

still. There has to be a limit to the period for which criminal proceedings against a person are allowed to go on at the initial stage. The constitutional right to speedy trial of a fair, just and reasonable procedure now recognized under Article 21 of the Constitution stands plainly violated in this case. The pendency of the investigation for the last six years is itself a regrettable feature and the passing of a direction for completing investigation without any further delay would meet the ends of justice. The respondent-State is directed to complete the investigation of this case at the earliest, preferably within a period of six months from today.

(55) The observations made here-in-above shall have no bearing on the final outcome of the writ petitions pending before this Court concerning the officers of the Punjab Civil Services (Executive Branch) and the trial of Ravinderpal Singh Sidhu and others pending before the trial Court.

R.N.R.

Before Hemant Gupta and Mohinder Pal, JJ.

GURPREET SINGH BHULLAR,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 12206 of 2005

10th April, 2008

Constitution of India, 1950—Art. 226—Punjab Police Service Rules, 1959—Rl. 10—Recruitment to Deputy Superintendent of Police from two sources—Dispute in respect of fixation of seniority between direct recruit and promotee D.S.Ps—Quota of 80:20 of promotees and direct recruit prescribed—Rule of seniority—By rotation of vacancies—Quota rule not adhered to either at time of recruitment or at time of confirmation—Neither recruitment nor confirmation as per vacancies available—Determination of seniority by breaking down rotational rule—Seniors ignored for appointment to I.P.S.—Petitions allowed while issuing certain directions to State in finalization of seniority list.

Held, that for the intervening period i.e. 1974 till 1989 the State Government has not prepared any seniority list on the rotational basis. It is apparent that neither the recruitments were made keeping in view the vacancies nor rotational rule has been given effect to with full rigor ever since the rules were framed in the year 1959.

(Para 22)

Further held, that the quota rule was not adhered to either at the time of recruitment or at the time of confirmation. The rotational rule has broken down and, therefore, seniority should not be determined on the basis of rotational principles, would be against the law and directions given by the Hon'ble Supreme Court which are binding on the State Government. The reasoning given by the State Government that the established practice of calculating the share of direct recruits and promotees on the basis of sanctioned posts of cadre is continuing for over 45 years, is in fact contradictory to the judgments of the Hon'ble Supreme Court. Such established practice, which is not in conformity with the enunciation of law cannot be permitted to continue any longer. The recruitment and confirmation of the officers has not been made as per the prescribed quota from the very inception of the cadre.

(Paras 26 and 27)

Rajiv Atma Ram, Senior Advocate, with BNS Sharma, Advocate,
for the petitioner.

Rupinder Khosla, Additional Advocate General, Punjab.

H.N.S. Gill, Advocate, for respondent No. 6.

D.V. Sharma, Senior Advocate, with Harit Sharma, Advocate,
for respondent Nos. 10, 11, 13 and 15.

HEMANT GUPTA, J,

(1) This order shall dispose of bunch of writ petitions, namely, CWP Nos. 12206 of 2005 ; 9087 of 2006 ; 12208 of 2005 and 12321 of 2005 filed by the directly recruited Deputy Superintendents of Police and the CWP Nos. 11887 of 2005 ; 12009 of 2005 ; and 12475 of 2005 filed by the Deputy Superintendents of Police promoted from Inspectors

against the finalisation of the seniority list,—vide order dated 7th/8th July, 2005. This order shall also dispose of the CWP Nos. 13224 of 2001 ; 14332 of 2001 and 15145 of 2001, wherein challenge is to the order of confirmation of the promotee Officers allegedly in violation of the Statutory Rules. This order shall also dispose of CWP No. 17397 of 1999, whereby the petitioner has claimed finalisation of seniority in terms of the seniority Rules. In the said writ petition, an order was passed that appointment to the Indian Police Service shall be subject to the final decision of the writ petition. Since the issues involved in all the writ petitions are common, therefore, we deem it appropriate to decide all the cases together. However, the facts have been primarily taken from CWP No. 12206 of 2005 filed by the direct recruit Deputy Superintendents of Police (for short the direct recruits’) and CWP No. 11887 of 2005 filed by the promotee Deputy Superintendents of Police (for short ‘the promotees’).

(2) The recruitment and conditions of services of the Deputy Superintendent of Police in Punjab Police, are governed by the Punjab Police Service Rules, 1959 (hereinafter referred to as ‘the Rules’). The primary dispute in this bunch of writ petitions is in respect of fixation of seniority under Rule 10 of the aforesaid Rules.

