

Before Jaswant Singh & Sant Parkash, JJ.

OM PARKASH AND OTHERS—Appellant

versus

STATE OF HARYANA AND OTHERS—Respondent

CWP No.13496 of 2009

July 27, 2020

A. *Punjab Police Rules, 1934— Rule 13.14(2) (as applicable to State of Haryana) —Promotion Post of Inspector of Police— All promotions to post of Inspector have to be made on basis of eligibility criteria provided under Rule 13.14(2)— Same was not tinkered with by State when selection grade was abolished in 1986 or when amendment to Rule 12.3 was carried out in year 2001 If Rule 13.14(2) has no application as far as promotion to post of Inspector is concerned, there is no other statutory provision which would fill up vacuum— Two statutory provisions i.e. Rule 13.5(4) and 13.15 would also be rendered otiose— As necessary corollary of which, no Sub-Inspector would be promoted to post of Inspector.*

Held that the Eligibility criteria prescribed in Rule 13.14(2) does not differentiate between a direct recruit or promote Sub Inspector. Any Sub Inspector, who possesses eight years experience subject to fulfillment of all other condition, is considered for promotion to the post of Inspector. The rationale for providing eight years experience as Upper Subordinate has also been established before us.

(Para39)

B. *Constitution of India, 1950— Article 16— Punjab Police Rules, 1934, Rule 13.14 (2) (as applicable to State of Haryana) Promotion Post of Inspector of Police — Eligibility criteria prescribed in Rule does not differentiate between direct recruit or promotee Sub Inspector Any Sub Inspector, who possesses eight years experience subject to fulfillment of all other condition, can be considered for promotion to post of Inspector Rule lays down eight year experience as upper subordinate, out of which five years have to be as Sub Inspector —It does not mandate that rest of 3 year service as upper subordinate has to be in previous ranks alone meaning thereby said experience eacquired in rank of Sub Inspector is equally valid for further promotion on post of Inspector Rule 13.1 provides that promotion from one rank to another and from one grade to another*

in same rank shall be made by selection tempered by seniority and efficiency and honesty shall be main factors governing selection — There is no discrimination on basis of source of recruitment Therefore, eligibility criteria prescribed in Rule 13.14(2) for promotion to post of Inspector is discriminatory or denies lack of equal opportunity— Petition dismissed.

Held that we are convinced that the eligibility criteria prescribed in Rule 13.14(2) for promotion to the post of Inspector is not discriminatory in terms of Article 14 or denies lack of equal opportunity in terms of Article 16. Accordingly, the issue no. 2 is also decided against the Petitioners.

(Para 39)

Rajiv Atma Ram, Senior Advocate, assisted by
Arjun Partap Atma Ram &
Bhagoti Singh, Advocates
for petitioner Nos. 1 to 3.

Puneet Bali, Advocate, assisted by
Vibhav Jain &
Mriganki Nagpal, Advocates
for the Interveners / petitioner Nos. 4 to 40.

[CM No. 6565 of 2016 disposed of vide order dated 13.09.2019 permitting the applicants to assist the Court as Interveners]

Shruti Jain Goyal, Deputy Advocate General, Haryana
for official respondent Nos. 1 to 3/State.

Gurminder Singh, Senior Advocate, assisted by
Vivek Sharma &
Rohan Markanda, Advocates
for private respondent Nos. 33 to 35.

[CM No. 13290 of 2019 for impleadment as respondents allowed vide order dated 13.09.2019]

Vikas Bahl, Senior Advocate, assisted by
Nikhil Sabharwal &
Aakritee Raj, Advocates
for private respondent Nos. 36 to 42.

[CM No. 14235 of 2019 for impleadment as respondents allowed vide order dated 27.09.2019]

Anupam Gupta, Senior Advocate, assisted by Promila Nain &
Harveen Mehta, Advocates
for private respondent No. 43-Rajat Gulia.

**[CM No. 16740 of 2019 for impleadment as respondent
allowed vide order dated 07.11.2019]**

JASWANT SINGH, J.

CM Nos. 3250-51 of 2019 & CM No. 8833 of 2019:

The CM No. 3250-51 of 2019 was filed by the petitioners for stay of action in furtherance of letter dated 20.02.2019 (**Annexure P-20**) whereby the cases of the private respondent Nos. 4 to 32 were called for further promotion from the post of Inspector to the post of Deputy Superintendent of Police and to issue appropriate directions.

The CM No. 8833 of 2019 was filed by the petitioners under Section 151 of CPC for issuance of appropriate directions. It was prayed that the respondent-State be restrained from taking any action in furtherance of letter dated 27.05.2019 (**Annexure P-21**) vide which the certificates and character rolls for appointment of one or more of the respondents were called.

CM No. 16332 of 2019 & CM No. 17360 of 2019:

The CM No. 16332 of 2019 was filed by the Respondent-State for recalling/modification of the order dated 13.09.2019 vide which the departmental proceedings for promotion of Deputy Superintendent of Police were stayed.

Another Civil Miscellaneous Application bearing CM No. 17360 of 2019 was filed by the Respondent-State to allow the applicants/respondents to hold the meeting of Departmental Promotion Committee for consideration of eligible Inspectors for promotion to the post of Deputy Superintendent of Police.

CM No. 18245 of 2019 & CM No. 324 of 2020:

Respondents Nos. 33 to 35 have filed CM No. 18245 of 2019 with a prayer to stay/defer the appointment to the post of Deputy Superintendent of Police advertised by the Respondent-State or in the alternative to direct the Respondent-State to reserve the post as well as seniority for all intents and purposes for the applicants/respondent Nos. 33 to 35 whose names are mentioned in **Annexure-P-21**.

They have also filed CM No. 324 of 2020 praying for stay/deferment of order dated 20.12.2019 (Annexure A-1) vide which the Director General of Police directed the Superintendent of Police of various Districts to send the names of the Inspectors for out of turn promotion on the basis of gallantry etc. as per the notification/Policy dated 28.02.2019 to the post of Deputy Superintendent of Police within two weeks.

CM No. 2406 of 2020

Instant application was filed to place on record the counter-affidavit of Petitioner No. 1-Sh. Om Prakash, to the affidavit filed by Shri Vinod Kumar, H.P.S., A.I.G. Administration, Haryana on behalf of Respondent-State. The same is **allowed** and the counter-affidavit is taken on record.

Registry to place it at the appropriate place and page mark the paper-book.

MAIN CASE

(1) Through the instant Writ Petition under Article 226 of the Constitution, the Petitioners are seeking quashing of order dated 27.11.2008 (**Annexure P-8**), Order dated 18.05.2008 (**Annexure P-9**) and Order dated 13.08.2009 (**Annexure P-10**), whereby the private respondents have been promoted as Inspectors of Police, as also order dated 30.06.2009 (**Annexure P-2**), order dated 15.06.2009 (**Annexure P-3**) and further order dated 30.06.2009 (**Annexure-P-4**) whereby the petitioners have been confirmed as Sub Inspectors in Haryana Police.

The Petitioners are further assailing vires of Rule 12.8 and 13.18 of the Punjab Police Rules, 1934, as applicable to State of Haryana (for short 'Rules'), which are governing *inter-se* seniority of direct recruits and promotees appointed on the post of Sub Inspectors of Police and their further promotion to the post of Inspector of Police. The Petitioners are seeking direction to officials Respondents to consider and promote them as Inspectors with effect from the date their juniors private respondents were promoted alongwith all consequential benefits flowing therefrom.

(2) Since the filing of the instant Writ Petition, various Civil Miscellaneous Applications were moved by the petitioners whenever the cases of eligible Inspectors were called for further promotion as Deputy Superintendent of Police. The said applications were disposed of with a direction that all these promotions shall remain subjected to

the outcome of the Writ Petition. However, on another Civil Miscellaneous application, CM No. 8833 of 2019, filed by the Petitioners, this Court vide an order dated 13.09.2019, restrained the Respondent-State from pursuing the departmental proceedings for promotions to the post of Deputy Superintendent of Police, till the next date of listing. The stay order was further continued by subsequent orders till the final decision of the case. The resultant position is that no Inspector has been promoted to the post of Deputy Inspector since then.

