



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

LPA-2446-2017(O&M)

Reserved on : 26th of May, 2025

Date of Decision: 29th of May, 2025

***THE DIRECTOR GENERAL, RAILWAY PROTECTION FORCE, RAIL
BHAWAN, NEW DELHI AND OTHERS***

.....Appellant (s)

V/s.

HARINDER SINGH DHALIWAL AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

Present: Mr. Anil Chawla, Advocate for the appellants.

Mr. Aakash Singla, Advocate for respondents No.1 to 3.

SANJEEV PRAKASH SHARMA, J.

1. This is a proceeding which we have taken up as the Hon'ble Supreme Court vide its order dated 22.10.2021 had requested to decide this LPA within a period of four months.

2. It seems that on account of the COVID-19, the case could not be taken up as certain queries were also raised from time to time by the Court with regard to the seniority lists of Inspector Grade-I and Inspector Grade-II as existing in the Department.

3. The appellants by way of this LPA have challenged order dated 08.09.2017 passed by the learned Single Bench in *CWP-4353-2006*.

4. The brief facts which need to be noticed are that before the learned Single Bench, the respondents No.1 to 3/writ petitioners had preferred a Writ Petition i.e. *CWP-4353-2006*, challenging the validity of order dated 16.02.2006 by which respondents No. 4 to 8 had been promoted to the Post of Assistant Security Commissioner (hereinafter referred to as



“the ASC”). Respondent No.1-Harinder Singh Dhaliwal was appointed as Assistant Public Prosecutor in May 1996 and was selected as Inspector Prosecution Grade-II on 23.03.1999 in the Railway Protection Force, Prosecution Wing. Similarly, respondent No.2-Mam Chand Sharma had joined Railway Protection Force in the year 1974 and was selected as Sub-Inspector Prosecution Grade-II on 14.12.1992. He was further promoted as Inspector Prosecution Grade-II on 10.12.1998 and thereafter further promoted as Inspector Prosecution Grade-I on 23.03.2002. Respondent No.3-Krishan Kumar Sharma was a practicing Lawyer for the period 1987-1999 at Alwar, Rajasthan and was appointed as Inspector Prosecution Grade-II on 31.03.1999. He was further promoted to the post of Inspector Grade-I on 22.03.2022. While respondent No.1 is due to retire on 30.06.2025, other two respondents have already been retired on 31.10.2013 and 31.12.2022 respectively, on attaining the age of 60 years.

5. The challenge by them to the order dated 16.02.2006 resulted in allowing their Writ Petition with the directions to the respondent therein to consider the name of the petitioners (respondents No.1 to 3 herein) for promotion to the post of ASC as on 17.01.2006 with reference to the Railway Protection Force (Group-A) Posts of Deputy Inspector General (Railway Protection Force), Deputy Chief Security Commissioner/Senior Security Commissioner and Assistant Security Commissioner Recruitment Rules, 1994 (hereinafter referred to as “the Rules of 1994”), within three months and also extend the consequential service and monetary benefits.

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6. Learned Single Bench has further held that combined seniority list prepared as on 01.07.2004 of Inspectors, reflecting respondents No.4 to 8 to be senior to the respondents No.1 to 3, was redundant for the purpose of promotion of 119 upgraded posts as on 17.01.2006.

7. The Railway Protection Force, Act, 1957 (hereinafter referred to as “the Act of 1957”) and the Railway Protection Force Rules, 1987 (hereinafter referred to as “the Rules of 1987”) govern the service conditions of the respondents.

Case of the Appellants

8. Learned counsel for the appellants has submitted that the impugned order passed by the learned Single Bench has failed to take into consideration the provisions of the Rules in their correct perspective and the judgments applied by the learned Single Bench of **Y.V. Rangaiha and Others** Vs. **J. Sreenivasa Rao and Others** ; (1983)3 SCC 284 and **Arjun Singh Rathore and Others** Vs. **B.N. Chaturvedi and Others**; (2007) 11 SCC 605 could not have been relied upon as the same stands already overruled in the case of **State of Himachal Pradesh and Others** Vs. **Raj Kumar and Others** ; (2023) 3 SCC 733. Therefore, the impugned order is not sustainable in law.