(3) The recruitment to the Service is required to be made 80% by promotion from the rank of Inspector and 20% by direct appointment. The Inspectors, who have got 6 years continuous service, officiating as well as substantive, are eligible for promotion. The promotion from amongst the Inspectors is made from those Inspectors, who are brought in List-G, a list of officers considered fit for promotion to the post of DSP. Such list is prepared by the Department in consultation with the Government, whereas the direct appointment to the Service is required to be made as a result of competitive examination conducted by the Commission. The relevant Rules are being reproduced as under :—

“6. Method of recruitment.—(1) Recruitment to the Service shall be made :—

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

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

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

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

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- “10. Seniority of members of Service.—The Seniority of members of the Service shall be determined by the date of confirmation in the service :

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

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

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14. General Powers to relax rules.—Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.”

(4) The direct recruits in this bunch of writ petitions were appointed on 6th April, 1990 or later and confirmed on 2nd September, 1992, whereas the promotees whose seniority is in dispute were promoted in the year 1989. 111 Inspectors were promoted in 1989 as DSP and confirmed on 1st April, 1992 but prior to confirmation of the direct recruits. It has also come on record that 31 Officers of the Service have been selected for appointment to Indian Police Service. Though the order Annexure P. 6 dated 7/8th July, 2005 deals with as many as 9 issues, but issue No. 3 i.e. “Violation of Quota Rule” is the central question.

(5) At this stage it may be mentioned that the Rules came for consideration before the Hon’ble Supreme Court for the first time in the year 1979 in the case of **Paramjit Singh versus Ram Rakha, (1)**. That was a case arising out of writ petition filed by the promotees appointed to the Service in Feb-June, 1961. The Court found that where recruitment to a cadre is from two sources and the Service Rules prescribe quota for recruitment for both sources, then a question would always arise whether the quota rule would apply at the initial stage of recruitment or also at the stage of confirmation. It was considered that though generally the seniority is determined from the date of entry into cadre on the principles of continuous officiation, but confirmation would ordinarily depend upon satisfactory completion of probationary period, efficiency in discharge of duty, capacity to discharge the functions, availability of permanent vacancy etc. It was held that on completion of maximum period of probation, the promotees would be put to an unintended disadvantage, as the promotees were not confirmed even after more than 11 years of officiating service and that there was not a slightest suggestion that the services of respondent Nos. 1 and 2 were not satisfactory and that confirmation was denied on any such ground

(1) AIR 1979 SC 1073

there directly affecting their place in the seniority list. It was also held that quota rule would apply both at the time of recruitment as also at the time of confirmation. It was held to the following effect :—

“It may be pointed out that where recruitment is from two sources and the seniority in the cadre is determined according to the date of confirmation, to accord utmost fair treatment a rotational system has to be followed while giving confirmation. The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota. If the quota rule is strictly adhered to there will be no difficulty in giving confirmation keeping in view the quota rule even at the time of confirmation. A roster is introduced while giving confirmation ascertaining every time which post has fallen vacant and the recruit from that source has to be confirmed in the post available to the source. (Emphasis Supplied). This system would break down the moment recruitment from either source in excess of the quota is made. In fact a strict adherence to the quota rule at the time of recruitment would introduce no difficulty in applying the rule at the time of confirmation because vacancies would be available for confirmation to persons belonging to different sources of recruitment. The difficulty arises when recruitment in excess of the quota is made and it is further accentuated when recruits from one sources, to wit, in this case direct recruits get automatic confirmation on completion of the probationary period while the promotees hang out for years together before being confirmed. In **Mervyn Coutinho’s** case this Court in terms said that rotational system of fixing seniority meaning thereby confirmation followed by seniority does not offend equality of opportunity in Government service and recruitment not following the fixed quota rule need not be a ground for doing away with rotational system.”

(6) The aforesaid judgment came up for clarification on an application filed by one Jaspal Singh Dhaliwal seeking quashing the

tentative seniority list prepared by State of Punjab and published on June 4, 1981. The said application was disposed of,—vide order reported as **Paramjit Singh Sandhu and other versus Ram Rakha Mal and others, (2)**. Though the Hon'ble Supreme Court has not examined the validity of the seniority list, but found that there is no ambiguity in the judgment, including the words on which emphasis has been laid in the above reproduced para of the judgment. The Court held to the following effect :—

“6. In our opinion there is no ambiguity in the judgment. Ordinarily speaking, where recruitment is from two sources with a view to integrating recruits from both sources after the recruitment seniority is determined from the date of entry into the cadre except where there has been a substantial violation of the quota giving undeserved advantage to one or the other source. Seniority ordinarily speaking is determined with reference to the date of entry into the cadre which is service jurisprudence is styled the date of continuous officiation. These notions of service jurisprudence may have to yield place to the specific rules and the fact situation with reference to Rule 10 did compel this Court to depart from the normal concept in service jurisprudence. However, introduction of a roster system is very well known in service jurisprudence. What this Court meant while saying that when a quota rule is prescribed for recruitment to a cadre it meant that quota should be correlated to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. Promotees who come to the service at an advanced age may retire early and direct recruits who enter the service at the comparatively young age may continue for a long time. If, therefore, in a given year larger number of time the vacancy is filled in by referring to the source from which the retiring person was recruited it would substantially disturb the quota rule itself. Therefore, while making

recruitment quota rule is required to be strictly adhered to. That was what was meant by this Court when it said: “The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota.” The quota in the present case is 4:1 that is, four promotees to one direct recruit. Therefore, whenever vacancies occur in the service the appointing authority has to go on recruiting according to quota. In other words, whenever vacancies occur, first recruit four promotees irrespective of the factors or circumstances causing the vacancies and as soon as four promotees are recruited bring in a direct recruit. That was what was meant by this Court when it said that a roster has to be introduced and this roster must continue while giving confirmation. The sentence which seem to have created a difference of opinion reads as under :—