(3) Few facts emerging from record and necessary for adjudication of present controversy are that the Petitioners are direct recruits on the post of Sub-Inspector of Police whereas Respondent No. 4 to 32 were promoted as Sub-Inspector from the rank of Assistant Sub Inspector. In the State of Haryana prior to 2001, 100% posts of Sub Inspector of Police used to be filled by way of promotion, however vide notification dated 24.12.2001, the State Government carried out an amendment in the Rules and introduced 50% quota for direct recruitment in the rank of Sub Inspector by substituting Rule 12.3 which is extracted below:

“12.3, Direct appointment of Inspectors and Sub Inspectors-

Except as provided in rules 12.1 and 12.4 direct appointment shall not be made except in the rank of Inspector and Sub Inspector of Police. Such appointment in the rank of Inspector and Sub Inspector may be made up to a maximum of ten percent and fifty percent of posts respectively.”

(4) In terms of the amended Rule 12.3, the first requisition for direct recruitment of 100 Sub Inspectors in Haryana Police was sent to Haryana Staff Selection Commission on 25.03.2002, which was published by the Commission through an advertisement No. 01/2002 dated 18.04.2002. The matter regarding direct recruitment of 100 Sub Inspectors was re-examined by the respondent department in view of judgment dated 24.09.2002 passed by this Court in *CWP No. 11046 of 2002 titled Rajinder Singh versus State of Haryana* and judgment dated 14.02.2003 in CWP No. 11046 of 2002. Since, only 33 vacancies were mentioned in the judgment dated 24.09.2002, a request was made to the Commission vide memo dated 21.02.2003 to make recommendation only against 17 posts in place of 100 posts. Subsequently, some more posts were created by the State Government and a fresh requisition of 100 posts was sent to the Commission.

Against the posts advertised vide aforesaid two advertisements, recommendations for 17 and 100 candidates were received on 26.05.2003 and 12.09.2003 from the Commission respectively.

(5) All the three Petitioners were appointed in pursuance to the recommendations dated 26.05.2003. Petitioner Nos. 1 & 3 joined on 26.05.2003 and Petitioner No. 2 joined as Sub Inspector on 27.05.2003. Respondent Nos. 4 to 32, were promoted from the rank of Assistant Sub Inspector to Sub Inspectors from June 2003 to March 2004 i.e. after direct recruitment of Petitioners, which made Respondents junior to Petitioners. The grievance of the Petitioners is that although they were appointed as Sub Inspector prior to the private respondents and are senior to them on the basis of length of service, nonetheless they have been ignored while making promotions to the post of Inspector whereas the private respondents who are junior to them (Petitioners), have been promoted as Inspector of Police.

(6) Mr. Rajeev Atma Ram, Senior Advocate, counsel for the Petitioners, submitted that Rule 12.2(3) which provides for determination of seniority by date of confirmation is contrary to law. Further, the Rules of confirmation i.e. Rule 12.8 and 13.18 are different for direct recruits and the promotees as they provide for different period of probation for the direct recruits and promotees. He submitted that neither of the two Rules provides for automatic confirmation on expiry of probation, thus both the Rules are open ended and are clearly amenable to arbitrariness in confirmation. In support of his submission that a valuable right such as seniority cannot be made dependent upon the vagaries of incidence of confirmation, he placed reliance upon the Judgment of the Apex Court in *S.B. Patwardhan* versus *State of Maharashtra*¹, *Direct Recruits of Class-II Engineering Services Association* versus *State of Maharashtra*², *O.P. Garg* versus *State of Uttar Pardesh*³.

(7) The second contention raised by Mr. Atma Ram is that all Sub Inspectors constitute one class and no discrimination is permissible in the same class of Sub Inspectors i.e. between direct recruits and promotees for any purpose. Therefore, Rule 12.8 and 13.18 cannot prescribe different periods of probation, especially when seniority is by continuation in the cadre. Reference has been made to the Judgment in

¹ AIR 1977 SC 2051

² AIR 1990 SC 1607

³ 1991(2) SCT 507

Mervyn Continho versus *Collector of Customs, Bombay*⁴, *Roshan Lal Tandon* versus *Union of India*⁵, *S.M. Pandit* versus *State of Gujarat*⁶, *State of Jammu & Kashmir* versus *Triloki Nath Khosa*⁷. His third contention is that in any case, once an order of confirmation is passed, it has to relate back to the date of appointment. Thus the confirmation of the Petitioners would be deemed to be with effect from the date of their appointment.

(8) In reply to contentions of the Petitioner, Ms. Shruti Jain Goyal, the Learned DAG, appearing for the State submitted that though there is a rationale and complete justification for providing determination of final seniority from the date of confirmation and for providing different periods of probation for direct recruits and promotees as stated in detail in the written statement supplemented by additional affidavits, in the case in hand, it would not be necessary to delve into this issue. It was not due to operation of rule of probation and confirmation or seniority that the Petitioners were not promoted to the post of Inspector along with the private respondents, rather it was due to non-fulfillment of eligibility criteria prescribed under Rule 13.14(2) that they did not fall within the zone of consideration for further promotion to the post of Inspector.

(9) She further submits that as per provision of Rule 13.14(2), eight years of minimum service as upper subordinate is required for promotion as Inspector from the rank of Sub Inspector including five years as Sub Inspector. Since the Petitioners were appointed in May 2003, they did not complete 8 years as an Upper Subordinate in the year 2009 and thus were not eligible for being considered for promotion to the rank of Inspector whereas the respondent no. 4 to 32 were promoted as Sub Inspector from the rank of Assistant Sub Inspector in the year 2003-2004 and were further promoted on possession of eight years of experience including completion of five years as Sub-Inspectors in the year 2009 against the available vacancies of Sub Inspectors.

(10) The official Respondents, in compliance of direction dated 16.01.2020 of this Court, filed an affidavit dated 06.02.2020, narrating that in terms of amendment made in Rule 12.3 of the Rules on

⁴ AIR 1967 SC 52

⁵ AIR 1967 SC 1889

⁶ AIR 1972 SC 252

⁷ 1974 AIR SC 1

24.12.2001, the Petitioners were directly recruited as Sub Inspectors in the selection process carried out in the year 2003. It would be profitable to reproduce para 11 of the affidavit, which is as below:

“11. That it is submitted that promotions of Sub Inspectors, who were directly recruited from 2003 onwards, to the rank of Inspectors have strictly been made as per provision of above rules and only against the vacancies meant for promotion quota. The detail of promotion of the petitioners to the rank of Inspector is as under:-

Sr. No.	Rank, Name and Number	D.O.B	Category	D. E.As SI	D.O.C. AsSI	D.O.P. List 'F'	D.O.P.As Inspr.
1	P/SI Om Parkash	31.05.76	GC	26.05.03	31.08.07	27.05.11	27.05.11
2	P/SI Sudeep	29.09.79	GC	27.05.03	31.08.07	27.05.11	27.05.11
3	P/SI Suresh Kumar	04.12.79	BCB	26.05.03	31.08.06	27.05.11	27.05.11

It would not be out of place to mention here that the promotion to the rank of Inspectors in respect of respondents was also made as per criteria laid down in Punjab Police Rules and against the promotion quota posts only. The details thereof are as under:-

Sr. No.	Rank, Name and Number	D.O.B.	D.O.E.	Category	D.O.P. As SI	D.O.C.As SI	D.O.P. List 'F'	D.O.P.As Inspr.
1	Inspr.JagatSinghNo. 2/HAP	20.07.53	01.05.75	GC	01.06.03	31.08.08	25.11.08	27.11.08
2	Inspr. Satender SinghNo. 33/HAP	02.01.61	06.11.79	BC	01.06.03	31.08.08	25.11.08	27.11.08
3	Inspr. Hardev Singh No. 6/HAP	10.03.56	10.07.75	SC	01.06.03	31.08.08	25.11.08	27.11.08

4	Inspr. Ram Diya No.11/HAP	11.12.52	31.01.77	GC	01.06.03	31.08.08	25.11.08	27.11.08
5	Inspr. Manbir Singh No. 51/HAP	06.07.58	30.12.76	SC	01.06.03	31.01.09	25.11.08	27.11.08
6	Inspr. Isham Singh No.73/HAP	30.03.56	29.04.75	GC	01.06.03	31.01.09	25.11.08	27.11.08
7	Inspr. Lekh Ram No. 76/HAP	05.03.56	31.01.81	BC	01.06.03	31.01.09	25.11.08	27.11.08
8	Inspr. Jaibir Singh No. 79/HAP	07.01.60	16.05.75	GC	01.06.03	31.01.09	25.11.08	27.11.08
9	Inspr. Suresh Kumar No.85/HAP	13.01.56	17.10.79	GC	01.06.03	31.01.09	25.11.08	27.11.08
10	Inspr. Sat Narain No. 86/HAP	10.05.58	18.10.78	GC	01.06.03	31.01.09	25.11.08	27.11.08
11	Inspr. Dhrampal No. 87/HAP	05.02.52	04.03.77	GC	01.06.03	31.01.09	25.11.08	27.11.08
12	Inspr. Ram Swarup No. 95/HAP	02.12.55	31.03.77	SC	01.06.03	31.01.09	25.11.08	27.11.08
13	Inspr. Mahabir Singh No. 46/HAP	15.04.53	18.03.77	BC	25.08.03	31.01.10	02.03.09	02.03.09