9. The posts of Inspector were earlier classified in three Branches (i) Executive Branch (ii) Prosecution Branch and (iii) Fire Service Branch. However, in 2003, there were only two Branches i.e. (i) Executive Branch (ii) Prosecution Branch as the Fire Service Branch was disbanded in the year 1992 and merged into the Executive Branch. Respondents No.1 to 3



were in the Prosecution Branch whereas respondents No.4 to 8 were in the Executive Branch. The Rules of 1994 governed the method of promotion/recruitment to the posts of ASC.

10. As per the Rules of 1994, the post of ASC was to be filled by promotion and in this regard, the relevant extract of the Rules is reproduced as under:-

<u>(1)</u>	<u>(2)</u>	<u>(3)</u>
4. Assistant Security Commissioner	<i>A degree of any of the Universities established or incorporated by an Act of the Central or State Legislature in India or other Educational Institutions established by an Act of Parliament or declared to be deemed as a University under Section 3 of the University Grant Commission Act, 1956, or an equivalent qualification.</i>	<u>Promotion:-</u> <i>Inspectors Grade-I (Pay Scale Rs.2000-3200) with five years regular service in the grade, failing which Inspectors Grade I with seven years combined regular service as Inspector Grade-I (Rs.2000-3200) and Inspector Grade II (Rs.1640-2900) with a minimum of two years regular service as Inspector Grade I.</i>

11. On 10.10.1997, the pay scales of Inspector Grade-I and Inspector Grade-II were equated by the 5th Pay Commission and pay scale was merged as ₹6,500-₹200-₹10,500/-. So far as the Inspector Grade-I are concerned, a sum of ₹200/- as special pay was granted who were holding the post of Inspector Grade-I. It has been stated that since in the Prosecution Branch, the cadre of Inspector Grade-I was small in comparison to the cadre of Inspector Grade-I in the Executive Branch, the special pay was earned much earlier in the Prosecution Branch. From 10.10.1997, the post of



Inspector Grade-I seized to be a promotional post, but no amendments were made in the Rules of 1994.

12. On 17.01.2006, 119 posts of Inspector were upgraded to the rank of ASC (Junior scale) at different places wherein 8 posts were earmarked as far as the Northern Railways is concerned.

13. In 2006, the appellants amended the Rules of 1994 and these Rules were called “Railway Protection Force (Group-A) Posts of Deputy Inspector General (Railway Protection Force), Deputy Chief Security Commissioner/Senior Security Commissioner and Assistant Security Commissioner Recruitment Rules, 1994 (hereinafter referred to as “the Rules of 2006”. The Rules of 2006 were notified on 16.01.2006 and thereafter gazetted on 20.01.2006. As per the new Rules of 2006, the post of ASC was to be filled by way of selection. 40% by promotion, 50% by direct recruitment and 10% from deputation by re-employment by the Armed Forces Personnel, failing which, by promotion.

14. The channel of promotion was provided from Inspectors with revised pay scale of ₹6,500-₹200-₹10,500/- with five years regular service in the grade with a note that where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility served by more than half of such qualifying/eligibility service of two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying eligibility service.



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15. On 16.02.2006, the Railway Protection Force has promoted respondents No.4 to 8 to the post of ASC and against the said order, respondents No.1 to 3 had preferred Writ Petition i.e. *CWP-4353-2006* in March 2006.

16. Vide gazette notification dated 27.01.2007, the Railway Protection Force Rules, 1987 were amended wherein Rule-1 2(a) and Rule 69 of the Railway Protection Force Rules, 1987 were added.

17. On 28.02.2005 and 10.06.2005, combined seniority lists of all Inspector Grade-I and Inspector Grade-II were published respectively. Representations were called for and grievances/objections of respondents No.1 to 3 were rejected. It was decided that the Inspector Grade-I promoted after 01.10.1997 cannot be included in the seniority list for the purpose of promotion to the rank of ASC.