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

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

(7) It was held that when a Seniority Rule prescribes for a recruitment to a cadre from two sources, then quota should be correlated to the vacancies which are to be filled in. While making the recruitment, quota rule is required to be strictly adhered to. The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to quota. It was held that whenever vacancies occur in service, the appointing authority has

to go on recruiting according to quota. In other words, whenever vacancies occur, first four promotees irrespective of the factors or circumstances causing the vacancies and that as soon as four promotees are recruited, bring in a direct recruit. After saying so, the Court recorded the assurance given by the counsel appearing for the State of Punjab that both the recruitment and the confirmation have strictly been made according to quota rule, namely, when vacancies occur, recruit first four promotees and the 5th post will go to direct recruit and the same Rule is followed in confirmation.

(8) The aforesaid judgments came up for consideration in **State of Punjab and others versus Dr. R. N. Bhatnagar and another, (3)**, wherein the almost identical Rules i.e. Punjab Medical College Education Service (Class-I), Rules, 1978, was the subject matter of interpretation. In the said case, the State advertised 16th vacancy to be filled up by direct recruitment. The challenge was made by a promotee Assistant Professor alleging therein that the said vacancy has to go to the departmental promotee. The claim of the promotee was accepted by a Division Bench of this Court on 20th August, 1997 after it was found that a direct recruit is already working as Professor and, therefore, vacancy in question must go to the promotee as there were only three promotee at the relevant time. This Court relied upon a Constitution Bench decision of the Hon'ble Supreme Court in **R. K. Sabharwal versus State of Punjab, (4)**.

(9) The Hon'ble Supreme Court found that the said judgment deals with Article 16(4) of the Constitution which carves out a separate field for itself from the general sweep of Article 16(1) which guarantees equality of opportunity in matters of appointment in Government services to all citizens of India. The reservation for these categories in employment has to be achieved by earmarking requisite percentage of posts for the reserved category of candidates and by pitchforking these posts on roster points on requisite point roster and when such roster takes a full cycle, posts earmarked on reserved points will enable the requisite reserved category of candidates to fill up these posts. It was further held that whenever a reserved candidate vacated a reserved post, the

(3) AIR 1999 S.C. 647

(4) AIR 1995 S.C. 1371

said post was liable to be filled only by a candidate belonging to the reserved category. But while interpreting the Rules, it was held that such Rule has nothing to do with reservation of posts in the cadre of Professors. It is not a rule of reservation envisaged for a specified category of persons as permitted by Article 16(4) of the Constitution. It was further held that on the contrary, it is a rule of recruitment from two different sources. Such two sources serve two entry points for the cadre and once the concerned candidates enter into any cadre through entry point reserved for them, they get fused and blended into one single cadre and their birth marks get obliterated. Quoting from **Roshan Lal Tandon versus Union of India, (5)**, it was found that the decision rendered by the Constitution Bench in **R. K. Sabharwal's** case is in connection with Article 16(4) and the operation for the posts of Scheduled Castes and Scheduled Tribes and Backward Classes, cannot be pressed into service for interpreting the Rules. In the said case, it was held as under :—

“The attempt of learned counsel for the respondent to treat a quota rule as a reservation rule would result in requiring the State authorities to continue the birth-marks of direct recruits and promotees even after they enter the common cadre through two separate entry points regulating their induction to the cadre. Therefore, the roster for 3 promoted and one direct recruit is to be continued every time a vacancy arises and there is no question of filling up a vacancy arising out of a retirement of a direct recruit by a direct recruit or on the retirement vacancy of a promotee by a promotee. Consequently, the question of rotating the vacancies as posts for treating the posts mentioned in the rules of recruitment as necessarily referable to posts in the cadre at a given point of time in the light of R.K. Sabharwal's judgment (*supra*), therefore, cannot survive for in the case of a quota rule between direct recruits and promotees the same is to be judged on the touchstone of Article 16(1) and the statutory rules governing the recruitment to the posts of Professor constituting the Punjab Medical Education Service (Class-I)

and not on the basis of Article 16(4). The Division Bench in the impugned judgment with respect wrongly applied the ratio of R.K. Sabharwal's case (*supra*) governing Article 16(4) to the facts of the present case, which are governed by Article 16(1)."