14	Inspr. Dharam vir Singh No. 335/H	15.04.5 2	25.09.73	GC	15.02.04	31.08.09	06.08.09	06.08.09
15	Inspr. UdmiRam No. 178/H	15.06.5 9	11.05.78	BC	15.02.04	31.08.09	06.08.09	06.08.09
16	Inspr.Raj SinghNo. 46/HAP	08.06.5 4	19.07.72	GC	15.02.04	31.08.09	06.08.09	06.08.09
17	Inspr. Ami Lal No.47/H	15.06.5 4	26.11.74	GC	15.02.04	31.08.09	06.08.09	06.08.09
18	Inspr. Virende r SinghNo. 71/H	02.01.5 6	20.03.75	GC	15.02.04	31.08.09	06.08.09	06.08.09
19	Inspr. MadanL alNo. 190/H	05.05.5 7	02.02.76	SC	15.02.04	31.08.09	06.08.09	06.08.09
20	Inspr. Jai NarainNo. 188/H	10.05.5 3	28.06.76	SC	15.02.04	31.08.09	06.08.09	06.08.09
21	Inspr. Maha SinghNo. 193/H	29.12.5 5	23.10.75	SC	15.02.04	31.08.09	06.08.09	06.08.09
22	Inspr. Balwant Singh No. 78/HAP	01.07.6 5	16.05.95	GC	15.02.04	31.08.09	06.08.09	06.08.09
23	Inspr. Vinod Kumar No. 207/H	30.09.6 1	10.02.95	GC	15.02.04	31.08.09	06.08.09	06.08.09
24	Inspr. Mahender SinghNo. 272/H	01.05.6 2	15.02.95	GC	15.02.04	31.01.10	06.08.09	06.08.09

25	Inspr. Virender Singh No. 159/H	15.08.6 6	11.02.95	GC	15.02.04	31.01.10	06.08.09	06.08.09
26	Inspr. Ravinder Kumar No. 50/H	20.01.6 4	08.02.95	GC	15.02.04	31.01.10	06.08.09	06.08.09
27	Inspr. Ram Singh No. 103/H (130/H)	05.10.6 4	07.02.95	GC	15.02.04	31.01.10	06.08.09	06.08.09
28	Inspr. Rattan Singh No. 28/H	04.04.5 5	31.03.77	BC	15.02.04	--	06.08.09	06.08.09
29	Inspr. Ram Kumar No. 90/RR	12.02.5 3	16.10.73	GC	05.03.04	31.08.06	06.08.09	06.08.09

(11) It is evident from the above chart that the Petitioners were in no manner prejudiced by rule of probation and confirmation or seniority rather the Petitioners 1 & 2 were confirmed in the rank of Sub Inspector on 31.08.2007 and the Petitioner no. 3 was confirmed as Sub Inspector on 31.08.2006 i.e. prior to Respondent No. 4-32 who were confirmed as Sub Inspectors on various dates ranging from 31.08.2006 to 31.01.2010.

On being confronted with this uncontroverted factual position, Mr. Atma Ram gave up his challenge to the vires of Rule 12.2(3), 12.8 and 13.18 of the Rules and to the confirmation orders of the Petitioners, **P-2, P-3 & P-4**.

(12) The Writ Petition now survives only qua the challenge to the promotion orders of respondent no. 4-32 to the post of Inspectors and with regard to prayer of the Petitioners to promote them to the rank of Inspector along with Respondent no. 4-32 as also with regard to the applicability of Rule 13.14(2) being the relevant/applicable rule for promotion to the rank of Inspector; as also whether the eligibility condition of eight years experience as Upper Subordinate Office would be violative of Article 16 of the Constitution.

ARGUMENTS

(13) In rebuttal to the stand of the Respondent-State that the Petitioners were not promoted on the post of Inspector at par with the private respondents owing to the condition of eight years experience in the Rule 13.14(2), Mr. Atma Ram submitted that Rule 13.14(2) deals with promotion to selection grade and not to the post of Inspector which is evident from a conjoint reading of Rule 13.14(1), (2), (3), (4) as also from a bare perusal of Rule 13.14(2). He submitted that there is no Rule providing any required length of service/experience for promotion from Sub Inspector to Inspector. He places reliance on the Judgment *in Rohitash Kumar* versus *Om Prakash Sharma*⁸ to contend that the State cannot add words to Rule 13.14 to say that it is applicable to promotion of Inspector as well. He asserted that it is rule 13.16 read with rule 13.1 which will govern the promotion to rank of Inspector and the respondent-state is bound to follow the same.

(14) Mr. Atma Ram further submitted that if Rule 13.14, as existing, is applied to promotion of Inspectors, it would be violative of Article 16 of the Constitution of India as direct recruit Sub Inspectors have no experience as upper subordinate before appointment as Sub Inspector, whereas promotees from the rank of Assistant Sub Inspector do possess such experience. He submits that all Sub Inspectors constitute one class, having same pay scales, duties and common seniority and experience of Assistant Sub Inspectors cannot be counted after promotion as Sub Inspector and no distinction can be made on the basis of source of recruitment viz. direct recruitment and promotion.

(15) Mr. Gurminder Singh, Senior Advocate appearing for newly impleaded Respondent Nos. 33 to 35, draws our attention to para 9 & 10 of the affidavit dated 06.02.2020 filed by the Respondent-State to assert that in order to place a construction on Rule 13.14(2) and to ascertain its full import, the entire scheme of the statutory rules and the inter-play of the said rule *vis-à-vis* rule 13.1, 13.15 & 13.16, which are relevant for the purpose of promotion to the post of Inspector, is required to be considered by this Court.

(16) He relies upon the Judgment in *Dr. N.C. Singhal* versus *Union of India*⁹ to submit that when two interpretations of a rule are possible, the court should adopt the construction which makes the rule

⁸ 2013(1) SCT 537

⁹ (1980)3 SCC 29

workable over the one which renders it otiose. To bring home the point that such construction, which is in consonance with long-standing practice prevailing in the concerned department in relation to which the law has been made, should be preferred, he relies upon the Judgments in *N. Suresh Nathan and another versus Union of India*¹⁰, *State of Orissa versus Prasana Kumar Sahoo*¹¹. Reliance is also placed on *Guman Singh versus State of Rajasthan*¹² to urge that if the statutory rules are silent on any particular point, Government can fill up the gaps by way of executive instructions.

(17) Appearing for the newly added respondent No. 43, Mr. AnupamGupta, Senior Advocate contradicts the argument of Mr. Atma Ram that *casus omissus* in rule 13.14(2) is an attempt by the State to re-write the rule by averring before the Court that the rule applies to promotion to the post of Inspector as well. Mr. Gupta submits that reliance on the Judgment in *Rohitash Kumar's case (supra)* will not be appropriate in the context of present case. He asserts that barring the few species of legislation, it is the principle of purposive interpretation of statute and not the literal interpretation which would hold the field. To fortify his submission, Mr. Gupta relies upon the Judgment of the Constitutional Benches in *Tinsukhia Electric Supply Co. Ltd. versus State of Assam*¹³ and *Abhiram Singh versus C.D. Commachen (Dead) By Lrs. &Ors*¹⁴.

(18) Mr. Anupam Gupta further argues that 'selection grade' and 'selection' both belongs to the same genus. If some other meaning is assigned to the term 'selection grade' then the Rule 13.1, which provides 'selection tempered with seniority' as the sole founding principle for promotions in all ranks, would be fundamentally contradictory and incongruous to rule 13.14. He submits that the terms 'recommendation', 'suitability' which are writ large in Rule 13.15, are nothing but selection. He submits that the semantic reference to 'selection grade' in Rule 13.14 and rule 13.15(4) is not something accidental or casual but reflects the intention of the designer of the rules. Since nowhere in rules, promotion to any rank is anchored in seniority alone, the interpretation that rule 13.14(2) is applicable

¹⁰ (1992) AIR (SC) 564

¹¹ (2007)3 SCT 560

¹² (1971)2 SCC 452

¹³ 1989(3) SCC 709

¹⁴ (2017)2 SCC 629

to promotion to the post of Inspector is not even purposive but literal interpretation of the rules.