Contentions of the appellants

18. Learned counsel for appellants submits that the learned Single Bench has failed to notice that the post of ASC could not have been filled in accordance with the Rules of 1994 as the post of Inspector Grade-I seizes to be a promotional post of Inspector Grade-II with w.e.f 10.10.1997. It was clarified further vide circular dated 13.01.1999 that on recommendations of the 5th Pay Commission, the seniority list was decided to be maintained of all the Inspectors w.e.f. 04.12.1997 and respondents No. 1 to 3, being senior as Inspector Grade-I, paled into insignificance right from 04.12.1997. The seniority of Inspector Grade-I prior to 04.12.1997 would only be treated for the purpose of seniority and those who are promoted after 04.12.1997, the



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seniority will be maintained from Grade-II promotion. Since, the respondent Nos. 4 to 8 had been appointed as Inspector Grade-II much earlier point of time than respondents No. 1 to 3 and had been working as Inspector Grade-II on 01.04.1983 and were also drawing pay scale of ASC, in view of the benefit of ACP scheme, they had become entitled for promotion on the upgraded post under the old Rules.

19. Learned counsel for the appellants submits that the Director General, Railway Protection Force alone has the power to decide the *inter se* seniority of the officials if the Act is silent. The *inter se* seniority of Inspector Grade-II was, therefore, to be taken into consideration amongst all the Inspector Grade-I and Grade-II after the merger of both the posts Inspector Grade-I and Grade-II, with effect from the pay of both the posts were revised i.e.10.10.1997. Respondents No.1 to 3, therefore, could not claim themselves to be senior to the Inspectors of the Executive Branch, who were holding the pay scale of Inspector Grade-II till their scale was upgraded.

20. It is further submitted that upgradation of 119 posts was from the Executive Branch and therefore, the appellants had rightly promoted the officials working as Inspectors Inspector Grade-I and Grade-II in the Executive Branch. The promotion, therefore, did not deserve to be disturbed.

Contentions of the respondents No.1 to 3

21. *Per contra*, learned counsel for the respondents No.1 to 3 submits that the Rules provide that the position prior to merger of Inspector



Grade-I and Inspector Grade-II was Sub-Inspector to Inspector Grade-II to Inspector Grade-I and thereafter to the ASC. The merger of cadres of Inspector Grade-I and Inspector Grade-II and the formation of cadre of Inspectors has come into force only on 27.01.2007 by the amendment Rules, 2006. Thus, on the day when the promotions were made, there was no actual merger.

22. It is submitted that respondents No.1 to 3 were seniors to respondents No.4 to 8 under the old Rules as they had been promoted on the post of Inspector Grade-I, while the respondents No. 4 to 8 were holding the post of Inspector Grade-II. When the revised pay scales came into force w.e.f. 10.10.1997, the pay scale of the respondents No.4 to 8 was made equivalent to that of respondents No. 1 to 3, but there was no actual merger and therefore, merely because of the upgradation of their pay scales, they could not be said to be holding the same posts as respondents No. 1 to 3 on the day when the impugned promotion order was passed.

23. Learned counsel for the respondents No.1 to 3 frankly submits that although the principle laid down in the case of **Y.V. Rangaiha and Others** (Supra) would have no application to the present case as the same judgment itself has been overruled as on the day when the promotions were given because, since the new Rules had not come into force w.e.f. 27.01.2007 i.e. the date of publication in the gazette and the common cadre was found only w.e.f. the said date. Promotions given prior to the formation of the common cadre could not be made on the basis of the new Rules.



24. It has been further submitted that as per Rules of 1994 as amended in 2006, if applied to the promotions made on 16.02.2006, then too, the respondents No. 4 to 8 could not have been treated as senior to respondents No. 1 to 3 as per note made in the amendment in the pay scale and respondent No.1 to 3 were required to be first considered being already holding the posts of Inspector Grade-I.

