cases, the panel for selection/promotion is to be sent year-wise for consideration

by the Selection Committee/Commission and clubbing of vacancies for different years is not permissible. Reference in this regard can be made to the following judgments wherein it was, *inter-alia*, held:-

**(i) Syed Khalid Rizvi & Others vs Union of India & Others
1993 Supp (3) SCC 575, paragraph 9:-**

“It would, thus, be clear that the Selection Committee shall consider the eligibility and suitability of the members of the State Police Service on the basis of merit, ability and suitability. Seniority will be considered only where merit, ability and suitability are approximately equal and it should prepare the select-list of such suitable officers in the order of merit in each category such as ‘outstanding’, etc. and send the select-list in order of seniority to the State Government who with its comments would forward the same to the UPSC for approval. The UPSC again would review the list, if necessary, with prior notice to the State Government and revise the order of names (seniority) in the list which should be final and operative for a period of 12 months. The list should consist of such number plus 20 per cent or two officers whichever is more and of three times the anticipated substantive vacancies in the cadre posts. The appointment to the cadre posts should be made by the Central Government in the order in the list on the recommendation of the State Government The word "may" in Regulation 5 indicates that the Committee ordinarily meets at intervals not exceeding one year. Though the word "may" indicates that it is not mandatory to meet at regular intervals, since preparation of the select-list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS officers,

the preparation of the select-list must be construed to be mandatory. The Committee should, therefore, meet every year and prepare the select-list and be reviewed and revised from time to time as exigencies demand. No officer whose name has been entered in the list has a vested right to remain in the list till date of appointment. The list would be liable to shuffle and the name may be excluded from the list on the comparative assessment of merit, ability and suitability based on the anticipated or expected availability of the vacancies within quota etc. The junior may supersede the senior and may be ranked top.”

(ii) Union of India & Others vs. Vipinchandra Hiralal Shah (1996) 6 SCC 721, paragraphs 11 & 13:-

11. It must, therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst the State Civil Service officers who fulfill the conditions regarding eligibility on the first day of the January of the year in which the Committee meets and fall within the zone of consideration as prescribed in clause (2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service officers who were eligible and fell within the zone of consideration for selection in that year.

13. Therefore, while upholding the judgment of the Tribunal that the respondent is entitled to seek fresh consideration on the basis that the selection should be made for vacancies occurring in each year separately, but in substitution of the directions given by the Tribunal in the regard, the following directions are given :-

(1) The number of vacancies falling in the quota prescribed for promotion of State Civil Service officers to the Service shall be determined separately for each year in respect of the period from 1980 to 1986.

(iii) In **H.R. Kasturi Rangan and others vs. Union of India and others 1998(1) Scale (SP) 11**, paragraph 5:-

“5. Having heard learned counsel we are satisfied that there is no conflict between the decisions in Mohan Lal Capoor and Syed Khalid Rizvi. As for the submission that the word “ordinarily” occurring in Regulation 5 appears to have been overlooked in Rizvi, we find that it is not so in as much as the learned Judges in para 9 have referred to it while dealing with Regulation 5. The learned counsel for the respondent, who had made that submission before a two Judge Bench, then referred to the observations in para 34 of the decision in Rizvi wherein Regulation 5 has been described as mandatory while saying that “preparation of the select list every year is mandatory”. In our opinion these observations in the decision in Rizvi have to be read in the context and together with what follows that observation. It has been stated thereafter that the dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of want on infraction. It is clear from the observations which follow that the importance of performing this exercise annually was emphasized and it

was pointed out that in the event of any failure, the lapse must be satisfactorily explained by the State Government concerned. This is itself an indication of the purpose for which the performance of that exercise annually was described as mandatory, without saying that its breach invalidates the subsequent action.”

(iv) In Vijay Singh Charak vs. Union of India & Others (2007) 9 SCC 743, Paragraphs 12, 13, 14:-

“12. A select list can only be prepared for a particular year, and only those who are eligible in that particular year alone can be considered for selection in the select list. Even if the select-list is not prepared in that very year, it will relate back to that particular year.

13. In the present case, a select list had to be prepared for the year 1991. Hence, only those officers who were eligible for induction into IFS in the year 1991 could have been considered in the select list for the year 1991 (even if it is prepared subsequent to 1991).