He relies upon the Judgment in *Lalit Mohan Deb & Ors. versus Union of India & Ors*¹⁵ where the *casus omissus* in the rules was 'selection grade' and grant of revised scale to some of the members in the same cadre was interpreted by the Court in the context as 'selection grade' to urge that if this is permissible then *a fortiori* filling up of gap by the State in Rule 13.14 as per principles enshrined in Rule 13.1 cannot be held to be bad or beyond jurisdiction. He then, to dispel the alternative argument of Mr. Atma Ram that by relying upon the Instructions issued by Director General of Police is an attempt by the State to re-write the Rules, concludes his arguments by referring to the Judgment in *Sant Ram Sharma versus State of Rajasthan*¹⁶ to submit that the absence of statutory rules is no bar to the State for issuing instructions regarding promotion to the higher grade as long as such instructions are not inconsistent with rule on the subject and in the present case, the State on affidavit has stated that the rule 13.14(2) has been followed by the State, consistently and without any deviation.

(19) In rebuttal Mr. Atma Ram relies upon the Judgment of the Full Bench of this Court in *Head Constable Sardul Singh, versus Inspector- General of Police, Punjab*¹⁷ to assert that the instructions, produced by the Ld. Law Officer and taken on record as 'Mark A', have been issued by the Director General of Police, who has no authority to issue any instructions to supplement the statutory rules. He adds that even in *Sant Ram Sharma's case*, their lordships of Supreme Court held that the supplemental instructions can only be issued by the State Government which is competent to make the rules provided they are not inconsistent with the rules already framed. In this regard, he refers to the Judgment in *State of Haryana versus Shamsher Jang Bahadur*¹⁸ to submit that the Government cannot amend or supersede the statutory rules by administrative instructions, which are not inconsistent with the rules already framed. Mr. Atma Ram further places reliance upon the Judgment in *State of U.P. versus M/S Sitapur Packing Wood Suppliers*¹⁹, to urge that the law does not

¹⁵ (1973)3 SCC 862

¹⁶ 1968 (1) SCR 111

¹⁷ 1970 AIR (Punjab) 481

¹⁸ AIR 1972 SC 1546

¹⁹ (2002)4 SCC 566

compel one to do which one cannot possibly perform. Once the selection grade was abolished, it cannot be expected from any Sub-Inspector to be promoted to selection grade for further placement in list 'F'.

(20) Mr. Vikas Bahl, Senior Advocate appearing for respondent no. 36-42, has reiterated the submissions already made by the Learned Counsels. He also relies upon the Judgment in *Rakesh Wadhawan* versus *M/s. Jagdamba Industrial Corporation*²⁰ to urge that it is a settled rule of construction that in case of ambiguity, the provision should be so read as would avoid hardship, inconvenience, absurdity and anomaly.

(21) Having scrutinized the rival contentions and going through the pleadings with the able assistance of Ld. Counsels for the parties, the following two issues arise/remain for our consideration:

- a. Whether Rule 13.14(2) prescribes the eligibility criteria for consideration for promotion to the post of Inspector?
- b. If the Rule 13.14(2) is applicable, whether the conditions of eight years experience is arbitrary and discriminatory and is, therefore, required to be struck down being violative of Article 16 of the Constitution?

Discussion and Analysis:

Issue No. 1:

(22) The Respondent-State, in its affidavits dated 10.07.2015 and 06.02.2020 has referred to rule 13.15(4) to contend that the promotions to the Inspectors are made from amongst the Sub-Inspectors whose names are brought on List 'F' and names of only those Sub-Inspectors are brought on List 'F' who fulfill the eligibility condition prescribed under Rule 13.14(2). For adjudicating this issue, we must necessarily have a look at the relevant rules which read as follows in so far as they are material:-

"1.13. Classes and ranks of police officers. - The expression "gazetted police officer" is applied to police officers appointed under Section 4, Act V of 1861, and includes the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General, Superintendents, Assistant Superintendents and Deputy Superintendents.

²⁰ (2002)5 SCC 440

The expression "enrolled police officer" is applied to police officers appointed under section 7, Act V of 1861, and includes inspectors, sergeants, sub-inspectors, assistant sub inspectors, head constables and constables.

The expression "upper subordinate" includes all enrolled police officers of and above the rank of assistant sub-inspector.

The expression "lower subordinate" includes all other enrolled police officers.

13.1. Promotion from one rank to another. - (1) Promotion from one rank to another, and from one grade to another in the same rank shall be made by **selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection.** Specific qualifications, whether in the nature of training courses passed or practical experience, shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. This rule does not affect increments within a time-scale.

(2) Under the present constitution of the police force no lower subordinate will ordinarily be entrusted with the independent conduct of investigations or the independent charge of a police station or similar unit. It is necessary, therefore, that well-educated constables, having the attributes necessary for bearing the responsibilities of upper subordinate rank, should receive accelerated promotion so as to reach that rank as soon as they have passed the courses prescribed for, and been tested and given practical training in, the ranks of constable and head constable.

(3) For the purposes of regulating promotion amongst enrolled police officers six promotion lists - A, B, C, D, E, and F will be maintained.

Lists A, B, C and D shall be maintained in each district as prescribed in rules 13.6, 13.7, 13.8 and 13.9 and will regulate promotion to the selection grade of constables and to the ranks of head constables and Assistant Sub-Inspector. List E shall be maintained in the office of Deputy Inspector-General as prescribed in sub-rule 13.10(1) and will regulate promotion to the rank of Sub-

Inspector. List F shall be maintained in the office of the Inspector- General as prescribed in sub-rule 13.15(1) and will regulate promotion to the rank of Inspector.

Entry in or removal from A, B, C, D or E lists shall be recorded in the order book and in the character roll of the police officer concerned. These lists are nominal rolls of those officers whose admission to them has been authorised. No actual selection shall be made without careful examination of character rolls.

(4). Nothing contained in these rules shall affect reservation and other concessions required to be provided for Schedule Castes and other backward Classes in accordance with the orders issued by the State Government in this regard, under clause (4) of Article 16 of Constitution of India.

Promotions to and in the selection grades of Sub-Inspectors.

(1) Promotion to the various selection grades of Sub-Inspectors shall be made by Superintendents of Police and the Assistant Superintendent, Government Railway Police, as vacancies in the sanctioned establishment of such appointments occur in accordance with the principle laid down in Rule 13.1.

(2) **No Sub-Inspector shall be considered eligible for promotion to a selection grade unless he has at least eight years' approved service as an upper subordinate, of which at least five shall have been in the rank of Sub-Inspector, and unless he is thoroughly efficient and competent to hold charge of a police station of first class importance.** No Sub-Inspector who has been punished by reduction, stoppage of increment, or forfeiture of approved service for increment, shall be eligible for promotion to a selection grade. Exceptions to this rule may be made only with the sanction of the Inspector- General in recognition of distinguished service and exemplary conduct.

(3) Sub-Inspectors promoted to the 4th selection grade shall be on probation for one year and may be reverted without formal departmental proceedings during or on the expiry of the period of their probation if they fail to maintain an exemplary standard of conduct and efficiency.

[Provided that the competent authority may, if it so thinks fit in any case, extend the period of probation by one year in the of the extended period of probation as it could have passed during or on the expiry of original period of probation].

List F – Promotion to Inspectors.-

(1) Recommendations on behalf of sergeants and Sub Inspector considered fit for promotion to the rank of Inspectors shall be submitted with their ACRs on 15th April each year to Deputy Inspector-General by Superintendents of Police in Form 13.15(1) Recommendation on behalf of Sergeants and Sub-Inspectors employed in the Government Railways Police will be sent direct to the Inspector General of Police by the Assistant Inspector-General, Government Railways Police, in the same form and not later than October each year. The Deputy Inspector General shall decide, after seeing the officers recommended, and in consideration of their records, and his own knowledge of them, whether to endorse the recommendations of Superintendents of Police and forwarded them to the Inspector-General. He will keep a copy of any recommendation so forwarded in the personal file of the officer: if he decides not to endorse a recommendation, he shall retain the original in the officer's personal file and send a copy of his own order on it to the Superintendent concerned. Deputy Inspector- General shall finally submit recommendations to the Inspector- General as soon as they are satisfied as to the fitness of officers recommended, but in no case later than October each year.

(2) Such of the officers recommended as the Inspector-General may consider suitable shall be admitted to promotion list 'F' (form 13.15(2) which will, however, not be published. Deputy Inspectors- General shall be informed, and shall in turn inform the Superintendents concerned, of the names of those who have been admitted to the List, similar information will be sent to the Assistant Inspector-General, Government Railway Police.