Findings of the Court

25. We have considered the submissions of learned counsel for both the parties.

26. At the outset we find that the reliance made by the learned Single Bench to the judgment of **Y.V. Rangaiah and Others** (Supra) in the impugned order is wholly irrelevant and unjustified and the same is not required to be taken into consideration as the same has been overruled by the Apex Court in the case of **State of Himachal Pradesh and Others Vs. Raj Kumar and Others**; (2023) SCC 773 wherein it has been held as under:-

“36. A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:

- 1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah’s case must be understood in the context of the rules involved therein.*
- 2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered*

for promotion occurs on the date of consideration of the eligible candidates.

3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit.⁶¹ The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of [Article 14](#).

4. The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.

37.1 The above-referred observations made in the fifteen decisions that have distinguished Rangaiah’s case demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished Rangaiah hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in Rangaiah is confined to the facts of that case.”

27. The method of recruitment to the post of Assistant Security

Commissioner (ASC) under the amended Rule of 2006, reads as under:-

<i>Name of the post</i>	<i>No. of posts</i>	<i>Classification</i>	<i>Scale of Pay</i>	<i>Whether selection post or non-selection post</i>	<i>Whether benefit of added years of service admissible</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
Assistant Security Commissioner	152* (2006) Subject to variation dependent on work lod	General Central Service Group- A Gazette No. ministerial	₹8000-275-13,500	Selection	Non applicable



<i>Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of the post to be filled by various methods</i>	<i>In case of recruitment by promotion/ deputation/ absorption grade from which promotion/ deputation/ absorption to be made.</i>
<i>11</i>	<i>12</i>
<i>40% promotion</i> <i>50% direct recruitment</i> <i>10% by deputation</i> <i>Re-employment of armed forces personal, failing which, by promotion</i>	<i>Promotion</i> <i>Inspectors with revised pay scale of ₹6500-₹10,500 with five years regular service in the grade.</i> <i>Note:- juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provide they are not short of the requisite qualifying/eligibility serve by more than half of such qualifying/eligibility service of two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying eligibility service.</i>

28. From the perusal of the above, it is apparent that the combined seniority list of the Inspectors Grade-I and Grade-II could have been prepared on the advice of the Director General only after coming into force the amendment in 2006. Merely because, the pay scale Rules equated the pay scale of Inspector Grade-II to Inspector Grade-I, it would not mean that both the posts had been merged. Merger of posts is an administrative feat which comes into force only upon appropriate amendments being made in the Rules. The cadre of Inspectors Grade-I and Grade-II continue to operate till publication of the amendment Rules of 2006 i.e. till 27.01.2007. The respondents No.1 to 3, who were holding the post of Inspector Grade-I, could not have been equated to the respondents No.4 to 8, who were holding the post of Inspector Grade-II.

29. We notice that merely because the post of Inspectors was upgraded from the Executive Branch to the post of ASC, the respondents No. 1 to 3 have not been considered, who were in the Prosecution Branch. It is not a case where respondents No.1 to 3 have been even considered for promotion. The seniority list of 2005, as has been placed on record with the

Appeal, would, therefore, be *void ab initio* in view of what we have stated hereinabove and could not have been made as a source of making promotion to the post of ASC. The Writ Petition therefore, deserves to be allowed though, for the reasons as above instead of the reasons which have been assigned by the learned Single Bench as the reliance made by the learned Single Bench to the judgment of Y.V. Rangaiha and Others (Supra) has been overruled by the Apex Court.

Conclusion

30. In view thereto, the Appeal stands **dismissed** to the aforesaid extent and the Writ Petition is allowed and the operative part of the impugned order passed by the learned Single is upheld for the reasons as substituted herein above.

31. All pending applications in this case are disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[DEEPINDER SINGH NALWA]
JUDGE

May 29, 2025
Ess Kay

Whether speaking / reasoned	:	Yes
Whether Reportable	:	Yes