14. It is obvious, therefore, that clubbing is illegal. Since clubbing has been done for vacancies arising between 1991-1995 in IFS, this was clearly illegal in view of the decision in Union of India v. Vipinchandra Hiralal Shah (supra).”

(v) Again in Union of India & another vs Hemraj Singh Chauhan & others (2010) 4 SCC 290, paragraphs 36,38,42,43,48:-

“36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article

16 virtually flows from guarantee of equality under Article 14 of the Constitution.

38. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion have been defeated by the acts of the Government and if not of the Central Government, certainly the unreasonable inaction on the part of the Government of State of Uttar Pradesh stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy.

42. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely lethargy, inaction, an absence of a sense of responsibility cannot fall within the category of just exceptions.

43. In the facts of this case neither the appellants nor the State of Uttar Pradesh has justified its action of not undertaking the exercise within the statutory time-frame on any acceptable ground. Therefore, the delayed exercise cannot be justified within the meaning of “ordinarily” in the facts of this case. In the facts of the case, therefore, the Court holds that there was failure on the part of the authorities in carrying out the timely exercise of cadre review.

48. The Court is satisfied that in this case, for the delayed exercise of statutory function the Government has not

offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event, this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively.”

In view of the above legal position, it can be safely concluded that panel/list of the eligible candidates for selection/ promotion is to be sent year-wise and clubbing is not permissible; rather same would be illegal.

21) Sub-rule 4, Rule 9 says that “each year” at such time, as the Government may require, the FCR shall submit to the Government the list of eligible DROs, Tehsildars and Naib Tehsildars. Although the word, “each” is not defined under the rules, but as per Collins English Dictionary (3rd Edition), it means “if you refer to each thing or each person in a group, you are referring to every member of the group and considering them as individuals” . Thus, ‘each year’ is to be considered as every year. Again the word “year” is defined under Section 2 (60) of Punjab General Clauses Act, 1898, according to which ‘year’ shall mean “a year reckoned according to British Calendar”. It is a matter of common knowledge that as per Gregorian Calendar, the British Calendar consists of 12 months starting from 1st January ending with 31st December. Thus, from plain reading of sub-rule 4, it is clearly discernible that every year the requirement is to be seen by the government as per the exigency of the service and the FCR is under obligation to submit the list in pursuance of the decision of the government.

In case there is an unjustified delay, then he can expose himself for the consequences as per law if the competent authority so desires. As per sub-rule 4, the days and months may vary; but not the year. As a natural corollary, the list is to be sent on yearly basis and there is no other option left for the department of personnel except when there is no vacancy in a particular year. Provisions of rule 9 nowhere talk about combined list for more than one year at a given point of time rather it speaks otherwise and as such, the vacancies cannot be clubbed for more than one year. Although, learned State counsel as well as private respondents submitted that the impugned list dated 11.09.2015 contained names of 30 eligible candidates and out of those, first 27 were meant for the process year 2013 whereas, remaining 03 candidates were for 2014 and thus there was no clubbing. Also tried to justify that after consideration of the service records of all the candidates, separate selection list was prepared for 10 posts (9+1) pertaining to the years 2013 & 2014. At first blush, the arguments seem to be attractive but it is farcical in view of the fact that service records of all 30 candidates was assessed in the meeting held on 08.02.2016 and on the basis thereof, selection list was prepared for 10 (09+01) vacancies for the year 2013 and 2014. In the opinion of this Court, firstly, the panel of 27 candidates has to be considered and after finalization of the recommendations, the left over officers are to be considered subject to their eligibility for the next panel list to be sent for the process year 2014. Thereafter, the same is to be considered by the Commission for the similar exercise and recommendations are to be made separately for the vacancy of 2014.