The original personal files of Sub-Inspectors admitted to the list shall be transferred to the Inspector-General after

duplicates have been prepared for retention in the office of the Deputy Inspector-General or the Assistant Inspector-General, Government Railway Police, as required by Rule 13.38(1). Copies of all subsequent annual confidential reports prepared in form 13.17 in respect both of Sergeants and Sub-Inspectors admitted to the list will, on return by the Inspector-General in accordance with rule 13.17(1), be recorded by Deputy Inspectors-General or the Assistant Inspector-General, Government Railway Police, with the duplicate personal files of the officers concerned. Copies of all entries ordered to be made in personal files other than annual confidential reports will be forwarded to the Inspector-General as soon as made for record with the original personal files; all such copies shall be attested by the Deputy Inspector-General or the Assistant Inspector-General, Government Railway Police, personally.

(3) When submitting recommendations for the entry of fresh names in List F, Deputy Inspectors-General and the Assistant Inspector-General, Government Railway Police, will at the same time submit specific recommendations (which need not be accompanied by detailed confidential reports) as to the retention or removal of officers already admitted to the list. On receipt of these recommendations, the Inspector-General will review the Provincial List, and pass orders regarding the retention or exclusion of names, at the same time communicating his decision to the Deputy Inspector-General and the Assistant Inspector-General, Government Railway Police.

(4) **Sub-Inspectors admitted to List 'F' will be placed in that list in order according to their date of permanent promotion to selection grade, and, if the date of permanent promotion to selection grade is the same in the case of two or more Sub-Inspectors admitted to list 'F' on one and the same date, then according to date of permanent promotion to the time-scale.** Sergeants will be shown in list 'F' according to the date of entry in the list. When, however, two or more Sergeants are admitted to list 'F' on the same date, their names will be shown in order of seniority among themselves.

Promotion to the rank of Inspector. -

(1) Substantive vacancies in the rank of Inspector, save those which are specially designated for the appointment of probationers shall be filled by promotion of officers from list F selected according to the principles laid down in rule 13.1. Sergeants are eligible for promotion in the appointments reserved for European Inspectors.

(2) Temporary vacancies in the rank of Inspector shall be filled by the officiating promotion of officers on F list by the authorities empowered by rule 13.4 to make the appointment. Such officiating promotions shall be made in accordance with the principles laid down in sub-rule 13.12(1) in the case of E list, and the second part of that rule shall, mutatis mutandis, govern the scrutiny of the work of F list officers and the removal from that list of the names of those who are found unfit for the rank of inspector.

(3) No officer whose name is not on F list shall be appointed to officiate as Inspector without the special sanction of the Inspector-General. When no officer on F list is available in the range for a vacancy which the Deputy Inspector-General is required to fill, application shall be made to the Inspector-General to appoint a man from another range.

(Emphasis Supplied)

(23) From the reading of aforesaid statutory provisions it emerges that the Rule 13.1(1) provides that all promotions from one rank to another and from one grade to another shall be made in accordance with principle of *selection tempered by seniority*, which essentially means that selection will be the dominant factor in determination of better suitability/merit which will give way to seniority only if two officers stand at equal merit. Sub-rule (3) mandates preparation of six promotional lists – A, B, C, D, E and F for the purpose of regulating promotions amongst enrolled police officers. Lists A, B, C and D shall be maintained in each district as prescribed in rules 13.6, 13.7, 13.8 and 13.9 and will regulate promotion to the selection grade of constables and to the ranks of head constables and Assistant Sub- Inspector. List E, as prescribed in sub-rule 13.10(1), will regulate promotion to the rank of Sub-Inspector. List F, as prescribed in sub-rule 13.15(1), will regulate promotion to the rank of Inspector.

(23.1) The Sub-Inspectors are admitted to Promotional List ‘F’

in accordance with provisions of Rule 13.15. Sub-rule (4) restricts the entry to List 'F' to only those Sub-Inspectors who have been promoted to selection grade i.e. the promotional scale. Their names are to be placed in the List in order of their date of permanent promotion to selection grade and if two or more Sub-Inspectors are admitted to List 'F' on the same date then according to the date of their permanent promotion to time scale i.e. on the basis of length of service in the cadre of Sub-Inspector. As per the provisions of Rule 13.16, all the substantive vacancies in the rank of Inspector which are to be filled up by promotions shall be filled up by promotion of officers from List 'F' selected according to the principles laid down in rule 13.1. Sub-Rule (3) prohibits appointment of any officer whose name is not on List 'F' to even officiate as Inspector.

(23.2) Promotions to and in the selection grades of Sub-Inspectors are governed by Rule 13.14. The selection grades are of the nature of promotional scales in the same rank which is evident from a reading of Sub- rule (3) of Rule 13.14. Sub-rule(2) prescribes the eligibility for promotion of a Sub-Inspector to selection grade which is eight years approved service as an upper subordinate, of which at least five shall have been in the rank of Sub-Inspector. It further states that no sub-Inspector who has been punished by reduction, stoppage of increment, or forfeiture of approved service for increment, shall be eligible for promotion to a selection grade. It is apparent from the provisions of Rule 1.13 (reproduced in para 22) that the Upper Subordinates include all enrolled police officers in the rank of Assistant Sub-Inspector, Sub-Inspector and Inspector.

(23.3) It can thus be safely concluded that the eligibility criteria provided under the Sub-Rule (2) of Rule 13.14 is for further promotion, even though in the same rank and from a conjoint reading of the aforesaid Rules it comes out that it is the only criteria provided in the Rules for making promotions to the post of Inspector, without which '*seniority*' would become the sole basis/criteria for promotion which shall be in direct conflict with the principle of '*selection tempered by seniority*' provided under Rule 13.1.

Our view that the selection grade is of the nature of promotion scale and therefore the same criteria/eligibility would be applicable for consideration for promotion to the post of Inspector, is also fortified by the decision in *Lalit Mohan Deb's case (supra)* wherein the concept of 'selection grade' has been succinctly explained by their lordships in para 7 of the judgment, which is extracted herein below:

“7. Mr. Sen on behalf of the appellants did not challenge the right of the Administration to have scales of pay in the same category of posts. Provision of a selection grade in the same category of posts is not a new thing. This has been recognised by the Central Pay Commission in para 10 of Chapter X of the Report. The Commission observed "with the object of providing incentive to employees who have no outlets or very limited outlets for promotion to higher posts, we are recommending in a number of cases that a certain percentage of the posts in the grade-usually 10 per cent-should carry a somewhat higher scale of pay even though there will be no change in the duties. Following the terminology in vogue we have described these posts as selection grade posts. **"It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency.**In the present case it is explained in the reply affidavit filed on behalf of the Administration that **the basis for selection of some of the Assistants to the higher scale is seniority-cum-merit which is one of the two or three principles of promotion widely accepted in the Administration and duly recognised by the Pay Commission** in Chapter XXXXV of the Report. Mr. Sen was, therefore, quite right in not challenging the right of the Administration to create a selection grade in the category of Assistants.”

(Emphasis Supplied)

(24) As noted heretofore, prior to 2001, all the posts (100%) of Sub- Inspectors were filled by way of promotion, therefore, even though the selection grade was abolished by the State in the year 1986, no dispute regarding inter-se seniority of the Sub-Inspectors and their further promotion to the rank of Inspector arose. All Sub-Inspectors used to possess experience in the previous rank of Assistant Sub-Inspector, thus on completion of 5 years of service as Sub-Inspector

but subject to fulfillment of other conditions, they were brought on List 'F'. It is only when by notification dated 24.12.2001 direct quota to the extent of 50% of posts was introduced, this alleged anomalous situation has arisen wherein it is possible that at a given point of time, while filling up the post of inspector from the promotional quota, a promotee Sub-Inspector, although junior to a direct recruit Sub-Inspector, may steal a march over his senior on account of possessing the prescribed eight year experience as upper subordinate officer while a direct recruit upper subordinate officer may not possess the required experience.

(25) Be that as it may, from the reading of above quoted statutory provisions, it comes out that Rule 13.14 still figures in the scheme of Rules governing promotion to the rank of Inspector. More so, it constitutes the foundation of Rule 13.15. If rule 13.14 has no application as has been urged before us, there cannot be a List 'F' and if there is no List 'F', there cannot be any promotion to the rank of Inspector. Therefore, even if we accept the contention of Mr. Atma Ram, that the promotions to the rank of Inspector are to be made as per the provisions of Rule 13.16 read with Rule 13.1, preparation of List 'F' will be a pre-requisite, which in turn depends upon the very existence and applicability of Rule 13.14.