(10) After so holding the Hon'ble Supreme Court examined the judgments in Paramjit Singh's cases [AIR 1979 SC 1073 and AIR 1983 Supreme Court 314] (*supra*), and held to the following effect :—

"The aforesaid decision which squarely applies to the facts of the present case, therefore, leaves no room for doubt that when under the recruitment Rule 9 in question there is no reservation of any given category of candidates likes SCs, STs and BCs to the posts in the cadre of Professors, appointments to the posts in the cadre have to be made in the light of the percentage of vacancies in the posts to be filled in by promotees or direct recruits. The quota of percentage of departmental promotees and direct recruits has to be worked out on the basis of the roster points taking into consideration vacancies that fall due at a given point of time. As stated earlier, as the roster for 3 promotees and one direct recruit moves forward, there is no question of filling up the vacancy created by the retirement of a direct by a direct recruit or the vacancy created by a promotee by a promotee. Irrespective of the identity of the person retiring, the post is to be filled by the onward motion of 3 promotees and one direct recruit."

(11) The State Government while dealing with issue No. 3 i.e. Violation of quota rule in the impugned order found that the Government has been working out the share of the two sources of recruitment of Deputy Superintendents of Police i.e. Direct recruits and promotees as a percentage of the total sanctioned strength of the cadre. This practice continued for over 45 years till date. The order further records that the Government has assured the Hon'ble Apex Court that the roster was being followed but for some unknown reasons, this roster has failed to be maintained so far and as a result there is an imbalance between

the two sources of recruitment. The Government has decided to implement this roster for both recruitment and confirmation starting from the date the officers were promoted i.e. from 21st June, 1989 and after some officers promoted on the said date were selected for appointment to the Indian Police Service. It was found as under :—

“The Government had assured the Hon’ble Apex Court that the roster was being followed but for some unknown reasons this roster has failed to be implemented so far. As a result there is an imbalance between the two sources of recruitment. The Government has decided to implement this roster for both recruitment and confirmation. As far as the imbalance in recruitment is concerned the same cannot be undone now. But implementation of roster for recruitment would set right the balance in the future. The Hon’ble Court itself has observed that if the roster was to be applied to confirmation, imbalance, if any, in recruitment would be automatically taken care of. However, it is worth mentioning that the rosters cannot be implemented retrospectively from the date of inception of the cadre for the following reasons :—

- (a) This established practice of calculating the shares of direct/promotee officers as a percentage of the sanctioned posts of the cadre has been continuing for over 45 years.
- (b) A large number of officers from both sources have been admitted into Punjab Police Service since the inception of the cadre on the basis of calculations of their shares as mentioned in sub- para above. Moreover, a large number of them have already left the cadre on account of retirement/death/dismissal/induction into IPS etc.
- (c) As on 1st January, 2004, there were 31 serving IPS Officers who had been inducted into Indian Police Service from the Punjab Police Service in accordance with Rule 9 of the IPS (Recruitment) Rules, 1954.

These officers had been admitted into the Punjab Police Service on the basis of calculation of shares of direct recruits/promotees as mentioned in sub-para (a) above. Out of these 31 officers, at present 25 have already been confirmed in the IPS and they no longer have any lien on their parent cadre of the Punjab Police Service. Retrospective implementation of the roster enunciated by the Hon'ble Supreme Court would rake up the issue of the seniority of such officers within PPS and further their induction into IPS.

- (d) The direct recruit officers had raised the issue of the quota rule linked to vacancies as against a percentage of total sanctioned posts for the first time in the year 2000 in the form of CWP filed by Shri A. S. Chachal, which is still *sub-judice* in the Hon'ble High Court. Out of the 31 serving inductees into IPS, 6 officers were promoted to the IPS subject to the outcome of above mentioned writ petition and another writ petition of 1999 filed by Shri Mohinder Singh.

That the Government has decided to implement the roster regulating confirmation from the 2 sources i.e. Promotees and direct recruits as enunciated by the Hon'ble Supreme Court in the case of Shri Paramjit Singh starting from Shri Iqbal Singh, No. P/292 who happens to be the immediate junior of Shri Lok Nath Angra in the Punjab Police Service (who was the last PPS Officer to be inducted to the IPS).

- (iv) That there are 4 PPS Officers namely, Shri Rajinder Singh Darbhanga, Shri Sukhmohinder Singh, Shri Sohinderpal Singh Bawa and Shri Ajaib Singh who were inducted into PPS prior to Shri Lok Nath Angra referred to in the para above but are still continuing in PPS as they were not earlier inducted into IPS owing to different reasons. It has been decided that the roster outlined above would not include these officers and they would be shown in the seniority list above the roster.”