22) Learned State counsel as well as respondents tried to justify the impugned corrigendum/letter dated 26.08.2015 on the premise that there was a considerable delay in sending the list dated 25.05.2015 by the FCR and while

making reference to rule 9(3)(b), tried to convince that age of 54 years is to be reckoned on first day of November immediately preceding the date of submission of list by the FCR. As per their stand, in the present case, the names of 27 candidates were submitted vide list dated 25.05.2015 by FCR thus, the relevant cut-off date would be 1st day of preceding November i.e. 01.11.2014, however, the same is not acceptable for the following reasons:-

- (i) Selection process for filling-up 09 vacancies for the year 2013 was initiated by the personnel department on 03.01.2014 and the cut-off date for the purpose of age and experience was fixed as 01.11.2013.
- (ii) List of 27 eligible candidates including DROs, Tehsildars and Naib Tehsildars was to be submitted by the FCR to the department of personnel by 15.01.2014; but despite 04 reminders needful was not done.
- (iii) Ultimately, list of 27 candidates including petitioners Balwinderpal Singh and Arvind Parkash Verma was sent by FCR after a considerable delay on 25.05.2015.
- (iv) The FCR while sending response dated 24.01.2014 tried to justify the delay on account of the fact that selection process for the process year 2012 was still pending with the Commission, therefore, the list could not be sent as the left over candidates from 2012 panel, were also to be included for the year 2013.
- (v) This is an admitted fact that recommendations for the process year 2012 were made by the Commission on 18.02.2014, but

despite that FCR did not send any list at the relevant point of time.

- (vi) Again FCR raised lame excuse on the premise that seniority dispute of the Tehsildars and DROs was finalized only on 28.05.2014 and 11.03.2015, respectively; thus, on that count, delay has occurred in sending the list. This plea on behalf of the FCR is far from satisfaction in view of the fact that the names of eligible candidates were to be sent while taking into consideration the cut-off date for age and experience as 01.11.2013 and as such, finalization of the seniority is not at all relevant.
- (vii) It has also come on record that private respondents were promoted as DROs from the post of Tehsildars on 16.10.2014 and as a result thereof, they stole the march over petitioner-Arvind Parkash Verma who was the senior most Tehsildar as on 01.11.2013 except respondent-Pinki Devi and in view of this strong circumstance, delay on the part of FCR cannot be said to be *bonafide*.
- (viii) This is not the stand of the official respondents that initial cut-off date for the process year 2013 in the letter dated 03.01.2014 was wrongly fixed by the department of personnel or that they had fixed the cut-off date as 01.11.2013 *dehors* the provisions of rule 9. In such a situation, the department of personnel after receiving the panel/list of 27 eligible candidates on 25.05.2015 cannot turn

around and say that cut-off date for the process year be treated as 01.11.2014.

- (ix) Although, the respondents forcefully tried to justify the change in cut-off date from 01.11.2013 to 01.11.2014 for the year 2013 while pressing into service the provisions of rule 9(3)(b), but the same is not acceptable. Of course, in normal circumstances, when there is no delay in sending the panel/list and process takes place every year well in time, as per the availability of vacancies, then such a plea could be raised ; but in a case, like the present one, it may be counter- productive. Reason is obvious, the FCR may delay in sending the list without any justification, as has happened in these matters and if date of submission of panel/list is to be treated as the cut-off date, then he can easily deprive any candidate for consideration being over aged. So the net result would be that everything shall be left to the mercy of FCR and he can easily defeat the purpose of rule 9 with impunity. Therefore, accepting of such an argument is not only incongruous to the scheme of rule 9; rather negation of the rule of law, which cannot be countenanced at any cost.
- (x) Even the Government also did not adhere to their own decision dated 03.01.2014 and merely side-tracked the issue while seeking the opinion from L.R. without considering the imperatives of sub-rule 5 as well as gravity of situation.

23) Thus, all the authorities i.e. Chief Secretary, Secretary, Department of Personnel, FCR and L.R., Punjab, acted contrary to the ambit and scope of rule 9

as well as in disregard of the requisition dated 03.01.2014. As a result thereof, the action of the personnel department while issuing corrigendum dated 26.08.2015 in the midst of selection process for the year 2013 and sending of fresh combined list dated 11.09.2015 by the FCR amounts to clubbing of vacancies of two years i.e. 2013 & 2014, which is not only legally impermissible; rather illegal. Hence, their actions are indefensible in law being violative of Articles 14 & 16 of the Constitution.

Point No.2

24) Petitioners have seriously assailed the impugned recommendations dated 08.02.2016, *inter alia*, on the premise that the Commission while preparing the impugned select list, ignored the principle of ‘merit-cum-seniority’ and followed the rule of ‘seniority’ alone.