(26) However, the argument of Ld. Senior Counsel is required to be tested so as to put this controversy finally to rest. As per the affidavit dated 06.02.2020, the selection grade was abolished by the State Government in the year 1986, however, it neither deleted Rule 13.14 from the rules nor any amendment was carried out in Rule 13.15(4). Again, when amendment was made in Rule 12.3, whereby direct recruitment in the cadre of Sub Inspector was introduced, the provisions of Rule 13.14 and 13.15 were kept intact. Rather before us, it is the categorical stand of the State that since the creation of the State of Haryana on 01.11.1966 till date, promotions from the post of Sub-Inspector to Inspector have been made as per the provisions of Rule 13.14(2) and 13.15(4) including that of Petitioners. Thus, it has unequivocally been established before us that since the creation of State of Haryana in the year 1966, all the promotions to the post of Inspector have been made on the basis of the eligibility criteria provided under Rule 13.14(2) and the same was not tinkered with by the Respondent-State when the selection grade was abolished in 1986 or when the amendment to Rule 12.3 was carried out in the year 2001.

(27) It is well settled principle of law that Courts must strongly lean against any construction which tends to reduce a Statute to a

nullity or make it unworkable. The provision of a statute must be so construed as to make it effective and operative, on the principle “*ut res magisvaleat quam pereat*”. We respectfully follow the ratio laid down by Hon’ble Supreme Court in *Tinsukhia Electric Supply Co. Ltd. versus State of Assam*²¹ reiterated in *State of Gujarat and another versus Justice R.A. Mehta (Retired) and others*²². In *Justice R.A. Mehta’s case*, while dealing with the issue of primacy of opinion in the appointment of Lokayukta, Hon’ble Supreme Court while interpreting the word ‘consultation’ as finds mention in Section 3 of the Gujarat Lokayukta Act, 1986, has held:

"96. In the process of statutory construction, the court must construe the Act before it, bearing in mind the legal maxim *ut res magisvaleat quam pereat*-which mean-it is better for a thing to have effect than for it to be made void, i.e., a statute must be construed in such a manner, so as to make it workable. Viscount Simon, L.C. in the case of *Nokes v. Doncaster Amalgamated Collieries Ltd.*, (1940) 3 All E.R. 549, stated as follows:

" if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to futility, the should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result." "

"97. Similarly in *Whitney v. Inland Revenue Commissioner*, 1926 AC 37, it was observed as under:

"A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable." "

" 98. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept.

²¹ 1990 AIR (SC) 123

²² (2013) 3 SCC 1

The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction, which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred, looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. **"The courts strongly lean against any construction which stands to reduce a statute to futility. The provision of the statute must be so construed so as to make it effective and operative."** **The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted, as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus, legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter, and the obvious intention of the legislature does not stand defeated, unless it leads to a case of absolute intractability in use.** The court must adopt a construction which suppresses the mischief and advances the remedy and "to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico". The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide: *M. Pentiah & Ors. v. Muddala Veeramallappa & Ors.*, AIR 1961 SC 1107; *S.P. Jain v. Krishna Mohan Gupta & Ors.*, AIR 1987 SC 222; *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. & Ors.*, AIR 1987 SC 1023; *Tinsukhia Electric Supply Co. Ltd. v. State of Assam & Ors.*, AIR 1990 SC 123; *UCO Bank & Anr. v. Rajinder Lal Capoor*, (2008) 5 SCC 257; and *Grid Corporation of Orissa Limited & Ors. v. Eastern Metals and Ferro Alloys & Ors.*, (2011) 11 SCC 334)."

(Emphasis Supplied)

In *Central Bureau of Investigation, Bank Securities and Fraud*

Cell versus *Ramesh Gelli and others*²³ while interpreting the provisions of the Prevention of Corruption Act, 1988, read in conjunction with the provisions of Section 21 and Section 409 of the IPC and the Banking Regulation Act, 1949, the Court by invoking the principle of *purposive interpretation*, held that even the office bearers of a private bank would come within the definition of a public servant:-

“10.The Court need not speculate the reasons therefor, though, perhaps one possible reason could be the wide expanse of the definition of "public servant" as made by Section 2(c) of the PC Act. Be that as it may, in a situation where the legislative intent behind the enactment of the PC Act was, inter alia, to expand the definition of "public servant", the omission to incorporate the relevant provisions of the PC Act in Section 46A of the BR Act after deletion of Sections 161 to 165A of the I.P.C. from Chapter IX can be construed to be a wholly unintended legislative omission which the Court can fill up by a process of interpretation. **Though the rule of casus omissus i.e. "what has not been provided for in the statute cannot be supplied by the Courts" is a strict rule of interpretation there are certain well known exceptions thereto.** The following opinion of Lord Denning in *Seaford Court Estates Ltd. v. Asher*, (1949) 2 AllER 155 at page 164 noticed and approved by this Court may be taken note of.

"The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it wereHe (The Judge) must set to work in the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature.....A judge should ask himself the question, how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the

²³ (2016) 3 SCC 788

creases."

In *Magor & St. Mellons Rural District Council v. Newport Corporation*, (1950) 2 ALLER 1226 the learned judge restated the above principles in a somewhat different form to the following effect: "We sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

11. Though the above observations of Lord Denning had invited sharp criticism in his own country we find reference to the same and implicit approval thereof in the judicial quest to define the expression "industry" in *Bangalore Water Supply & Sewerage Board v. A. Rajappa and Others*, (1978) 2 SCC 213. Paragraphs 147 and 148 of the opinion of Chief Justice M.H. Beg in *Bangalore Water Supply & Sewerage Board* (*supra*), which are quoted below, would clearly indicate the acceptance of this Court referred to earlier.

"147. My learned Brother has relied on what was considered in England a somewhat unorthodox method of construction in *Seaford Court Estates Ltd. v. Asher* [(1949) 2 ALL ER 155, 164], where Lord Denning, L.J., said :

When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament - and then he must supplement the written words so as to give

'force and life' to the intention of legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

When this case went up to the House of Lords it appears that the Law Lords disapproved of the bold effort of Lord Denning to make ambiguous legislation more comprehensible. Lord Simonds found it to be "a naked

usurpation of the legislative function under the thin disguise of interpretation". Lord Morton (with whom Lord Goddard entirely agreed) observed: "These heroics are out of place" and Lord Tucker said "Your Lordships would be acting in a legislative rather than a judicial capacity if the view put forward by Denning, L.J., were to prevail."

148. Perhaps, with the passage of time, what may be described as the extension of a method resembling the "arm-chair rule" in the construction of wills. Judges can more frankly step into the shoes of the legislature where an enactment leaves its own intentions in much too nebulous or uncertain a state. In *M. Pentiah v. Muddala Veeramallappa* [(1961) 2 SCR 295], Sarkar, J., approved of the reasoning, set out above, adopted by Lord Denning. And, I must say that, in a case where the definition of "industry" is left in the state in which we find it, the situation perhaps calls for some judicial heroics to cope with the difficulties raised.

12. There are other judicial precedents for the view that I have preferred to take and reach the same eventual conclusion that my learned brother Prafulla C. Pant, J. has reached. I would like to refer to only one of them specifically, namely, the decision of a Constitution Bench of this Court in *Dadi Jagannadham v. Jammulu Ramulu and others*, 2001(4) R.C.R.(Civil) 267 : (2001) 7 SCC 71."

(Emphasis supplied)

(28) In *Rohitash Kumar's case (supra)* also, on which heavy reliance has been placed by Mr. Atma Ram, where the interpretation of the proviso to the rule came up for consideration of the Court, the principle of purposive construction was not frowned upon as has been canvassed before us. It was held that where the text of the statute is not afflicted with any obscurity or ambiguity and the intention of the legislature is clearly conveyed, principle of literal interpretation of a statute must be strictly adhered to, however, purposive construction may be taken recourse to, to make the statute workable without altering its fabric. The relevant para of the Judgment is extracted herein below:

"22. The Court has to keep in mind the fact that, while interpreting the provisions of a Statute, it can neither add, nor subtract even a single word. The legal maxim "A Verbis

Legis Non Est Recedendum" means, "From the words of law, there must be no departure". A section is to be interpreted by reading all of its parts together, and it is not permissible, to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and **it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven.** The Court, while interpreting statutory provisions, cannot add words to a Statute, or read words into it which are not part of it, especially when a literal reading of the same, produces an intelligible result. (Vide: *Nalinakhya Bysack v. Shyam Sunder Haldar & Ors.*, AIR 1953 SC 148; *Sri Ram Ram Narain Medhi v. State of Bombay*, AIR 1959 SC 459; *M. Pentiah & Ors. v. Muddala Veeramallappa & Ors.*, AIR 1961 SC 1107; *The Balasinor Nagrik Co-operative Bank Ltd. v. Babubhai Shankerlal Pandya & Ors.*, AIR 1987 SC 849; and *Dadi Jagannadham v. Jammulu Ramulu & Ors.*, 2001(4) R.C.R.(Civil) 267 : (2001) 7 SCC 71.)”