(12) The perusal of the said finding of the State Government would show that the quota has been determined keeping in view the total sanctioned strength of the cadre. It has been said that the roster cannot be implemented from the date of inception of the cadre as the quota is being determined on the basis of sanctioned posts of the cadre for the last 45 years. The roster is sought to be implemented from the year 1989. It is also noticed that the large number of officers from both the sources have already left the cadre on account of retirement, death, dismissal or induction in IPS and that 25 officers have been confirmed in the Indian Police Service and they have no longer any lien on their parent cadre. Another reason given not to implement the roster is that it would rake up the issue of seniority of such officers within PPS and further their induction in IPS. It has been further found that the quota rule linked up to vacancies is subject matter of challenge in a writ petitions filed by A. S. Chahal and Mohinder Singh. Therefore, the Government has decided to implement the roster from Iqbal Singh, who is promotee Officer appointed in the year 1989.

(13) Before we consider the respective contentions of the parties, it may be noticed that on 4th June, 1981, the State Government passed an order of confirmation in respect of the officers with effect from 6th January, 1960 and the last officer is at Serial No. 97 with date of confirmation as 1st January, 1974. The word 'D' after the name is of the candidates appointed by direct recruitment. Some of the extracts of the list read as under :—

Sr. No.	Name of Officer S./Shri	Date of confirmation
1	Surinderpal Singh	06/01/60
2	Harbax Singh	01/04/60
3	Avtar Krishan Datta	01/04/60
4	Harbans Singh	01/04/60
5	Rajinder Singh	01/04/60
6	Y. S. Nakai (D)	05/06/60
7	D. S. Mohi (D)	23/07/60

Sr. No.	Name of Officer S./Shri	Date of confirmation
8	Chandhal Singh Bajwa	03/08/60
9	Ram Datta Mal	10/09/60
10	Avtar Singh Pannu	10/09/60
11	Banar Singh	10/09/60
12	Gurbax Singh	24/12/60
13	Chaman Lal	24/12/60
14	Vishwa Mitter	01/03/61
15	Shanti Saroup	01/03/61
16	Ajay Pal Singh Mann	06/04/61
17	Achhar Singh (D)	03/11/61
18	G. S. Bhullar (D)	11/11/61
19	Mohinder Singh	07/12/61
20	Gurdip Singh	26/02/62
21	Gian Chand	03/04/62
22	Dilbag Singh (D)	05/04/62
23	S.J.B. Ohri (D)	11/04/62
24	Jagjit Singh	07/07/62
25	Gurbachan Singh Behniwal	11/10/62
26	Balwant Singh	12/11/62
27	Sadhu Singh	23/11/62
28	Vidya Sagar	24/11/62
29	Om Parkash	24/11/62
30	Harbhajan Singh	24/11/62
31	Ravinder Kapur	12/11/62
32	Raj Bahadur Singh	23/11/62

Sr. No.	Name of Officer S./Shri	Date of confirmation
33	Surinder Pal Singh	24/11/62
34	Ranjit Singh	24/11/62
35	Hardyal Singh	24/11/62
36	Pritam Singh	24/11/62
37	Balbir Singh	24/11/62
38	Kanwal Gopal	24/11/62
39	Prithi Nath Seth	24/11/62
40	Sham Dass	24/11/62
	XXX XXX XXX	
82	Sukhdarshan Likhi, P/146	04/09/71
83	Ram Sarup Dass, P/63	04/09/71
84	Gurdial Singh, P/77	04/09/71
85	Charan Singh, P/67	01/11/71
86	Sukhdial Singh Bhullar	20/01/72
87	Hardam Singh, P/56	21/01/72
88	Surjit Singh, P/70	24/03/72
89	Bhajan Singh, P/163	29/03/72
90	Jaspal Singh Dhaliwal, P/147	21/04/72
91	Darshan Pal Singh, P/168	04/02/73
92	Ramvel Singh, P/172	28/04/73
93	Baldev Singh, P/174	28/04/73
94	Prem Singh, P/176	15/01/73
95	Waryam Singh, P/178	07/02/74
96	H.R. Chadha (D)	09/06/74
97	Balbinder Singh Grewal, P/142	01/07/74

(14) Thereafter no list has been produced in respect of date of confirmation of the direct recruits and promotees except the one finalised on 7/8th July, 2005, though different orders of confirmation have been passed. The said list is also from an officer who has been appointed on 21st June, 1989 whereas Lok Nath Angara who is now in the Indian Police Service was also appointed on 21st June, 1989. The relevant extracts of the list finalised on 7th/8th July, 2005, read as under :—