25) On the other hand, respondents while referring to the judgments of the Hon’ble Supreme Court in **H.L. Dev’s case & Dalpat Abasaheb Solanke’s case(supra)** vehemently opposed the above contention and submitted that the Commission took into consideration the entire service records of the candidates as per the procedure similar to that being followed by UPSC. It was further submitted that in view of the settled law, the High Court should refrain from interfering with the recommendations made by the Commission while exercising power of judicial review under article 226 of the constitution.

26) In the opinion of this Court, after the conclusion recorded at point No.1, it would not be appropriate to delve into the above rival contentions of the parties in view of the old legal maxim, “*sublato fundamento cadit opus*”, which means that once foundation is removed, the super-structure will also fall. In this regard, reference can also be made to the judgment of the Hon’ble Supreme Court

in case of **Chairman-cum-Managing Director Coal India Limited and others vs.**

Ananta Saha and others (2011) 5 SCC 142, paragraphs 32 and 33:-

“32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim sublato fundamento cadit opus is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33. In Badrinath vs. Govt. of T.N this Court observed that once the basis of a proceedings is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders.”

27) Since the impugned corrigendum dated 26.08.2015 issued by the Personnel Department as well as the subsequent list dated 11.09.2015 of 30 candidates for 10 (9+1) posts of PCS (EB) for the process years 2013 & 2014 have been found to be legally indefensible; as a result thereof, the consequent recommendations dated 08.02.2016 are also declared invalid.

28) So far as claim of petitioner-Balwinderpal Singh for consideration against the vacancies of 2012 is concerned, the same cannot be accepted and liable to be rejected for the following reasons:-

- (i) Petitioner was considered during the process year 2012, but found “unfit” by the Commission while making recommendation on 18.02.2014. It is also necessary to mention here that above recommendations were accepted as per rules on 25.02.2014 and names of selected officers were entered into Register A-1 as accepted candidates.

(ii) Petitioner has neither challenged the above recommendations of the Commission; nor the order of acceptance, therefore, at this stage, no mandamus can be issued for reconsideration of his case for the process year 2012.

29) The name of petitioner-Avtar Singh was not included in the first list dated 25.05.2015 due to the reason that he stood promoted as Tehsildar on 06.02.2006. Thus, due to lack of requisite experience of 08 years on the cut-off date i.e. 01.11.2013 he was not eligible for consideration. Moreover, he never challenged the non-inclusion of his name in that list dated 25.05.2015 at the relevant point of time. However, as discussed above, the name of Avtar Singh was considered on the basis of panel/list dated 11.09.2015, and secured 12th rank in the impugned select dated 08.02.2016. Since now the above second list along with consequent recommendations have been quashed by this Court with direction to consider the claim of eligible candidates on the basis of list dated 25.05.2015; therefore, in such a scenario, no mandamus could be issued for reconsideration of his case against 09 vacancies for the year 2013.

Point No.3

30) Consequently, Writ Petitions Nos.20282 of 2016 and 6426 of 2016 are allowed to the extent that the impugned corrigendum dated 26.08.2015, second panel/list dated 11.09.2015 along with the recommendations of the Commission dated 08.02.2016 are quashed and set aside. Chief Secretary as well as Secretary, Department of Personnel, Government of Punjab are directed to take further necessary action on the basis of the panel/ list dated 25.05.2015 for the year 2013 as per rule 9(5) and forward the same to the Commission for further consideration

in accordance with law without any further delay. After finalization of the recommendations for the year 2013, the panel/ list of the eligible candidates for the vacancy/ vacancies pertaining to the year 2014 shall be sent separately for further consideration by the Commission in accordance with law without any loss of time.

In view of the findings recorded in para No.29, CWP No.3154 of 2016 filed by petitioner Avtar Singh stands dismissed.

- 31) Pending Civil misc. application(s), if any, also stand disposed off.
- 32) Original records received from the official respondents be returned to the concerned officials under proper acknowledgement.
- 33) The observations made hereinabove shall not be construed as expression of an opinion on the merits of the candidates to be considered by the Commission in any manner.
- 34) A photocopy of this order be placed on the files of connected cases.

October 1st, 2021
SN/sanjay

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable: Yes/No