(Emphasis Supplied)

Referring to the Judgment in *N. Suresh Nathan's case (supra)* and a host of other decisions, it was held as follows:

“14. In view of the above, one may reach the conclusion that administrative interpretation may often provide the guidelines for interpreting a particular Rule or executive instruction, and the same may be accepted unless, of course, it is found to be in violation of the Rule itself.”

Adverting to the case in hand, if we accept the submissions advanced by Mr. Atma Ram and hold that Rule 13.14(2) has no application as far as promotion to the post of Inspector is concerned, there is no other statutory provision which would fill up the vacuum. Per contra, two more statutory provisions i.e. Rule 13.5(4) and 13.15 would also be rendered *otiose*. As a necessary corollary of which, no Sub-Inspector would be promoted to the post of Inspector. We are guided by principles of law as enunciated by the aforesaid judgments in

Justice R.A. Mehta (Retired) and Ramesh Gelli's case and also even the judgment in Rohitash Kumar's case as relied upon by Mr. Atma Ram that in such a scenario, it is a duty cast upon this Court to ensure the harmonious construction of Rule 13.14(2) vis-à-vis rule 13.1, 13.15 & 13.16 of the rules, so as to make the said provision operative and effective rather than to render other provisions nugatory. The in-depth scrutiny of the scheme of the Rules and the interactivity of aforesaid Rules, leaves no manner of doubt that the criteria prescribed under Rule 13.14(2) is the only criteria provided in the Rules for making promotions to the post of Inspector, apart from which there is no other statutory provision which would govern the further promotions from the rank of Sub Inspector to the rank of Inspector. Thus, the issue No. 1 is decided against the Petitioners and in favour of the Respondent-State by declaring that Rule 13.14 (2) would be applicable for promotion to the rank of Inspector.

(29) As regards the ancillary submission of Mr. Atma Ram that 'Mark A' are the Instructions issued by the Director General of Police who is not competent to issue any administrative instruction much the less contrary to the statutory provisions, a bare glance at 'Mark A' shows that these are the letters issued by Inspector General of Police/Director General of Police, Haryana from the year 1984 upto 2019 calling for recommendations in respect of Sub Inspectors who had eight years of service as a non-gazetted officer, out of which 5 years as Sub-Inspector for consideration of their names for admission to promotional List 'F'. The fact which emerges from this discussion is that it was not on the basis of any administrative instructions or by following a long established practice that the promotions have been made, rather all promotions to the post of Inspector have been made in accordance with the eligibility criteria prescribed under Rule 13.14(2) which has been followed by the State consistently, uninterruptedly and uniformly. The said letters in fact, have always served as a notice to all concerned as to what would be the criteria of promotion. This argument is therefore, dispelled being wholly misconceived. The dicta of the Judgments, referred to in this regard, would also not be attracted in the present case.

Issue No. 2:

(30) It is not the case of the Petitioners that they have been subjected to any differential or prejudicial treatment as far as the implementation of the provisions of rule 13.14(2) is concerned. The details given in the chart reproduced in para 12 show that they too were

promoted to the post of Inspector in the year 2011 on completion of eight years of service as upper subordinates as provided under the said Rule. Infact, it is the concession of experience of 3 years in previous ranks of upper subordinate (out of eight years, experience of five years as Sub Inspector is mandatory) which has worked to the disadvantage of Petitioners. Mr. Atma Ram has argued, as has been noticed above, that counting of experience of Assistant Sub Inspectors after promotion as Sub Inspector would be violative of Article 16 of the Constitution as all the Sub Inspectors constitutes one class and no differential treatment can be accorded to them on the basis of source of recruitment i.e. direct recruitment or promotion.

(31) In its additional reply and the affidavit dated 10.07.2015, the State has sought to explain the rationale of providing eight year experience as upper subordinate for further promotion to the post of Inspector. Para 6 of the aforesaid affidavit is extracted herein below:

“6. That a non Gazetted officer is considered for promotion to the rank of Inspector if he has **completed a total of 8 years service as Non Gazetted officer including 5 years as Sub Inspector and he is thoroughly efficient and competent to hold charge of a Police Station.** A directly recruited Sub- Inspector is under training for three years and if the plea of the Petitioners is accepted then they will become eligible for promotion as Inspector after 2 years of service after completing their training but they will hardly be thoroughly efficient and competent to hold charge of a Police Station which requires experience, maturity, investigating skills, management skills, knowledge etc. The promotee Non Gazetted officers are usually promoted to the rank of Inspector after about 15 years of service. The Rule is based on sound principles.”

(32) The Rule 13.14(2) lays down eight year experience as an upper subordinate, out of which five years have to be as Sub Inspector. It does not mandate that the rest of 3 year service as upper subordinate has to be in the previous ranks alone meaning thereby the said experience acquired in the rank of Sub Inspector is equally valid for further promotion on the post of Inspector. Thus, the present is not a case of discrimination on the basis of source of recruitment as has been vehemently argued by Mr. Atma Ram. Rule 13.1 provides that promotion from one rank to another and from one grade to another in the same rank shall be made by selection tempered by seniority and

efficiency and honesty shall be the main factors governing selection.

(33) The entire scheme of the Rules is such that it places heavy premium on efficiency and competence. Be it an officiating charge or promotion in a substantive rank, the object is to test all men **“as fully as possible in independent charges”**(Rule 13.10, 13.12& 13.16(2)). Rule 13.12 which lays down the method of filling temporary vacancies in the rank of Sub-Inspector makes it incumbent upon the supervising officer that **“In interpreting this rule discrimination shall be shown between faults which are capable of elimination by experience and further training, and those which indicate definite incompetence and defect of character”**.

There is no gainsaying that experience is a key element of efficiency, especially in disciplined forces like Police Force. The discharge of this sovereign function of the State requires different capabilities, training and skill which, certainly is acquired over a period of time. The legislature in its wisdom has prescribed possession of eight years experience as Upper Subordinate for acquiring eligibility for promotion to the higher post of Inspector, considering the specific requirements of the post and the same cannot be substituted by the Court with its own view.

(34) It is evident from the perusal of the Rule 13.14(2) that apart from possessing eight years experience as an Upper Subordinate, a Sub- Inspector shall be considered eligible for promotion to the selection grade only if ***he is thoroughly efficient and competent to hold charge of a police station of first class importance***. It has been very forcefully asserted by State in its aforesaid affidavit that the holding of independent charge of a police station requires experience, maturity, investigating skills, management skills, knowledge etc. and a person with two years service after completion of training (three years) would hardly be thoroughly efficient and competent for holding the independent charge. Apparently, the thrust is on experience.

(35) Though in the case in hand, the Rules do not provide different eligibility conditions for promotion to the post of Inspector on the basis of source of recruitment or as a matter of fact even on the basis of higher qualifications, the promotee Sub Inspectors have some edge over the direct recruits due to the experience gained by them as Upper Subordinates in previous ranks. However, considering the complete scheme of the Rules and the arguments addressed at bar, as noticed by us above, the same cannot be held to be arbitrary. The law abhors mini-classifications based on micro- distinctions, yet, it

recognizes the classification or on any preferential treatment on the basis of higher education or experience keeping into consideration the administrative efficiency and other relevant circumstances. We would be profited by referring to the Judgment of the Hon'ble Supreme Court in *State of Uttarakhand & Ors. versus S.K. Singh & Ors*²⁴ wherein the Rules under challenge provided for a quota of accelerated promotion for the Junior Engineers holding a Degree in Civil Engineering after completion of three years service as against the requirement of ten years' service under normal promotion. The grievance of the Diploma-holders JEs was that it would result in some of their juniors, who had Degrees, being promoted earlier. The High Court while deciding in favour of Diploma Holders ruled that if the Degree-holders and Diploma- holders are both regarded as fit for promotion, no differentiation can be made between them by laying down separate quota for promotion for each and given preferential treatment to Degree-holders over Diploma-holders. The writ petition was allowed by the High Court.