Sr. No.	Name & No. of the Officer S./Shri	Date of Birth	Date of Entry as DSP	Remarks	Roster for confirmation
	Lok Nath Angra, P/147 (last PPS Officer inducted into IPS), P/147	17/08/57	21/06/89	Now IPS	
1	Iqbal Singh, P/292	01/12/57	21/06/89		1
2	Harinderpal Singh, P/274	20/11/49	21/06/89		2
3	Balbir Singh, P/333, J/134	05/08/37	23/11/89	Retired	3
4	Narinderpal, P/87, J/135	04/01/39	01/04/90	Retired	4
	XXX	XXX	XXX		
15	Mehaish Chawla (DR-90)	01/05/65	21/04/90		15
16	Pawan Kumar Uppal, P/177, TP/14	09/01/59	27/10/89		16
17	Gurbachan Singh, PAP/37	01/02/35	06/12/89	Retired	17
18	Avtar Singh, J/42, P/34	23/07/33	06/12/89	Retired on 31/07/91	
19	Pritam Singh, J/49	15/10/33	24/11/89	Retired on 31/10/91	

Sr. No.	Name & No. of the Officer S./Shri	Date of Birth	Date of Entry as DSP	Remarks	Roster for confirmation
20	Pakhar Singh, J/79	03/12/33	04/12/89	Retired	18
21	Dyal Singh, PR/159	03/10/34	09/12/89	Retired	19
22	SPS Parmar (DR-90)	04/09/66	21/04/90		
23	Sarup Singh, FR/37	24/05/32	08/12/89	Retired on 31/05/90	
24	Dev Raj, J/143, P/39	19/05/33	12/01/90	Retired on 31/05/91	
25	Harminder Singh, J/78	12/05/35	12/01/90	Retired	21
26	Bahadur Singh, J/103	01/01/37	27/11/89	Retired	22
27	Gurdev Singh, J/117	19/01/34	27/11/89	Retired	23
28	Inderjit Singh, TP/15	03/09/54	28/11/89		24
29	A.S. Chahal, (DR-90)	22/12/59	21/04/90		25
	XXX	XXX	XXX		
166	Prem Nath, PR/219	06/02/42	07/03/91	Retired	141
167	Karam Singh, PR/130	13/05/43	08/04/91	Retired	142
168	Mohan Singh, J/101	02/02/51	02/04/91		143
169	Mohinder Singh, J/11	01/03/44	02/04/91 DD	Retired	144
170	G. S. Gill (DR-91)	04/01/67	05/01/91		145

The above said list also shows that it is not strictly as per the vacancies and in the ratio of four promotees and one direct recruit. The candidates have been neither recruited nor confirmed as per the

vacancies available. It appears that 20% of the cadre strength was kept in mind while granting seniority points to the direct recruits, though, even said assignment is not uniform.

(15) An additional affidavit has been filed by Shri Kapil Dev, IPS, Assistant Inspector General of Police, Personnel, Punjab, Chandigarh on 31st March, 2008 giving the vacancy position of promotees and direct recruits from the year 1980-90 in terms of the directions of this Court. The list appended with the affidavit is as under :—

Year	Sanctioned strength of D.Ss.P (Cadre + deputation posts	Direct quota posts @ 20% of the cadre strength	DSs P in position as on 1st January		
			Promotee	Direct	Total
1	2	3	4	5	6
1980	123+26=149	24	139	7	146
1981	123+27=150	24	138	7	145
1982	143+28=171	28	129	7	136
1983	145+28=173	29	147	3	150
1984	145+28=173	29	140	3	143
1985	*144+31=175	29	144	20	164
1986	**188+27=215	37	162	20	182
1987	203+22=225	40	156	19	175
1988	203+22=225	40	144	18	162
1989	210+23=233 (34 more posts were sanctioned by the Govt.) 233+34=267	42	156	18	174
1990	234+33=267	47	167	42	209

Vacancies	DSs. P retd. Upto 31 Dec.	Total vacancies	Filled up	
			Promotee	Direct
7	8	9	10	11
3	13	Backlog of 1979=25	21	—
5	11	16	28	—
35	13	48	22	—
23	15	48	11	—
30	15	45	44	—
11	13	24	42	17
33	35	68	37	—
50	27	77	24	2
63	28	91	43	—
93	24	117	111	—
58	19	77	—	22

*Based on letter No. 19771/Con. SA-6, dated 17th December, 1985 written to Home Department, Punjab.

**Based on letter No. 14751/Con. SA-6, dated 10th August, 1987 written to Home Department, Punjab.

(16) A perusal of the above chart, which is part of the affidavit would show that the direct quota posts have been kept in view of 20% of the cadre strength. The said determination is in contravention of the principles of law enunciated by the Hon'ble Supreme Court in **Paramjit Singh's case** (*Supra*), wherein the vacancies (not posts) are required to be filled up in the ratio of 4 : 1 (four promotees and one direct recruit). Still further, the candidates belonging to the reserved categories are not shown in the seniority as per the Rules and instructions applicable to such class of Officers.

(17) Learned counsel appearing for the direct recruits has vehemently argued that the seniority determined,—*vide* order impugned in the writ petition is in contravention of the judgments of the Hon'ble Supreme Court in **Paramjit Singh's case** (*supra*), as the seniority was required to be fixed keeping in view the vacancies and not the posts. Still further the stand of the learned State counsel before the Hon'ble Supreme Court was that the seniority has been fixed keeping in view the directions of the Supreme Court but as per the orders impugned in the writ petition, the seniority is being determined in terms of the rotational Rule with effect from 1989. Thus, it is alleged that for the short period i.e. from 1982 to 1989, the rotational rule is not being applied for determination of the seniority. But before the year 1982 and after the year 1989 seniority is being determined on the basis of rotational system. The reasoning given by the State Government that 31 members of the Service have been inducted in the Indian Police Service and 25 have been confirmed and have no longer any lien and therefore, they cannot be reverted back is wholly untenable. Relying upon **Arvinder Singh Bains versus State of Punjab and others, (6)**, it was alleged that if on determination of seniority, certain candidates, who have been inducted into Indian Police Service, are not entitled to be inducted and they are liable to be reverted back. The entire reasoning given by the State Government is untenable. It was alleged that in fact the roster was not given effect to for giving benefit to Shri Parampal Singh Gill, who is brother of the then Home Secretary, Shri S.S. Gill, who was the member of the Committee constituted for determination of the seniority. It is argued that in fact the action of the State Government in not giving effect to the judgment of the Hon'ble Supreme Court is nothing but contemptuous, therefore, the State Government is bound to implement the judgment of the Hon'ble Supreme Court and to prepare seniority as per the rotational system. It is argued that the finding that the rotational rule has not been followed for 45 years is not correct, in as much as the same was given effect to till 1982 and has been ordered to be given effect after 1989. Therefore, the non-implementation of the rotational Rule for a period of 7 years is wholly unjustified.

(18) On the other hand, learned counsel appearing for the promotee-Officers have argued that in fact, Quota and Rota Rule was

never given effect to by the State Government even in the list issued on 4th June, 1981. It is argued that since the seniority has not been ever maintained by applying the rotational principles, therefore, there is breakdown of rota system and thus, the seniority cannot be fixed on the basis of rotational system. Reliance is placed upon **G. S. Lamba and others versus Union of India and others, (7)** and **J. Janardhana versus Union of India and others, (8)**,

(19) It is also pointed out that the seniority as depicted in the gradation list got the approval of the Division Bench of this Court in the judgment reported as **Tulsi Ram versus State of Punjab and others, (9)**. Therefore, the same issue cannot be raised again. In the said case the writ petitioner was the directly appointed DSP appointed in pursuance of advertisement in the year 1989. The petitioner joined on 21st April, 1990. The challenge was to the promotions made against 80% posts required to be filled up by promotion from amongst the candidates, inter-alia, on the ground that their names were not brought on list 'G' without the approval of the Public Service Commission and in relaxation of the condition of 6 years experience. The promotions were made by relaxation of the qualification though the proposal of the State Government to amend the Rules so as to reduce the experience of continuous service as an Inspector for a period of 6 years to 4 years was not acceded to by the Public Service Commission.

(20) This Court held that though initially appointment was not made in accordance with sub Rule 2 of Rule 6, but with the approval by the Commission, the promotee-DSPs are entitled to the benefit of their temporary service. It was held that the case of promotees is covered by proposition-B as held by the Supreme Court in the case of **Direct Recruit Class-II Engineering Officer's Association versus State of Maharashtra, (10)**. It was held by this Court to the following effect :—

“When we consider the case of the private respondents in the light of the aforesaid two propositions it became crystal

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- (7) AIR 1985 S.C. 1019
(8) (1983) 3 S.C.C. 601
(9) 2002 (5) S.L.R. 409
(10) (1990) 2 S.C.C. 715

clear that their case is covered by proposition (B). Their initial appointment was no doubt not made in accordance with sub-rule (2) of Rule 6 of the Rules in as much the approval of the Commission had not been obtained when they were promoted nor their names were brought on list 'G' but the promotees of the 1989 batch after their promotion concerned on the post uninterruptedly till their services were regularised by the Commission when it accorded approval to their names being brought on list 'G' with effect from the dates they were promoted. They are, therefore, entitled to the benefit of their temporary service which they rendered as DSPs and that service had to count towards their seniority."

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

(22) A perusal of some of the names entered into the list circulated in the year 1981 would show that the list is of the officers appointed from 1st January, 1960 till 1974. The said list is not the complete seniority list, in as much as the Officers, who were in position prior to the commencement of the Punjab Police Rules framed in 1959, have not been reflectd, as required in terms of the clarification order in **Paramjit Singh's case** (*supra*). The vacancies then determined would be available on the commencement of 1959 Rules for appointment in terms of Rule 6 of the Rules. All such vacancies are required to be filled up in terms of **Paramjit Singh's case** (*supra*). Therefore, even the list dated 4th June, 1981 is not in tune with the judgment of the Hon'ble Supreme Court. The said list also does not disclose the assignment of seniority to the candidates of reserved category nor discloses that the vacancies have been filled up in the ratio of 4 : 1. Somewhat similar is the situation in respect of the list circulated in the year 2005. The said list is from the year 1989. Therefore, it is apparent that for the intervening period i.e. 1974 till 1989 the State Government has not prepared any seniority list on the rotational principle basis. It

is apparent that neither the recruitments were made keeping in view the vacancies nor rotational rule has been given effect to with full rigour ever since the Rules were framed in the year 1959.