The Hon'ble Supreme Court set aside the order passed by High Court by following a line of judicial pronouncements in *State of Jammu and Kashmir versus Triloki Nath Khosa*²⁵, *P. Murugesan & Ors. versus State of Tamil Nadu & Ors*²⁶, *Roop Chand Adlakha & Ors. versus Delhi Development Authority & Ors*²⁷ and *M. Rathinaswami & Ors. versus State of Tamil Nadu & Ors*²⁸, and the Hon'ble Court reiterated that if the rule making authority is competent to impose a complete bar, it is also competent to impose a partial restriction, on the basis of higher qualifications. The concluding para of the Judgment is reproduced hereinbelow:

“26. The spectrum of judicial opinions referred to aforesaid leaves us with little doubt that though equality is the very bulwark of the provisions of the Constitution, in service jurisprudence, classifications are a matter of necessity and judicial pronouncements have sought to balance the equality principle with the principle of classification, dependant on the nexus for making the

²⁴ (2019)10 SCC 49

²⁵ (1974) 1 SCC 19

²⁶ (1993) 2 SCC 340

²⁷ 1989 Supp (1) SCC 116

²⁸ (2009) 5 SCC 625

classification. **Higher educational qualifications ave been repeatedly emphasized as an aspect which can give exclusive promotion, earlier promotion or for that matter, as in this case, an accelerated promotion. A higher degree of qualification intrinsically would bring in certain skills, though undoubtedly, that should be useful and have a nexus with the job being performed. As to who should examine this nexus, that has been left to the wisdom of the administrative authorities, who are best equipped to do so** M. Rathinaswami & Ors. v. State of Tamil Nadu & Ors. (supra)".

(Emphasis Supplied)

(36) It is undisputed factual position that both the directly recruited Sub Inspectors as well as the promotee Sub Inspectors form one class. They are both known by the same designation, having the same scales of pay. They discharge the same functions and the posts held by them are interchangeable. There is nothing to show that the two groups are kept apart. To both the groups, which constitute one single cadre, same Rule of promotion is applicable and all the Sub Inspectors are promoted in accordance with the same eligibility criteria as prescribed under Rule 13.14(2). There is no discrimination *per se*. It is only that directly recruited Sub-Inspector, due to non-possession of any previous experience as Upper Subordinate (in the lower rank), prior to their appointment and officiation as a Sub Inspector might not be promoted to the post of Inspector, while the Junior promotee Sub-Inspector, due to possession of required eight years experience including five years experience as Sub-Inspector get promoted earlier at a given point of time. In other words, there may be chance instances where a senior direct recruit Sub-Inspector is at a disadvantage compared to a promotee Sub-Inspector, who possesses three years experience in a lower rank out of total eight years prescribed experience. Therefore, at best it can be inferred that the chance of promotion of a direct recruit compared to a promotee Sub-Inspector may get reduced in relation to the time of filling up a vacancy of promotional post of Inspector.

(37) However, it is well settled that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service. This principle has been reiterated in the latest Judgment of the Hon'ble Supreme Court in

Air Commodore Naveen Jain versus *Union of India & Ors*²⁹ wherein clause 17 of the Promotion Policy dated 20.02.2008, for promotion to the post of Air Vice Marshall was challenged, *inter-alia*, on the ground that it is contrary to established principles of law pertaining to promotion on the basis of “merit- cum-seniority”. In view of the principles governing the right of promotion as reproduced below, their lordships held that the grievance of the appellant is in respect of lost chances of promotion inasmuch as he attained the age of superannuation before the vacancy arose, and the appeal was dismissed:

“13. In *State of Mysore & Anr. v. G.B. Purohit & Ors.*, this Court held that a right to be considered for promotion, is a condition of service but mere chances of promotion are not. The rule which merely affects the chances of promotion cannot be regarded as varying a condition of service. The said judgment was quoted with approval in later judgment reported as *Ramchandra Shankar Deodhar & Ors. v. State of Maharashtra & Ors.*, wherein this Court held as under:

“15.....All that happened as a result of making promotions to the posts of Deputy Collectors division wise and limiting such promotions to 50 per cent of the total number of vacancies in the posts of Deputy Collector was to reduce the chances of promotion available to the petitioners. **It is now well settled by the decision of this Court in *State of Mysore v. G.B. Purohit* [CA No. 2281 of 1965, decided on January 25, 1967] that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service.** In *Purohit’s* case the district wise seniority of sanitary inspectors was changed to State wise seniority, and as a result of this change the respondents went down in seniority and became very junior. This, it was urged, affected their chances of promotion which were protected under the proviso to Section 115, sub-section (7). This contention was negatived and *Wanchoo, J.* (as he then was), speaking on behalf of this Court observed: “It is said on

²⁹ 2019(10) SCC 34

behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service.....”

14) In Dwarka Prasad & Ors. v. Union of India & Ors. , the argument examined was that the promotion opportunities have to be provided in ratio with the strength of the feeder cadre. It was held as under:

“16. Fixation of quotas or different avenues and ladders for promotion in favour of various categories of posts in feeder cadres based upon the structure and pattern of the Department is a prerogative of the employer, mainly pertaining to the policy-making field. **The relevant considerations in fixing a particular quota for a particular post are various such as the cadre strength in the feeder quota, suitability more or less of the holders in the feeder post, their nature of duties, experience and the channels of promotion available to the holders of posts in the feeder cadres. Most important of them all is the requirement of the promoting authority for manning the post on promotion with suitable candidates. Thus, fixation of quota for various categories of posts in the feeder cadres requires consideration of various relevant factors, a few amongst them have been mentioned for illustration. Mere cadre strength of a particular post in the feeder cadre cannot be a sole criterion or basis to claim parity in the chances of promotion by various holders of posts in feeder categories.**”

15) In A. Satyanarayana & Ors. v. S. Purushotham & Ors., this Court held that the power of the State to fix quota for promotion cannot be said to be violative of the Constitutional Scheme of equality as contemplated under Articles 14 and 16 of the Constitution of India. The Court held as under:

“...25. While saying so, we are not unmindful of the legal principle that nobody has a right to be promoted; his right being confined to right to be considered therefor.

26. Similarly, the power of the State to take a policy decision as a result whereof an employee's chance of promotion is diminished cannot be a subject-matter of judicial review as no legal right is infringed thereby."

(Emphasis supplied)

(38) Equal opportunity contemplated by Article 14 of the Constitution envisages the equal right to be considered for promotion. If under a statutory provision, every person, on attaining prescribed eligibility, is considered for promotion, it cannot be held to be arbitrary and thus violative of Article 14 & 16 of the Constitution merely because it might work to the disadvantage of certain employees at a given point of time for promotion. It is a well-known fact in service jurisprudence that apart from the statutory provisions/Instructions, the promotion depends upon vagaries of service, affected by a multitude of factors such as availability of vacancies, administrative requirements and other attending circumstances. Further, to address concerns of administrative efficiency, 'seniority' is required to be enmeshed with 'suitability and merit'. Therefore, it is the right of consideration for promotion, on attaining eligibility, and not the equal chances of promotion which is recognized as a fundamental right under Article 16 of the Constitution.

(39) We have already held that the Eligibility criteria prescribed in Rule 13.14(2) does not differentiate between a direct recruit or promotee Sub Inspector. Any Sub Inspector, who possesses eight years experience subject to fulfillment of all other condition, is considered for promotion to the post of Inspector. The rationale for providing eight years experience as Upper Subordinate has also been established before us. It is also conceded position that the Petitioners were also promoted in the rank of Inspector in accordance with the eligibility criteria prescribed in Rule 13.14(2) akin to the private Respondents no. 4-32. Therefore, we are convinced that the eligibility criteria prescribed in Rule 13.14(2) for promotion to the post of Inspector is not discriminatory in terms of Article 14 or denies lack of equal opportunity in terms of Article 16. Accordingly, the issue no. 2 is also decided against the Petitioners.

(40) Before parting with the judgment, we are constrained to observe our anguish over the lackadaisical approach of respondent-State in not taking adequate steps to properly word the relevant rule governing promotion to the post of Inspector due to which the present litigation has arisen. We hope that the respondent-State of

Haryana would now be alive to the requirement and act to appropriately mould the rule so as to remove the confusion and to avoid unnecessary litigation in future.

(41) In view of the findings given above, the impugned promotion orders of respondent Nos. 4 to 32 also do not require any interference. Accordingly, the present **petition** is bereft of merits and is hereby **dismissed**. No orders as to costs.

Since the main case stands decided, no further orders are required to be passed in the pending miscellaneous applications and the same stand disposed of.

Dr. Sumati Jund