(23) In **J. Janardhana's case** (*supra*), the Hon'ble Supreme Court dealt with a situation where roster was required to be maintained consistent with the quota so that the relative inter se seniority of promotees and direct recruits be determined by the date on which vacancy occurred. It was held by the Hon'ble Supreme Court as under :—

“It is equally well recognised that where the quota rule is linked with the seniority rule if the first breaks down or is illegally not adhered to giving effect to the second would be unjust, inequities and improper. An incidental situation was noticed by this Court in first **B.S. Gupta case** wherein this court while rejecting the contention of the promotees that the quota rule and the seniority rule deserved to be independent of each other held that with the upgrading of the large number of posts and the appointment to them of promotees, the quota rule collapsed and with that the seniority rule also. Therefore, once the quota rule was wholly relaxed between 1959 and 1969 to suit the requirements of service and the recruitment made in relaxation of the quota rule and the minimum qualification rule for direct recruits is held to be valid, no effect can be given to the seniority rule enunciated in para 3(iii), which was wholly interlined with the quota rule and cannot exist apart from it on its own strength.”

(24) Later in **G. S. Lamba's case** (*supra*), the Hon'ble Supreme Court found that if the seniority rule being based on rotation of vacancies available of each seat and the quota not being filled in from time to time when the vacancies while the is inequitous. It was held to the following effect :

“17. It will be presently demonstrably established that where rota rule of seniority is inter-linked with quota rule of recruitment, and if the latter is unreasonably departed from and breaks down under its own weight, it would be unfair

and unjust to give effect to the rota rule of seniority. To some extent this is not *res integra*. Though some advance has been made in this proposition in later decisions.

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25. The language of Rule 13(1) appears to be mandatory in character. Where recruitment to a service or a cadre is from more than one source, the controlling authority can prescribe quota for each source. It is equally correct that where the quota is prescribed, a rule of seniority by rotating the vacancies can be a valid rule for seniority. But as pointed out earlier if the rule of seniority is inextricably intertwined with the quota rule and there is enormous deviation from the quota rule, it would be unjust inequities and unfair to give effect to the rota rule. In fact, as held in O.P. Singla's case, giving effect to rota rule after noticing the enormous departure from the quota rule would be violative of Art. 14. Therefore, assuming that quota rule was mandatory in character as pointed out earlier, its departure must permit rejection of rota rule as a valid principle of seniority."

(25) The aforesaid judgments have been considered recently by the Supreme Court in Arvinder Singh's case (*supra*). The said case pertains to the Punjab Civil Services (Executive Branch). In the said case, it was found that it was in December, 1982, the Government decided to deviate from long established practiced of applying Rota Rule and started determining seniority from the date of appointment and that there was no specific reasons to follow the new procedure for determining the seniority in the service. After various judgments, the Court held to the following effect :—

“47. To sum up, we hold that :—

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(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are not framed in this regard they must ordinarily be followed strictly.

- (D) If it becomes impossible to adhere to, the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.
- (E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.
- (F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised, that there was such relaxation when there is a deviation from the quota rule.
- (J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinized for finding out any possible error. It is not in the interest of Service to unsettle a settled position.”

(26) From the arguments raised by the learned counsel for the parties, it transpires that the quota rule was not adhered to either at the time of recruitment or at the time of confirmation. It is so apparent from the arguments raised by the counsel for the promotees that since the rotational rule has broken down and not adhered to, the rule of seniority based on rotational principle cannot be applied. In the absence of the judgment of the Hon’ble Supreme Court in **Paramjit Singh’s case (supra)** and subsequent on clarification application, we might have considered the acceptance of the arguments raised by the learned counsel for the promotee-officers, but keeping in view the judgment of the Hon’ble Supreme Court in **Paramjit Singh’s case (supra)**, we do not find that such arguments can be accepted in the present case. The

State Government has acted in breach of the directions and the principles laid down by the Hon'ble Supreme Court in Paramjit Singh's case (supra) and in fact, not given effect to the statement made by the learned State Counsel at the time of the decision of the application for clarification of the earlier order. In these circumstances to hold that the rotational rule has broken down and therefore, seniority should not be determined on the basis of rotational principles, would be against the law and directions given by the Hon'ble Supreme Court which are binding on the State Government.

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

(28) Therefore, we dispose of the present writ petitions and all miscellaneous applications by setting aside the order of fixation of seniority list dated 7th/8th July, 2005 and all other orders of confirmation

with directions to the State Government to finalise the seniority list within three months keeping in view the following principles :—

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